

HB

600

STATE OF ALASKA
THE LEGISLATURE

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POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

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

Mary Van Nimwegen

HT 2-27-86 JAM

HB 600 *file*

Representative Koponen added his name as co-sponsor to HOUSE BILL NO. 600 (relating to acquisition of rights-of-way by the Department of Transportation and Public Facilities; effective date).

HB 608

Representative Goll added his name as co-sponsor to HOUSE BILL NO. 608 (relating to spraying and application pesticides and broadcast chemicals).

The Speaker ordered the House recessed at 12:30 p.m. to a call of the Chair.

AFTER RECESS

Speaker Grussendorf called the House back to order at 6:20 p.m.

The House reverted to:

INTRODUCTION, FIRST READING AND REFERENCE
OF HOUSE RESOLUTIONS

HCR 49

HOUSE CONCURRENT RESOLUTION NO. 49 by Pourchot, Collins, Gruenberg, Pignatleri, Hurley, Jenkins, Clocksin, Boucher and Szymanski:

Relating to requirements of the Alaska Housing Finance Corporation for mobile home loans.

was read the first time and referred to the House Special Committee on State Loans and the Finance Committee.

HCR 50

HOUSE CONCURRENT RESOLUTION NO. 50 by Gruenberg, Koponen, Hurley, Taylor and Hanley:

Establishing a joint committee on mental health trust land.

was read the first time and referred to the Health, Education & Social Services and Finance Committees.

HCR 51

HOUSE CONCURRENT RESOLUTION NO. 51 by Marrou:

Relating to the Governor's budget.

was read the first time and referred to the Judiciary and Finance Committees.

HCR 52

HOUSE CONCURRENT RESOLUTION NO. 52 by Marrou:

Relating to state assumption of federally mandated programs.

was read the first time and referred to the Resources and Finance Committees.

HCR 53

HOUSE CONCURRENT RESOLUTION NO. 53 by Wallis:

Relating to the economy of rural communities of the Interior and Lower Yukon areas.

was read the first time and referred to the Labor & Commerce and Finance Committees.

HCR 54

HOUSE CONCURRENT RESOLUTION NO. 54 by Taylor, Koponen and Gruenberg:

Requesting the Alaska Supreme Court to consider amending Rule 14 of the Alaska Rules Governing the Administration of All Courts to provide for the reimbursement of day care expenses incurred by persons while serving as jurors.

was read the first time and referred to the Judiciary Committee.

HCR 55

HOUSE CONCURRENT RESOLUTION NO. 55 by Cato, Grussendorf, and Taylor:

Relating to the eighteenth annual Girls' State.

was read the first time and referred to the State Affairs Committee.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. Box K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 21, 1986

The Honorable John B. Coghill
Alaska Senate
P.O. Box V
Juneau, AK 99811

Re: SB 428/HB 600

Dear Senator Coghill:

You have inquired regarding the legal impact SE 428. Identical legislation has also been introduced in the House of Representatives as HB 600.

This bill amends AS 44.42.020 with new language, proposed as subsection (b)(3), which allows the Department of Transportation and Public Facilities (DOT/PF) the discretion to "acquire, purchase, or take over underdeveloped or prepared rights of way for present or future use as a road, highway, railroad or pipeline corridors." The language regarding prepared rights of way presents a number of legal difficulties, which arise from state procurement policies and general legal requirements regarding public construction contracts after award of the contract.

Under existing statutory authority, the Department of Transportation and Public Facilities has the duty to acquire land necessary as rights of way. AS 19.05.080 and AS 35.20.010. It is also required to construct public projects, with a cost of construction of more than \$100,000, by contracts awarded on the basis of competitive bidding to the lowest responsible bidder. The department can, upon a showing by ultimate facts, waive the requirements for competitive bidding when it is in the state's best interests. AS 19.10.170, 19.10.210, 35.15.010 and 35.15.050.

The new language contained in SB 428 grants no new authority to DOT/PF. The department presently has the ability to acquire land and to accomplish the construction of public works by means other than competitive bidding. The proposed language does blend the functions of land acquisition and construction

together, but in no way changes any other legal obligations of the department or other requirements which presently exist.

When the state acquires land it is obligated to render just compensation for the land, which is based upon the fair market value of the land without regard to any special value the land may have to the state for the project constructed in the manner proposed. AS 09.55.310 and Gackstetter v. State, 618 P.2d 564 (Alaska 1980). Its obligation can be characterized as a responsibility to pay as much money for the land as is reasonably supportable by external criteria found in the particular real estate market.

Public construction contracts are generally awarded to the lowest bidder which is determined on the basis of price competition among interested contractors. DOT/PF's duty in regard to these contracts may be characterized as the responsibility to accomplish the construction at the least cost to the state.

The proposed language of this bill does not alter DOT/PF's responsibilities under existing law regarding either land acquisition or public construction contracting. The department would still be required to prove by ultimate facts that the particular acquisition of prepared rights of way would be in the state's best interests compared to buying the land for fair market value and accomplishing the construction by competitive bidding with the award to the lowest responsible bidder.

There is a second set of legal requirements which also apply to public construction projects which the provisions of HB 428 do not alter. These requirements govern the performance of contracts for public construction projects and come into play after the contract has been awarded.

AS 36.05.010 through AS 36.05.110 require the payment of prevailing wage rates on public construction contracts. There is little doubt that the type of work contemplated by the term "prepared rights of way" would fall within the ambit of these statutes. Public construction is defined in AS 36.95.010(3) to mean ". . . the on site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state . . ." (Emphasis added). The fact that the state would be contracting for the purchase of land instead of the construction of a public works project would not defeat a worker's right to receive the prevailing wage rate. This conclusion is reached because of the close connection between the work to be done as an incident of the land

acquisition and the completed project, and the fact that the land as improved to the state's specifications will be used for a facility owned and used by the state. See, City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982) and Alaska Federation of Labor v. State Department of Labor et al, Alaska Supreme Court Opinion No. 3014, January 31, 1986.

Under the provisions of AS 36.25.010 contractors on state public works projects, which have a contract price of more than \$100,000, are required to procure payment bonds to guarantee payment for laborers and material men providing services and goods necessary for the performance of the contract. There have been no cases which require payment bonding under circumstances similar to the requirement to pay prevailing wage rates which we have discussed above. However, it is probable that our courts could reach that conclusion in regard to prepared rights of way.

We reach this conclusion because payment bonds are required to serve two functions. They protect laborers and material men by ensuring that they will be paid for their services or goods. Coincidentally, payment bonds also protect the state because they provide the exclusive remedy in the event of nonpayment of laborers and material men. Hence, the state is not subject to liens filed by laborers and material men under AS 34.35.050. (The argument for requiring payment bonds for creation of prepared rights of way is amplified because the relationship is structured as a land transaction, which would be subject to liens filed by laborers and material men.)

If a major alteration in public policy is sought by the passage of HB 428, the bill is not successful. The bill does not grant any authority to DOT/PF which it does not already possess under existing law. The department would still be required to prove that it was in the state's best interests to purchase prepared rights of way rather than have the work preparing the right of way done under a contract awarded on the basis of competitive bidding. It is a virtual certainty that laborers actually performing the work would be entitled to receive the prevailing wage rate under AS 36.05.010 which would make labor costs for preparing the right of way equal to the labor costs under competitive bidding. Similarly, there is also a very strong possibility that payment bonding would be required when prepared rights of way are purchased. The costs of these bonds would have to be factored and would be the same for both property owners preparing rights of way for sale to the state and construction contractors. It appears, given the costs paying prevailing wage rates and procuring the appropriate bonding, that

Honorable John B. Coghill
Alaska Senate


March 21, 1986
Page 4

it would be unlikely that the necessary showing that a contract to acquire prepared rights of way would be in the state's best interest, except for very modest projects, unless the property owner is willing to accept greatly reduced equipment rates on equipment required for the work and give up normally expected returns for overhead and profit.

If we may be of any further assistance on these matters, please contact us at your earliest convenience.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
William F. Cummings
Assistant Attorney General

WFC:prm:

Ahtna, Inc.

COPPER CENTER OFFICE
DRAWER G
COPPER CENTER AK 99573
PHONE (907) 822 3476

ANCHORAGE OFFICE
406 W FIREWEED LANE NO 100
ANCHORAGE AK 99503
PHONE (907) 274 7662

February 27, 1988

Rep. Bette Cato
Chairman
House Transportation Committee
Pouch V
Juneau, Alaska 99811

RE: HB 600

Dear Ms. Cato;

Ahtna, Inc. would like to submit for your consideration the following comments with respect to HB 600, the prepared "Right-of-way" bill.

Ahtna, Inc. is one of the twelve native region corporations established by the Alaska Native Claims Settlement Act of 1971 (ANCSA).

Our interest in this bill stems primarily from the fact that Ahtna, Inc. is located within the hub of three major highway arterial systems. These are the Richardson Hwy., the Glenn Hwy., and the Tok Cut-off Hwy.

Obviously then, due to the large amounts of impacted Right-of-way acreage within the Ahtna Region, our corporation would consider this bill major importance.

Ahtna, Inc. is wholeheartedly in support of this particular bill and we would like to discuss for your edification, some of the reasons why:

HB 600 would provide much needed legal flexibility to the Alaska Department of Transportation Public Facilities (DOT/PF) in developing projects requiring "Rights-of-way" acquisition.

HB 600 would assure more productive utilization of natural resource (such as timber), by allowing for planned disposal, rather than elimination, (hydro-axing, chipping, burning, etc.).

Planned disposal of natural resources, as we know, is conducive to improving and encouraging local economy and local hire. This is done simply by providing the land owner with the opportunity to deliver cleared or otherwise prepared Right-of-way for transportation and other related projects.


We feel that the passage of this bill would not only alleviate much of the strain that has developed between DOT/PF and ANCSA Corporations, but it would also serve to settle the question recently inferred by court decisions as to whether or not landowner cleared Right-of-way's are acceptable to the State of Alaska. In addition, we have the added inducement of providing for a framework in which DOT/PF and ANCSA Corporations can not only work more closely towards common interests, but also lead to a sharing of priorities and resources which to date has hampered such efforts. We speak specifically of such items as time lost by Corporations, Manager's and Resource Department personnel in assessing Right-of-Way acquisition offers, and interpretation of impact and/or other legal consequences.

We note that in times past in negotiating with DOT/PF for Right-of-Way acquisition, we were informed by DOT/PF that they did not have the authority to negotiate prepared Right-of-Way.

In summary we strongly urge members of your committee to fully endorse the passage of HB 600.

We also at this time would like to thank you personally for your past efforts on our behalf within the Ahna Region. Thank you and remaining,

Sincerely,


Wilson Justin
Operation's Manager

WJ/dg

CC: Roy S. Ewan, President
Land Committee
Larry Lau, Resource Manager
Marc Stemp, Controller
Lori Bogdanskyy, Assistant Resource Manager
Robert Goldberg, General Council

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 2/14/86

FURTHER REFERRALS: FINANCE

DATE: 27 FEB. 1986

The TRANSPORTATION Committee has considered HB 600

"An Act relating to acquisition of rights-of-way by the Department of Transportation and Public Facilities; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 600 (TRSP) same title new title

() and recommends _____

further referral to the _____^{2/14/86} Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

"An Act relating to _____"
Bette Cato
Melissalber
Dick Smith
A.W.M. MARROU

HB
SIGNING OTHER RECOMMENDATIONS:

Mike De

Bette Cato
Chairman

Introduced: 2/14/86
Referred: Transportation
and Finance

1 IN THE HOUSE

BY SHULTZ

2

HOUSE BILL NO. 600

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to acquisition of rights-of-way by
7 the Department of Transportation and Public Facili-
8 ties; and providing for an effective date."

9

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

10

* Section 1. AS 44.42.020(b) is amended to read:

11

(b) The department may

12

(1) engage in experimental projects relating to available
13 or future modes of transportation and any means of improving existing
14 transportation facilities and service;

15

(2) exercise the power of eminent domain, including the
16 declaration of taking as provided in AS 09.55;

17

(3) acquire, ^{trade land for or} purchase, ~~for~~ take over undeveloped or prepared
18 rights-of-way for present or future use as road, highway, railroad, or
19 pipeline corridors.

20

* Sec. 2. This Act takes effect July 1, 1986.

3869

Watts - seems not to have been author of Journal;

Wilton's draft

The objection to him is fundamental, what proper
can be done -

- How to be involved re: case - release of
prepared rules. Edwards - acquisition of books =
fair market value = value of property receiving benefit -
receiving seller. Problem: ordering, proportions =
dealing w/ and how value.

- Compare how to segregate it out.

- Do not have purchase and how w/ from. receive 30% to have
value already fixed.

Problem: Dep. on position - should be as if it is
proper construction of power to be a public project,
actions do not stand on "open + free bidding"
distinction.

→ AG's opinion - re: public project; interpretation
of statutes

Introduced: 2/14/86
Referred: Transportation
and Finance

1 IN THE HOUSE

BY SHULTZ

2 HOUSE BILL NO. 600

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to acquisition of rights-of-way by
7 the Department of Transportation and Public Facili-
8 ties; and providing for an effective date."

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15 (2) exercise the power of eminent domain, including the
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17 ~~(3) acquire, purchase, or take over undeveloped or prepared~~
18 rights-of-way for present or future use as road, highway, railroad, or
19 pipeline corridors.

20 * Sec. 2. This Act takes effect July 1, 1986.

OR
[OR TAKE OVER]
acquire, or
purchase
undeveloped

acquire, trade, lease, for, or purchase

Not necessary. Concern eminent domain

** attempt acquire prior to e.d. - put in statute
all else fails to be discretionary option for DOT*

*Correction: No Davis Bros & Co. - DOT holder on holding of
case. May not enter into negotiations of holding
in case*

*1. Negotiate or 2. Provide authority to negotiate which they said doesn't
exist. How DOT says this doesn't help*

"Trade land for"

1975 - seems not too broad and fairly foreseeable;

Unitary title

No objection to use to facilitate what people want to do

- Have to be careful not to raise claims as prepared R.O.W. Courts - acquisition of lands = fair market value = value of property willing buyer - willing seller. Problem: adding preparations = raising up market value.

- Careful how to phrase it out

- DOT has purchased R.O.W. from state corps where road already built

Problem: Dept. on position - should be contracts - public construction of roads to be in public project, before do not stand on "open & free bidding" statute.

→ AG's opinion: - not public project; interpretation of statute



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: House Bill No. 600 and Senate Bill No. 428 **APPROVED:**

Bill Knapp
Bill Knapp
Commissioner

TITLE: An Act relating to acquisition of right of way by DOT&PF and providing for an effective date **DATE:**

2/26/86

In reviewing both HB 600 and SB 428, it is our opinion that the language adds nothing to existing powers of the State of Alaska already under AS 44.42.020. We do, however, have some concern with the language and its impact.

The words "...prepared rights-of-way..." imply that preparation of the right of way is done prior to or as a condition of acquisition. The condemning authority could purchase the right of way in either an undeveloped or prepared condition under the power of eminent domain (AS 09.55); however, the condemning authority is limited to pay no more than fair market value for property. Fair market value does not include value that contributes to public construction or enhancement of a project. In other words, the price paid for right of way would be measured in terms of fair market value, not in terms of construction costs for performing project preparation. Providing that prepared rights of way were to be acquired, the fair market value of the land would have to be a separate issue from the price of doing the preparation to meet the requirements of the law. The increase in market value, if any, may or may not equal the cost of doing the preparations. It is noted that laws governing the fair market value concept are well established and defined by the courts.

Another question regarding the acquisition of prepared rights of way has to do with the competitive bid requirements of AS 37.05.230. The preparation of rights of way for a specific project surely would be deemed to be public construction, therefore subject to competitive bid. In a recent opinion of the Supreme Court of the State of Alaska, City and Borough of Sitka v. Construction and General Laborers Local 942, 644 p. 2d 227, Op. No. 2495 (May 7, 1982, Alaska), it was held that clearing requirements included in a timber sale contract were "public construction" and therefore subject to the Little David-Bacon Act of Alaska. The primary test applied in the opinion was the extent to which the clearing work under the timber sale contract related to the construction of a dam. In essence, the court concluded that the clearing work would not have been done but for the construction of the dam. This opinion would surely have some effect on our issue in regard to acquiring project-specific prepared rights of way.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: House Bill 600
 Title: An Act relating to acquisition of right of way by DOT&PF and providing for an effective date
 Sponsor: Schultz
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Department of Transportation & Public Facilities
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-				
TRAVEL		-0-				
CONTRACTUAL		-0-				
SUPPLIES		-0-				
EQUIPMENT		-0-				
LAND & STRUCTURES		-0-				
GRANTS, CLAIMS		-0-				
MISCELLANEOUS		-0-				
TOTAL OPERATING		-0-				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Milton H. Lentz 2/27/86

Prepared by: Milton H. Lentz, CRA Phone: 465-2985
 Division: Engineering & Operations Standards Date: 2/27/86

Approved by Commissioner: _____ Date: 2-26-86
 Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 600 and SB 428

The Department of Transportation and Public Facilities has some concern regarding the language of both House Bill No. 600 and Senate Bill 428. We do not understand the intent of these bills in view of present Alaska Statutes 44.42.020 and 09.55. Our major concern is with the words: "...prepared rights-of-way..." By statutes, acquisition would be limited to fair market value regardless of whether the right of way is "prepared" or not.

These bills appear to have no measurable fiscal impact on the Department of Transportation and Public Facilities as any funding for the acquisition would be by legislative appropriation.

DAVID L. ALLISON
ATTORNEY AT LAW

February 25, 1986

240 Main Street, Suite 601
Juneau, Alaska 99801
(907) 586-6079

Representative Richard Shultz
Room 120-C Capitol Building
Juneau, Alaska 99811

Dear Representative Shultz:

Enclosed with this letter are the following materials to substantiate the need for, and benefits of, HB 600:

1. Copy of HB 600.
2. Cover letter summarizing the issues.
3. Brief summary of the facts and reasons in support of enactment of HB 600.
4. Copy of Alaska Supreme Court Case: City and Borough of Sitka v. Construction, Etc., 644 P.2d227.
5. Copy of AS 44.42.020 in its' present form, prior to the proposed amendment.
6. Copy of AS 19.05.040 et seq., which sets out the powers of the Department of Transportation & Public Facilities.

If there are further questions or concerns which are not addressed adequately in this package, I would be pleased to respond to them or provide additional materials at your convenience or upon your request.

Yours Truly,



David L. Allison
for AHTNA, Inc.

ATTACHMENT 1

Copy of HB 600

ATTACHMENT 2
Issue Summary

HB 600 ISSUE SUMMARY

HB 600 is introduced at the request of AHTNA Inc., in order to address several problems confronting AHTNA Inc., as well as other major landowners throughout the State of Alaska. These issues have been raised by AHTNA Inc. representatives in their discussions with DOT/PF employees and other administration and Legislative personnel. HB 600 is designed to respond to the counsel which AHTNA Inc. representatives received from those sources.

Among the specific issues of concern are the following:

1. Local hire: encouraging the employment of local people, within a community impacted by development, on projects in their community, especially where property owned by those local citizens is to be used by the State in the development project.
2. Fair and equitable compensation: Often raw land, especially in rural areas, has a relatively low current appraised value, in part because of infrequent land transactions in those areas with a resultant scarcity of "comparables" for valuation purposes.
3. Expediting local construction projects: With the downturn in the State economy it has become a matter of economic necessity for many Alaskan residents that proposed public works projects be moved from legislative appropriation and administrative approval into the field as rapidly as possible.
4. Minimizing project costs to the State: In order to generate the greatest possible impact from Alaskas' increasingly limited capital budget, innovative processes and procedures for land or right-of-way aquisition and development should be explored.

DAVID L. ALLISON

ATTORNEY AT LAW

Although these four issues, obviously, do not address all of the concerns regarding local employment, fair compensation, accelerated construction schedules and maximum return on State capital expenditures, they do illustrate the primary issues addressed by the modification of AS 44.42.020 as proposed in HB 600. A brief summary of how HB 600 responds to these four issues is contained in Attachment # 3 in this package.

ATTACHMENT 3
Justification

HB 600 JUSTIFICATION

HB 600 is a very simple bill with limited impact compared with many of the complex and extensive bills which regularly come before this committee. It is a bill, however, which holds real promise for assisting many individual Alaskans, major land owners and even, possibly, the State treasury, at little or no cost to the State.

The provisions of HB 600, in substance, allow the Department of Transportation and Public Facilities to acquire prepared, as well as undeveloped, rights-of-way for highways and certain other public purposes. These provisions are not mandatory and require no more of the DOT/PF personnel than is required at present.

The potential effects of HB 600, however, are significant. If, for example, DOT/PF were to exercise its' discretion to negotiate for and acquire prepared right-of-way for a highway extension or by-pass from the owner of the real estate parcel through which the highway was to pass, that property owner would be in a unique position to legally guarantee the employment of local people for the task of clearing the right-of-way. Not only would the property owner have the advantage of adding value to the land prior to selling it, but the buyer, DOT/PF, would have the advantage of acquiring in one transaction the cleared right-of-way which would, without HB 600, require at least two, if not more, separate transactions. HB 600, therefore, has the potential to address each of the four issues mentioned in the ISSUE SUMMARY, which is attachment # 2 herein.

HB 600 responds to the issue of local hire by providing an opportunity for Alaskans to obtain employment on construction projects which take place near their homes. This opportunity is especially available when the major land holder from whom the right-of-way is obtained is a Native Corporation in that those corporations have both a commitment to, and a demand for, shareholder hire. Since the majority of the Native Corporation shareholders are also Alaska citizens, shareholder hire is, effectively, local hire. To the extent that shareholders are not available or not qualified for the jobs, those jobs are very likely to go to other, non-shareholder, local people as the

HB 600 JUSTIFICATION

HB 600 is a very simple bill with limited impact compared with many of the complex and extensive bills which regularly come before this committee. It is a bill, however, which holds real promise for assisting many individual Alaskans, major land owners and even, possibly, the State treasury, at little or no cost to the State.

The provisions of HB 600, in substance, allow the Department of Transportation and Public Facilities to acquire prepared, as well as undeveloped, rights-of-way for highways and certain other public purposes. These provisions are not mandatory and require no more of the DOT/PF personnel than is required at present.

The potential is significant. If, for example, the Department of Transportation has discretion to negotiate for a highway extension through an estate parcel through which a property owner would not guarantee the employment of clearing the right-of-way, the buyer, DOT, would have the advantage of it, but the buyer, DOT, in one transaction the HB 600, require at least two transactions. HB 600, each of the four issues addressed in attachment # 2 herein.

Handwritten notes:
I would like to see
the DOT/PF
that I can
negotiate

are
use its
right-of-way
of the real
, that
ally
ask of
property owner
rather than selling
of acquiring
could, without
to address
the issue, which is

HB 600 responds by providing an opportunity for Alaskans to obtain employment on construction projects which take place near their homes. This opportunity is especially available when the major land holder from whom the right-of-way is obtained is a Native Corporation in that those corporations have both a commitment to, and a demand for, shareholder hire. Since the majority of the Native Corporation shareholders are also Alaska citizens, shareholder hire is, effectively, local hire. To the extent that shareholders are not available or not qualified for the jobs, those jobs are very likely to go to other, non-shareholder, local people as the

Native Corporations have their headquarters, and, therefore, their hiring facilities, in Alaska.

The potential for fair and equitable compensation to the land owner is improved by the provisions of HB 600 by providing the opportunity to the land owner to add value to the right-of-way being acquired by DOT/PF prior to transfer of the property. Although the underlying value of the real estate is not changed by this bill, the opportunity to employ shareholders and to earn additional income from the right-of-way preparation, especially if the land clearing is done efficiently, adds significantly to the overall value and utility of the corporate land to the corporation without any additional cost to the State.

Because HB 600 would provide for acquisition of the prepared right-of-way in one transaction, rather than two or more transactions as is presently the case, implementation of HB 600 will be likely to expedite local construction projects, or, at least, offer an opportunity to expedite those projects. This potential benefit, like local hire, is most likely to be realized in situations where the right-of-way seller is a Native Corporation because such corporations are of sufficient size, with sufficient available employees and equipment, to undertake the clearing and other necessary or appropriate right-of-way preparation allowed for under the bill.

Maximizing local hire; expediting local construction projects; and providing fair and equitable compensation to the land owner; all improve the potential for minimizing the project costs to the State and reducing transfer payments from the State to both the individual Alaskans and the rural communities most severely impacted by declining revenues and limited local tax bases. Since HB 600 is discretionary rather than mandatory, DOT/PF would have the opportunity to experiment with the process on a limited basis, perhaps involving only one or two projects, until the benefits of the legislation are proven.

HB 600 is a simple bill which offers the potential for substantial benefits to the people of Alaska. Your positive recommendation is requested.

ATTACHMENT 4

City & Borough of Sitka v Construction Etc.

CITY AND BOROUGH OF SITKA, State of Alaska, and Alaska Lumber and Pulp Co., Inc., a Corporation, Appellants,

v.

CONSTRUCTION AND GENERAL LABORERS LOCAL 942, International Unions of Operating Engineers Local 302, and Teamsters Local 959, State of Alaska, Appellees.

No. 5774/5811.

Supreme Court of Alaska.

May 7, 1982.

Unions filed complaint alleging various charges against a proposed timber contract between a lumber company and a city and alleging, in effect, that workers had received less than the prevailing wage in violation of statute. The Superior Court, First Judicial District, Sitka, Duane Craske, J., held that the unions were entitled to recover. Appeal was taken. The Supreme Court, Compton, J., held that: (1) the statute requiring payment by a contractor or a subcontractor who performs work on public construction in the state to pay not less than the prevailing rate of wages for work of similar nature in the region in which the work is done was applicable to a timber sale contract entered into by the lumber company and the city, since the clearing of timber pursuant to the contract was a substantial portion of a project for the construction of a hydroelectric dam, and (2) a stipulation entered into between the lumber company and the unions that, if the unions prevailed on the claim concerning the applicability of the statute, the remedy would be in the form of damages precluded a challenge to the issue whether the statute authorizes a private right of action.

Judgment affirmed.

1. Labor Relations ⇌ 1132

Timber sale contract is not generally subject to statute requiring payment by contractor or subcontractor who performs

work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done. AS 36.05.010.

2. Labor Relations ⇌ 1132

In determining whether timber sale contract between lumber company and city was subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done, focus of inquiry was whether clearing of timber pursuant to contract related to construction of dam which was to be built on site. AS 36.05.010.

3. Labor Relations ⇌ 1132

Logging to be done pursuant to timber sale contract between lumber company and city was substantially related to construction of dam on that site and, therefore, was "public construction" subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done. AS 36.05.010.

See publication Words and Phrases for other judicial constructions and definitions.

4. Labor Relations ⇌ 1132

Fact that timber sale contract between lumber company and city was separated from contract for construction of dam for hydroelectric project did not preclude determination that timber sale contract was subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done. AS 36.05.010.

5. Labor Relations ⇌ 1132

Focus of statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of

similar nature in region in which work is done is benefit of employees, not of contracting principals. AS 36.05.010.

6. Labor Relations ⇐1132

Whether government pays contractor or whether contractor pays public agency does not determine whether contract in question is subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is performed. AS 36.05.010.

7. Stipulations ⇐14(12)

Stipulation agreed to by lumber company that if unions prevailed in litigation seeking determination of whether statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done was applicable to timber sale contract between lumber company and city, remedy would be damages paid to workers, precluded lumber company from raising issue of whether statute authorized private right of action to recover back wages. AS 36.05.010.

James F. Clark, Robertson, Monagle, Eastaugh & Bradley, Juneau, and Peter S. Halgren, Sitka, for appellants.

Bruce Monroe and Paul L. Dillon, Birch, Horton, Bittner, Monroe, Pestinger & Anderson, Juneau, for appellees.

Before BURKE, C. J., and RABINOWITZ, CONNOR, MATTHEWS and COMPTON, JJ.

1. Sitka submits that it never intended to include the timber clearing with the dam construction bid offering. When Sitka Municipal Administrator, Fermin Gutierrez saw that the engineering consultant firm which had prepared the bid offering had included the timber clearing within Contract No. 3, Gutierrez directed the firm to analyze the cost differential between a separate timber sale contract and including the timber clearing in the dam contract. Ultimately, the firm concluded that a separate timber sale contract would be to Sit-

OPINION

COMPTON, Justice.

This is an appeal from the judgment of the superior court which held that a timber sale contract executed between Alaska Lumber and Pulp Co., Inc. (ALP) and the City and Borough of Sitka (Sitka) was subject to the provisions of Alaska's "Little Davis-Bacon Act," AS 36.05.010.110. The logging and related clearing took place on land Sitka owned and upon which the Green Lake Hydroelectric Project, a dam, was to be built. The superior court further held that pursuant to a stipulation negotiated by the parties, the Unions were entitled to an award of damages. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

During 1974 Sitka began planning the Green Lake Project as a source of hydroelectric power. In 1977 the State of Alaska withdrew land needed for the Project from federal ownership pursuant to its statehood land acquisition rights. It then conveyed the land to Sitka on March 16, 1979.

In March 1979, Sitka published its intent to receive sealed bids through May 1 for the construction of the Green Lake Project. The bid offering, Contract No. 3, originally set out all the specifications for the construction of the dam, including the timber clearing specifications.¹

On April 19, 1979, ALP submitted an irrevocable offer to pay Sitka two million dollars for the right to remove the commercial timber and to accomplish the clearing in accordance with the pertinent specifications set forth in Contract No. 3.

ka's advantage, ostensibly because many dam contractors would not view the timber as a commercial asset.

The Unions dispute whether Sitka always intended for the timber contract to be separate from the dam construction contract. However, since the Unions obtained summary judgment below, we must construe all disputed factual inferences in Sitka's favor. See *Kodiak Island Borough v. Large*, 622 P.2d 440, 446 (Alaska 1981).

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Sitka promptly published Addendum No. 2 to Contract No. 3 in order to notify prospective bidders that Sitka would award a separate contract for substantially all of the reservoir clearing. Sitka stated that to be awarded this separate contract, the bidder would have to offer more than ALP offered. Addendum No. 2 noted that ALP had offered to pay \$2,000,000.00 to perform the reservoir clearing pursuant to the requirements of Contract No. 3.

The bids were opened on May 15. Sitka awarded the dam construction contract to S. J. Groves and Company and the timber sale contract to ALP. Sitka and ALP signed on June 13, 1979 an agreement entitled "Timber Sale Contract." The ALP-Sitka contract provided that Contract No. 3 was incorporated by reference. The original bid offering, Contract No. 3, stipulated that Little Davis-Bacon was applicable.² All parties agree that the dam construction contract is subject to the Act. The parties dispute, however, whether Addendum No. 2 exempted from the wage provision employees engaged in the severed logging and clearing activities, the work ultimately per-

formed by ALP.³ The ALP-Sitka contract did not contain any express wage stipulations.

The Alaska Department of Labor has the authority pursuant to AS 36.05.030 to determine whether a contract is subject to Little Davis-Bacon.⁴ In April 1979, Sitka received a form letter from the Wage and Hour Division of the Department stating that the proposed timber sale contract would be subject to the Act. Sitka disagreed with that conclusion, and persuaded the Director of the Division, Dale Cheek, to investigate the matter further. The Director subsequently stated his tentative opinion that the Act did not apply to the timber sale contract. An advisory memorandum issued by the Office of the Attorney General reached a similar result.⁵

The Department of Labor declined, however, to issue a formal determination of Little Davis-Bacon coverage.⁶ As a result, in June 1979 two workers filed a complaint in superior court containing two causes of action against Sitka and ALP (hereafter collectively referred to as Sitka). The first

2. The relevant provision in Contract No. 3 provided:

303.12 Section 205.10, "Wage Rates".

a. The contractor or its subcontractor shall pay wages which are not less than the current prevailing rate of wages as determined by the Alaska Department of Labor for labor of a similar nature in the region in which the work is done. The rate of wages shall be adjusted to the wage rate for each pay period as applicable under AS 36.05.010.

3. The Unions submit that the reference to Contract No. 3 incorporated the general wage stipulation set forth in section 303.12 of the contract. Sitka contends that Addendum No. 2 distinguished between the Contractor and the Clearing Contractor. The Clearing Contractor, in Sitka's view, was bound only by those sections of Contract No. 3 specifically reworded of the Clearing Contractor. As a consequence, Sitka's interpretation of Addendum No. 2 is that only the Contractor was bound by the wage stipulation.

For purposes of this appeal, we will accept Sitka's interpretation of Addendum No. 2. See *supra* note 1. Accordingly, our disposition of this appeal is not based upon an interpretation of the timber sale contract.

4. AS 36.05.030(a) provides in pertinent part: The Department of Labor has the authority to determine the prevailing wage, and whether

or not sections 10-110 of the chapter are being violated.

See *Fowler v. City of Anchorage*, 563 P.2d 817, 820 (Alaska 1975).

5. The relevant portion of the advisory memorandum provided:

While it is apparent that the contract between AL&P and Sitka necessarily involves work preparatory to the construction of the Green Lake Hydro Project to be performed by a general contractor, it is equally apparent that the primary purpose of the contract is one involving timber sales, not construction of a public work.

Accordingly, it is our view that the provisions of AS 36.05.010 do not apply to the contemplated contract between [Sitka] and [ALP].

Memorandum from Bruce Botelho, Assistant Attorney General, to Dale Cheek (May 15, 1979).

6. The superior court requested briefing from the parties regarding the propriety of remanding the matter to the Department of Labor. Both parties opposed the remand.

We do not decide whether the Department of Labor is required pursuant to AS 36.05.030 to issue a formal determination of Little Davis-Bacon coverage where such coverage is disputed.

Public construction is defined in AS 36.95-010(3) as "the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, a political subdivision of the state; . . ."

[1] All parties properly agree that a timber sale contract is typically not subject to the Act. Sitka, accordingly, labels the disputed contract a "timber sale contract," arguing that any site preparation work was incidental to the dominant purpose of the contract, the sale of timber. The Unions, on the other hand, argue that the sale of merchantable timber was incidental to the site preparation necessary for the construction of the Green Lake Project, and thus characterize the contract as a "clearing contract." The labels employed by the parties are merely the conclusions of a more substantive analysis. The dispositive issue in our view is whether a contract, which may independently be outside the scope of Little

8. It is useful here to set out the statutory construction rules for Alaska statutes modelled after those of other jurisdictions. A rebuttable presumption arises that when Alaska bases a statute on one from another jurisdiction, it adopts into the Alaska statute all previous cases from the other jurisdiction's statute. *Zerbe v. State*, 553 P.2d 645 (Alaska 1978); *Nicholson v. Sorensen*, 517 P.2d 766, 770 n.9 (Alaska 1973). See also *Fowler v. City of Anchorage*, 553 P.2d 817 (Alaska 1978). There is no such presumption when the cases from the other jurisdiction are decided after Alaska adopts its statute, though such cases may be persuasive. *Nicholson v. Sorensen*, 517 P.2d at 770 n.9.

No federal cases address the question of whether logging preliminary to dam construction is subject to Davis-Bacon coverage. The most important federal authorities to have discussed this issue are 29 C.F.R. §§ 4.116(b)(1), 5.2(f) and 5.2(g) (1980). Sections 5.2(f) and (g) were promulgated in 1951, before AS 36.95-010(3), which defines "public construction," became law in 1972, but after the original sections of Little Davis-Bacon became law in 1931. While this court is not bound by the federal regulations, we will look to the federal regulations construing Davis-Bacon for assistance in interpreting Little Davis-Bacon.

9. The parties refer to three position letters promulgated by the United States Solicitor of Labor. The most recent letter, dated December

Davis-Bacon, may nonetheless be subject to the Act where the specified work is substantially related to "public construction."

No prior Alaska court has addressed this issue. We turn, therefore, to federal authorities pertaining to the federal Davis-Bacon Act, 40 U.S.C. § 276a (1969), the model of the Alaska statutory scheme. See *Fowler v. City of Anchorage*, 553 P.2d 817, 821 (Alaska 1978); *1961 Op. Att'y Gen. No. 17* at 4 (Alaska, August 8, 1961).⁸

The federal regulations, 29 C.F.R. §§ 4.116(b)(1), 5.2(f) and 5.2(g) (1980), clearly indicate that clearing done at a dam site in preparation for the dam's construction is "construction" within the purview of Federal Davis-Bacon.⁹ Section 5.2(g) defines construction under Davis-Bacon as "all types of work done on a particular building or work at the site thereof." "Building" or "work" is defined in section 5.2(f) as including:¹⁰

without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, park-

13, 1951) states that the clearing and selling of lumber preliminary to dam building is not itself "construction" under federal Davis-Bacon. That opinion, however, does not discuss 29 C.F.R. §§ 5.2(f) and (g). It is also noteworthy that the December 13, 1961 letter opinion is contradicted by two other Solicitor of Labor opinions. One opinion, dated May 23, 1961, was signed by Charles Donahue, the same Solicitor of Labor who signed the other opinion discussed above. The May 23 opinion discusses a contract in which the Forest Service permits Boise Cascade to log timber in exchange for money and the construction of permanent roads within the national forest. The opinion states that Davis-Bacon covers the logging of lumber preliminary and necessary to build the roads but not the other logging. The second opinion, dated September 27, 1960, concluded that the clearing of timber necessary to build a runway and aircraft parking for the navy was public construction.

The parties do not cite to any more recent positions adopted by the United States Solicitor of Labor with respect to the scope of Davis-Bacon coverage.

10. The federal government has proposed changes in 29 C.F.R. Part 5 (1950). See 44 Fed. Reg. 77,050 (1979). Sections 5.2(f) and (g) remain unchanged, however, except that they are renumbered sections 5.2(i) and (j).

ways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, light houses, buoys, jetties, break-waters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. [Emphasis added.]

Section 4.116(b)(1) was promulgated in 1969 pursuant to the McNamara-O'Hara Act. This act regulates service contracts with the federal government. It exempts from its requirements the contracts which the Davis-Bacon Act covers. Section 4.116(b)(1) states in part:

For example, a contract for clearing timber brush from land or for the demolition or dismantling of buildings or other structures may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act may be considered inapplicable to such clearing. . . .

[2] We conclude that the federal regulations set forth an appropriate test to establish the parameters of Little Davis-Bacon. Accordingly, the focus of inquiry in determining whether the ALP-Sitka contract concerned "public construction" subject to the Act is the extent to which the work relates to the construction of the dam.

[3] The superior court, properly employing this analytic approach, concluded that "the predominant characteristic [sic] is that the work to be done is an integral part of the dam construction and is therefore 'public construction'." We agree. The logging occurred on the dam site, land acquired from the state expressly for the purpose of constructing the dam and its watershed. Moreover, it is uncontroverted that the clearing specifications incorporated by ref-

erence in the contract were intended to render the site suitable for the construction of the dam. The fact that the clearing work was initially included in the bid offering is further evidence of the strong linkage between the ALP-Sitka contract and the construction of the dam. In sum, the logging and related clearing work performed by ALP pursuant to the contract was preliminary and essential to building the dam, and would not have occurred when it did but for the dam.

[4] Sitka rejects this mode of analysis. Sitka instead submits that the determination of Little Davis-Bacon coverage should only reflect the isolated characteristics of the timber contract without consideration of the broader context in which the contract arose. Sitka thus argues that once severed from the dam construction bid, the ALP-Sitka contract is essentially the same as any other timber sale contract, and is therefore outside the scope of Little Davis-Bacon coverage. We recognize, in this regard, that the disputed contract does in fact have many of the attributes of a prototypical timber sale contract.

Sitka's position, however, unduly exalts form over substance. Had the logging remained in the parent construction bid, it is clear that the wage protections would have been applicable. That Sitka determined that it was to its benefit to sever the logging and clearing work is functionally irrelevant. It is the nature of the work and the relationship of the logging work to the dam project which are the salient considerations.

[5] Sitka's reliance on the fact that the timber contract was severed from the dam contract is misplaced for the additional reason that such a rule would thwart the policies which underly Little Davis-Bacon. The fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage. The focus of the Act, quite clearly, is to the benefit of the employees, not the contracting principals.¹¹ To argue

language of the Act and its legislative history plainly show that it was not enacted to benefit

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that Sitka should be allowed to maximize the economic benefit to be derived from the sale of merchantable timber as the focus of the Act. Presumably, Sitka would have payed Sitka less for the right to remove the timber had the timber contract been determined to be subject to Little Davis-Bacon wage guarantees. Quite unlike the mythical sailor torn between Scylla and Charybdis, Sitka found itself in the enviable position of having to choose whether to maximize the return from the sale of timber or whether to stipulate that Little Davis-Bacon wage guarantees attached to the contract. Where "public construction" is involved, however, the legislature has provided that the tension must be resolved in favor of the employees. Sitka's position, in essence, invites the government to sever from a public construction bid offering any aspect of the endeavor which may have an unrelated profit incentive, such as the removal of a natural resource. Such a rule impermissibly enables a public agency to profit at the expense of workers engaged in activities instrumental to a public construction project.

Sitka also argues that the logging should not be considered public construction because ALP paid Sitka to log the timber whereas in the typical public construction contract the public agency pays the contractor. Sitka notes that AS 36.05.07(a) applies only to "a public construction contract exceeding \$2,000." The statutory language cited by Sitka is plainly intended to restrict Little Davis-Bacon coverage to "substantial" public construction projects, i.e., those in excess of \$2,000. The ALP-Sitka contract concerns an activity which can hardly

contractors, but rather to protect their employees from substandard earnings by fixing a floor under wages on Government projects." *U.S. v. Binghamton Cons. Co.*, 347 U.S. 171, 177, 74 S.Ct. 438, 441, 95 L.Ed. 594, 599 (1953). See *Walsh v. Schlecht*, 429 U.S. 401, 411, 97 S.Ct. 679, 686, 50 L.Ed.2d 641, 650 (1977).

12. Once a sufficient nexus has been established between a contract and a public construction project, we may look to the value of the entire endeavor to ascertain if the \$2,000 threshold requirement has been satisfied.

13. AS 36.05.090(b) provides in part:

be characterized as insubstantial. Viewing only the timber transaction, Sitka has contracted on ALP a benefit, the merchantable timber, which is valued by the parties at two million dollars.¹²

[6] In support of its contention that it is the flow of money from the government to a private contractor which is determinative of Little Davis-Bacon coverage, Sitka notes that AS 36.05.070(c)(4) requires the contracting public agency to withhold payments to contractors who violate the Act by failing to pay the prevailing wage. Sitka argues that section 36.05.070(c)(4) is the enforcement mechanism of the Act. The mechanism fails to work when, as in the instant case, the contractor pays the public agency rather than vice versa. Actually AS 36.05.070(c)(4) is only one of several enforcement mechanisms under the Act. The other enforcement mechanisms work equally well whether the contractor pays the public agency or the public agency pays the contractor. Under AS 36.05.060, violators of Little Davis-Bacon can be prosecuted criminally. AS 36.05.080 permits the contracting agency to terminate the contract if the contractor violates the Act by not paying the prevailing wage. AS 36.05.090(b) permits the workers to sue for back wages.¹³ Under AS 36.05.030 the Department of Labor has the power to investigate violations, including the power to hold hearings where it can compel the attendance of witnesses and the production of books, papers and documents. Thus, we conclude that adequate enforcement mechanisms exist regardless of whether the money flows from the government to a private contrac-

If the accrued payments withheld under the contract are insufficient to reimburse all the laborers, mechanics, or field surveyors with respect to whom there has been a failure to pay the wages required under section 70 of this chapter, the laborers, mechanics or field surveyors have the right of action or intervention or both against the contractor and his sureties conferred by law upon persons furnishing labor or materials.

As we discuss in part III, *infra*, the scope of the workers' private right of action remains undetermined.

tor, or from the contractor to a public agency.

III. PRIVATE RIGHT OF ACTION

[7] Sitka next contends that even if the logging work is deemed to be public construction within the meaning of Little Davis-Bacon, the Act does not authorize a private right of action for back wages.¹⁴ As a consequence, Sitka submits that the award of damages was inappropriate. In paragraph 5 of the 1979 stipulation, however, Sitka agreed that if the Unions prevailed in the litigation, the remedy would be damages paid to the workers. The threshold inquiry, therefore, is whether or not to give effect to the stipulation agreed to by the parties.

The parties dispute the nature of the stipulation. The Unions characterize the stipulation as an "issue stipulation," and thus invoke the settled rule that such stipulations are binding on the parties.¹⁵ Sitka, on the other hand, submits that the question of whether or not Little Davis-Bacon authorizes employees or their representatives to maintain a private right of action to recover back wages is a legal issue and thus cannot be foreclosed by stipulation.¹⁶

In our prior cases we have dealt with stipulations which merely foreclose consid-

eration of a legal issue in a different fashion than stipulations which seek to resolve without judicial scrutiny a legal question.

Issue stipulations, on the one hand, save time and money for the litigants and for the court. *Godfrey v. Hemenway*, 617 P.2d 3, 8 (Alaska 1980); *Interior Credit Bureau v. Bussing*, 359 P.2d 104, 106 (Alaska 1977); *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1031 (Alaska 1972). Moreover, issue stipulations are oftentimes a negotiated compromise in the parties' respective legal positions. Accordingly, we have on several prior occasions given effect to a stipulation which foreclosed consideration of a legal issue. *Hilbers v. Municipality of Anchorage*, 611 P.2d 31, 39 n.19 (Alaska 1980), is a recent example. In that case the parties stipulated that plaintiffs would raise only four identified constitutional challenges to ordinances regulating and licensing massage parlours in Anchorage. We rejected on appeal the plaintiff's attempt to raise constitutional challenges not sanctioned by the stipulation. Similarly, we have enforced a stipulation which precluded consideration of a due process challenge to the composition of a medical review committee,¹⁷ and one which precluded consideration of the respective rights of the City and Borough of Anchorage regarding the installation of utility lines.¹⁸

under the terms of the stipulation the adversary had waived his right to attack the plan's fairness, the court still would permit the adversary to make the attack. The court declared that as a matter of law "a stipulation does not foreclose legal questions."

In *Utah v. United States*, 394 U.S. 89, 59 S.Ct. 761, 22 L.Ed.2d 99 (1969), however, the Supreme Court implicitly overruled *Case*. The court ruled that parties to a lawsuit may generally limit the issues which are tendered to the court for decision. Specifically, the court found valid a stipulation between Utah and the United States which precluded the parties from raising certain legal issues. See also *Perera Co. v. Goldstone*, 491 F.2d 366, 368 (9th Cir. 1974).

17. *Stotts v. Lutheran Hosp. and Homes Soc'y of America, Inc.*, 609 P.2d 24, 25 (Alaska 1980).

18. *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1031 (Alaska 1972). The court noted that "[i]sland judicial policy

14. At issue is whether the right of action authorized in AS 35.05.090(b) where a contract contains wage stipulations is also available where the contract in dispute does not contain wage stipulations. The United States Supreme Court held that federal Davis-Bacon does not provide workers a private cause of action to recover back wages where there has been an administrative determination of no Davis-Bacon coverage. *Universities Research Association, Inc. v. Coutu*, 450 U.S. 754, 101 S.Ct. 1451, 57 L.Ed.2d 662 (1981). We do not reach this issue.

15. *Fieser v. Stannett*, 509 P.2d 1155, 1159 (Kan. 1973). See generally 83 C.J.S. Stipulations § 22 (1953).

16. Sitka relies on *Case v. Los Angeles Lumber Products Co.*, 305 U.S. 106, 114, 60 S.Ct. 1, 6, 84 L.Ed. 110, 119 (1939) to support its contention that a stipulation which prevents consideration of a legal issue is void. In *Case*, one party argued that in a stipulation his adversary had waived his right to attack the fairness of a plan. The Supreme Court ruled that even if

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We recently reiterated, on the other hand, that "[a]lthough the parties' efforts toward simplifying the issues in a case are always appreciated, stipulations as to the law are not binding upon the court." *Dresser Industries, Inc. v. Alaska Department of Labor*, 633 P.2d 998, 1004 (Alaska 1981). See generally 73 Am.Jur.2d. Stipulations § 5 (1974). Unlike stipulations which limit the issues presented to a court, stipulations as to questions of law may have a profound impact on third parties, the public, and the judicial process itself. Accordingly, we have refused to give effect to stipulations regarding a question of law which unduly interfere with vital interests of the public or which impermissibly impinge on judicial functions. *Dresser Industries, Inc. v. Alaska Department of Labor*, 633 P.2d at 1004 (Alaska 1981); *Harris v. Morris*, 531 P.2d 517, 519 (Alaska 1975); *Marks v. State*, 496 P.2d 66, 67 (Alaska 1972).¹⁹

We conclude that Sitka's agreement that the Unions' "remedy will be in the form of damages . . . in accordance with Alaska law" necessarily encompassed a waiver of any legal issue which would defeat the award of damages. Sitka agreed not to raise procedural defenses and that damages would be the appropriate remedy were the Unions to prevail. The Unions, in return, agreed to dismiss the first cause of action, challenging the validity of the contract, and most importantly, to forego any attempt to obtain injunctive relief. Abandoning any entitlement to injunctive relief was a sig-

dictates that private settlements and stipulations between the parties are to be favored and should not be lightly set aside." *Id.* (footnote omitted.)

19. In *Harris* we refused to allow the parties to stipulate as to the content of jury instructions since "the trial judge has the direct responsibility of correctly instructing the jury." 531 P.2d at 519. Similarly, we decided in *Marks* that "[t]he public interest in criminal appeals does not permit their disposition by party stipulation." 496 P.2d at 67. And most recently, in *Dresser Industries* we rejected the parties' invitation to heed a stipulation which attempted to unduly restrict the judicial review of an administrative regulation.

nificant concession, since the cost attendant any delay in the construction of the project would undoubtedly have been substantial. The work now completed, it is of course impossible to "rescind" the stipulation and to return the parties to their respective status quo ante positions. It is particularly noteworthy that at the time the stipulation was negotiated, Sitka did not contend that the Unions could not maintain a private right of action to recover back wages. Only after the United States Supreme Court announced its decision in *Universities Research*, several months subsequent to the superior court's entry of summary judgment in favor of the Unions, did Sitka question the effect of the stipulation.

Sitka's attempt to classify the stipulation in dispute as one pertaining to a question of law is not persuasive. To be sure, the question of whether Little Davis-Bacon confers a private right of action to recover back wages is a question of general public importance. Yet resolution of the instant dispute by reference to the parties' stipulation does not in any manner taint the future consideration of that important issue. The impact on nonparties is inconsequential. Further, the stipulation between the parties does not impermissibly invade the prerogatives of this court.

We conclude that the stipulation precludes consideration of whether Little Davis-Bacon authorizes a private right of action to recover back wages. In accordance with the terms of the stipulation, therefore, the award of damages was appropriate.²⁰

In rejecting the stipulations at issue in *Dresser Industries* we noted the peculiar policy considerations implicated where stipulations impair a court's assessment of the validity of a regulation. "Laws are not to be declared invalid upon the consent of parties. We must determine their purpose and tendency for ourselves." 633 P.2d at 1005, quoting *E. Fougere & Co. v. City of New York*, 224 N.Y. 269, 120 N.E. 642, 643 (1915).

20. The summary judgment order provides that the Unions will receive as damages the difference between what the employees would have received had the work been classified as public construction with the wage protections of Little Davis-Bacon and what the employees received pursuant to the contract. The order further

The judgment of the superior court is
AFFIRMED.



STATE of Alaska, Appellant,

v.

ALASKA PUBLIC EMPLOYEES ASSO-
CIATION, Edward B. Coleman, Don Al-
len, Joe Anderson, Loy R. Bolt, Dwane
Burgess, Frank Byerly, David Cooper,
Harold Fencl, Fred C. Fowler, Tom Fur-
bush, Steve Kosenic, Kurt Masingill, Ho-
mer Mayo, Ron Murry, Paul Tannen-
baum, Jerry Velez, and Stan Wells, Ap-
pelees.

No. 5810.

Supreme Court of Alaska.

May 7, 1982.

Probation-parole officers and their em-
ployee association brought suit challenging
firearms policy, promulgated by the Health
and Social Services Commissioner, concern-
ing the carrying of concealed firearms by
probation-parole officers. The Superior
Court, Third Judicial District, Anchorage,
Ralph E. Moody, J., found the policy, which
restricts the carrying of firearms to very
limited circumstances, to be unworkable
and, after reference of the dispute to a
special master, propounded its own firearms

policy and ordered the Commissioner to im-
plement it. On the State's appeal, the Su-
preme Court, Matthews, J., held that the
Commissioner, not the Superior Court, is
charged with the responsibility for the day-
to-day operation of the probation service,
and the methods and equipment to be used
by probation officers fall within the ambit
of that responsibility; accordingly, the Su-
perior Court may not, under the guise of an
exercise of its authority to direct probation
officers, propound a firearms policy, except
in regard to firearms on court premises.
Reversed.

1. Courts ⇌ 55

Commissioner of the Department of
Health and Social Services, not the superior
court, is charged with the responsibility for
the day-to-day operation of the probation
service, and the methods and equipment to
be used by probation officers fall within the
ambit of that responsibility; accordingly,
the superior court may not, under the guise
of an exercise of its authority to direct
probation officers, propound a firearms pol-
icy, except in regard to firearms on court
premises. AS 33.05.010, 33.05.020, 33.05.-
030.

2. Courts ⇌ 55

Merely because probation officers are
officers of the court and subject to its au-
thority by virtue of statute does not mean
that the court has administrative authority
over them. AS 33.05.030.

3. Courts ⇌ 55

Superior court may direct individual
probation officers to perform appropriate
services, but it may not control the details
by which those services are accomplished by
establishing general policies. AS 33.05.010
et seq., 33.05.030.

rately ascertained since the Department of La-
bor determines the prevailing wage under
AAC 30.050 (Eff. 7/5/73), and both ALP and
the Unions should have records which clearly
indicate the wages previously received by the
workers. If, however, the parties dispute the
amount of damages, so that a genuine issue of
material fact exists, the superior court must
hold a hearing on this question.

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ATTACHMENT 5

AS 44.42.020-Present form

Collateral references. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 1 et seq.
39A C.J.S., Highways, § 1 et seq.

Sec. 44-42.010. Commissioner of transportation and public facilities. The principal executive officer of the Department of Transportation and Public Facilities is the commissioner of transportation and public facilities. (E.O. No. 39, § 2 (1977))

Sec. 44-42.020. Powers and duties. (a) The department shall

- (1) plan, design, construct and maintain all state modes of transportation and transportation facilities and all docks, floats, breakwaters, buildings and similar facilities;
- (2) study existing transportation modes and facilities in the state to determine how they might be improved or whether they should continue to be maintained;
- (3) study alternative means of improving transportation in the state with regard to the economic costs of each alternative and its environmental and social effects;
- (4) develop a comprehensive, long-range intermodal transportation plan for the state;
- (5) study alternatives to existing modes of transportation in urban areas and develop plans to improve urban transportation;
- (6) cooperate and coordinate with and enter into agreements with federal, state and local government agencies and private organizations and persons in exercising its powers and duties;
- (7) manage, operate, and maintain state transportation facilities and all docks, floats, breakwaters and buildings, including all state highways, vessels, railroads, pipelines, airports, and aviation facilities;
- (8) study alternative means of transportation in the state, considering the economic, social, and environmental impacts of each alternative;
- (9) coordinate and develop state and regional transportation systems, considering deletions, additions, and the absence of alterations;
- (10) develop facility program plans for transportation and state buildings, docks and breakwaters required to implement the duties set out in this section, including but not limited to (A) functional performance criteria; and (B) schedules for completion;
- (11) supervise and maintain all state automotive and mechanical equipment, aircraft, and vessels, except vessels and aircraft used by the Department of Fish and Game or the Department of Public Safety;
- (12) supervise aeronautics inside the state, under AS 02.10;

(13) complete and maintain a current inventory of public facilities, including a projection of the serviceability of the facilities and projections of replacements and additions to facilities needed to provide the level of services programmed by the various user agencies, for municipalities with populations of less than 12,000 and for unincorporated communities, and perform those duties on a cooperative basis with larger municipalities;

(14) adopt energy performance standards for public facilities of the state, the construction of which begins after July 1, 1980; the standards shall be based on thermal and lighting energy standards established by the American Society of Heating, Refrigeration and Air Conditioning Engineers as adapted for application in high latitude, cold climate environs;

(15) provide planning assistance, including but not limited to energy audits and related technical services, to school districts and regional educational attendance areas to develop and implement

(A) standards for the design, construction and operation of rural educational facilities; and

(B) energy conservation measures for rural educational facilities.

(b) The department may

(1) engage in experimental projects relating to available or future modes of transportation and any means of improving existing transportation facilities and service;

(2) exercise the power of eminent domain, including the declaration of taking as provided in AS 09.55. (E.O. No. 39, § 2 (1977); am § 13 ch. 168 S.L.A. 1978; am § 12 ch 83 S.L.A. 1980; am E.O. No. 50, § 10 (1981))

Cross references. — For the responsibility and authority of the supreme court over state court facilities, see AS 22.05.025.

Effect of amendments. — The 1980 amendment added paragraphs (14) and (15) to subsection (a).

The 1981 amendment, in subsection (a), deleted "communication facilities" in following "transportation facilities" in paragraph (1), deleted "and communication facilities" following "modes and facilities" in paragraph (2), deleted "and communication" following "improving transportation" in paragraph (3), deleted "communication facilities" following "transportation facilities" in paragraph (10), deleted "and" at the end of paragraph (11), deleted "and communication" following "aeronautics" and substituted a semicolon for a period near the end of paragraphs (12) and (13). The amendment also deleted "and communication" following "facilities and service" in paragraph (1) of subsection (b).

Sec. 44-42.030. Regulations. The department may adopt regulations under the Administrative Procedure Act (AS 44.62) to implement, interpret, or make more specific its powers and duties. (E.O. No. 39, § 2 (1977))

Sec. 44-42.040. Departmental organization. The commissioner shall establish regions within the state. The functions of the department within each region shall be performed, to the maximum extent

ATTACHMENT 6

AS 19.05.040- Present form

Alaska Statutes

Title 19. Highways and Ferries.

Chapter

- 05. Administration (§ 19.05.040)
- 10. State Highway System (§§ 19.10.060, 19.10.170)
- 20. Cooperation by and with the State (§ 19.20.015)
- 30. Access Roads (§§ 19.30.080, 19.30.127, 19.30.241, 19.30.260 — 19.30.320)
- 40. James Dalton Highway (§§ 19.40.100, 19.40.200, 19.40.210)
- 60. Ferry Terminal Facilities (§ 19.60.070)
- 65. Alaska Marine Highway System (§ 19.65.010)

Chapter 05. Administration.

Article

- 1. Department of Transportation and Public Facilities (§ 19.05.040)

Article 1. Department of Transportation and Public Facilities.

Section

- 40. Powers of department

Sec. 19.05.040. Powers of department. The department may

- (1) acquire property;
 - (2) exercise the power of eminent domain;
 - (3) take immediate possession of real property, or any interest in it under a declaration of taking or by other lawful means;
 - (4) acquire rights-of-way for present or future use;
 - (5) control access to highways;
 - (6) regulate roadside development;
 - (7) preserve and maintain the scenic beauty along state highways;
 - (8) dispose of property acquired for highway purposes;
 - (9) accept and dispose of federal funds or property available for highway construction, maintenance, or equipment;
 - (10) enter into contracts or agreements relating to highways with the federal government, municipalities, a political subdivision, or with a foreign government, if the contract is approved by the federal government;
 - (11) establish, levy, and collect tolls, fees, charges, and rentals for the use of state roads, highways, bridges, crossings, and causeways;
- and

§ 19.10.010 ALASKA STATUTES SUPPLEMENT § 19.10.060
(12) exercise any other power necessary to carry out the purpose of AS 19.05 — 19.25. (§ 2 art III title I ch 152 SLA 1957; am § 3 ch 35 SLA 1971; am § 2 ch 162 SLA 1984)

Effect of amendments. — The 1984 amendment deleted "and" at the end of paragraph (10), inserted present para-

Chapter 10. State Highway System.

- Article**
1. Designation, Marking and Use (§ 19.10.060)
3. Construction (§ 19.10.170)

Section

60. Regulation of weight and load of vehicles and use of highways during certain seasons

Sec. 19.10.010. Dedication of land for public highways.

NOTES TO DECISIONS

A utility may construct a powerline on an unused section line easement reserved for highway purposes under this section. *Fisher v. Golden Valley Elec. Ass'n*, Sup. Ct. Op. No. 267 (File No. 5902), 658 P.2d 127 (1983). AS 19.25.010 places Alaska among those states which permit powerline construction by a utility as an incidental or subordinate use of a highway easement. *Fisher v. Golden Valley Elec. Ass'n*, Sup. Ct. Op. No. 2606 (File No. 5902), 658 P.2d 127 (1983).

Sec. 19.10.060. Regulation of weight and load of vehicles and use of highways during certain seasons. The department, with respect to highways under its jurisdiction, may

- (1) establish limitations on weight, size, and load of vehicles;
- (2) [Repealed, § 25 ch 144 SLA 1977.]
- (3) prohibit the operation or impose restrictions on vehicular use of highways during certain seasons of the year. (§ 5 art III title II ch 152 SLA 1957; am § 1 ch 55 SLA 1963; am § 25 ch 144 SLA 1977; am § 2 ch 77 SLA 1982)

Cross references. For the duties of the Department of Commerce and Economic Development to operate weighing stations and enforce weight and load limitations based upon directions of the Department of Transportation and Public Facilities, see AS 44.33.020(25). **Effect of amendments.** — The 1982 amendment inserted "size" in paragraph (1).

§ 19.10.170 HIGHWAYS AND FERRIES § 19.20.015

Article 3. Construction.

Section
170. Construction by department

Sec. 19.10.170. Construction by department. (a) Except as provided in AS 36.98 and AS 44.33.300, it shall be the general policy of the department to require the construction of all highways under bid contract. However, subject to the provisions of (b) of this section, when the estimated cost of a construction project is less than \$100,000 or when it appears to be in the best interests of the state, the department may perform the work notwithstanding any other provisions of law.

(b) Construction or professional services in connection with the construction of highways performed by the department under (a) of this section which have an estimated cost exceeding \$5,000 may not be performed by the department unless the commissioner determines, in writing, that the cost to the state will be less than that incurred as a result of a formally advertised or negotiated contract. The determination of the commissioner shall be supported by findings of fact which shall set out enough facts and circumstances to clearly justify the determination. The determinations and findings shall be maintained as a permanent record of the department.

(c) In this section, "professional services" means architectural, engineering, or land surveying services. (§ 1 art III title IV ch 152 SLA 1957; am § 2 ch 277 SLA 1976; am §§ 1, 2 ch 104 SLA 1978; am § 1 ch 144 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "AS 36.98 and" in the first sentence of subsection (a).

Chapter 20. Cooperation by and with the State.

Section
15. Local control of state transportation corridors

Sec. 19.20.015. Local control of state transportation corridors. (a) A municipality, by resolution of its governing body, may request of the department the assumption of the department's responsibilities relating to planning of transportation corridors which are to be located within the boundaries or operating area of the municipality. After receipt of the request, the department shall provide by agreement for assumption by the municipality of the department's responsibilities relating to planning of transportation corridors, unless the commissioner determines that assumption of

To impose liability on the estate for its negligent failure to maintain Alaska highways through the winter would not place an "impossible burden" on the estate. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Sec. 19.05.040. Powers of department. The department may

- (1) acquire property;
- (2) exercise the power of eminent domain;
- (3) take immediate possession of real property, or any interest in it under a declaration of taking or by other lawful means;
- (4) acquire rights-of-way for present or future use;
- (5) control access to highways;
- (6) regulate roadside development;
- (7) preserve and maintain the scenic beauty along state highways;
- (8) dispose of property acquired for highway purposes;
- (9) accept and dispose of federal funds or property available for highway construction, maintenance, or equipment;
- (10) enter into contracts or agreements relating to highways with the federal government, municipalities, a political subdivision, or with a foreign government, if the contract is approved by the federal government; and

(11) exercise any other power necessary to carry out the purpose of chs. 5 — 25 of this title. (§ 2 art III title I ch 152 SLA 1957, § 3 ch 35 SLA 1971)

Legislative history reports. — For report on ch. 35, SLA 1971 (HB 387), see 1971 House Journal, p. 776.

NOTES TO DECISIONS

Department may acquire real property for highway through eminent domain. — The Department of Highways (now Department of Transportation and Public Facilities) may acquire real property for the purpose of constructing a highway through the exercise of eminent domain power, under the authority of this section. AS 19.05.080 — 19.05.120 and AS 19.20.040. *Babbinc v. State*, Sup. Ct. Op. No. 908 (File No. 1539), 612 P.2d 663 (1973), rev'd on other grounds, 566 P.2d 966 (1978).

Sec. 19.05.045. Relocation payments.
Repealed by § 2 ch 60 SLA 1969.

Editor's notes. — The repealed section derived from § 1, ch. 93, SLA 1968.

Sec. 19.05.050. Roads in tourist and trailer camps. The department may adopt regulations governing the use of roads in tourist, trailer and other camps when public and private roads in or through the camps are used by, or are open to, the general public. (§ 1 ch 59 SLA 1955)

Sec. 19.05.060. Sale of obsolete equipment and material. The department may sell exchange or otherwise dispose of obsolete machinery, equipment and material no longer needed, required or useful for construction or maintenance purposes. Money derived from the sale of the property shall be credited to the funds from which the purchase was originally made. (§ 3 art IV title IV ch 152 SLA 1957)

Sec. 19.05.070. Vacating and disposing of land and rights in land. (a) The department may vacate land, or part of it, or rights in land acquired for highway purposes, by executing and filing a deed in the appropriate recording district. Upon filing, title to the vacated land or interest in land inures to the owners of the adjacent real property in the manner and proportion considered equitable by the commissioner and set out by him in the deed.

(b) If the department determines that land or rights in land acquired by the department are no longer necessary for highway purposes the department may:

- (1) transfer the land or rights in land to the Department of Natural Resources for disposal, or
- (2) sell, contract to sell, lease, or exchange land or rights in land according to terms, standards and conditions established by the commissioner.

(c) Proceeds received from disposal of land or rights in land as authorized by this section shall be credited to the funds from which the purchase of the land was made originally. (§ 4 art IV title IV ch 152 SLA 1957; am § 4 ch 35 SLA 1971)

Article 2. Acquisition of Property

Section	Section
80. Acquisition of land, rights-of-way, and materials by purchase or eminent domain	publicly owned property for purpose of exchange
90. Declaration of taking	120. Authority to purchase property for the purpose of exchange
100. Acquisition of excess lands	122. Utility corridor for extension of the Alaska Railroad
110. Authority to condemn or acquire	

Sec. 19.05.080. Acquisition of land, rights-of-way, and materials by purchase or eminent domain. The department on behalf of the state and as part of the cost of constructing or maintaining a highway may purchase, acquire, take over, or condemn under the right and power of eminent domain land in fee simple or easements which it considers necessary for present public use, either temporary or permanent, or which it considers necessary and reasonable for the public use. By the same means, the department may obtain material, including clay, gravel, sand, or rock, or the land necessary to obtain material, including access to it. The department may acquire the land or materials notwithstanding the fact that title to it is vested in the

§ 19.05.090

ALASKA STATUTES

§ 19.05.090

state or a department, agency, commission or institution of the state. (§ 1 art I title IV ch 152 SLA 1957)

Cross references. — For general provisions concerning eminent domain, see AS 09.55.240 — 09.55.460. For power of eminent domain, see AS 44.42.020(b).

NOTES TO DECISIONS

Department may acquire real property for highway through eminent domain. — The Department of Highways (now Department of Transportation and Public Facilities) may acquire real property for the purpose of constructing a highway through the exercise of eminent domain power, under the authority of AS 19.05.040, this section through AS 19.05.120, and AS 19.20.040. *Babinec v. State*, Sup. Ct. Op. No. 908 (File No. 1539), 512 P.2d 563 (1973), *rev'd* on other

grounds, 586 P.2d 966 (1978). Construction of state lease reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, division of lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Highways. *Wessells v. State*, Dept. of Hwys., Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Collateral references. — 27 Am. Jur. 2d, Eminent Domain § 325-332, 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 32-40.

39A C.J.S., Highways, §§ 2, 25-36, 39 C.J.S., Highways, §§ 1, 2, 25, 39, 53,

67. Constitutionality of statutory provisions as to political corporations or divisions which shall bear cost of establishing or maintaining highway. 2 ALR 746; 123 ALR 1462.

Classification as regards counties or other political subdivisions permissible in statute imposing cost of construction or maintenance of highways upon property specially benefited. 77 ALR 1285. Jurisdiction and power in respect of

street or road which is part of or touching upon state or federal highway. 144 ALR 307.

Construction of streets and roads constituting part of state highway. 144 ALR 312.

Electric light or power line in street or highway as additional servitude. 58 ALR2d 525.

Inclusion or exclusion of first and last days in computing time for giving notice of hearing for location of public highway, which notice must be given a certain number of days before a known future date. 98 ALR2d 1397.

Extent and reasonableness of use of private way in exercise of easement granted in general terms. 3 ALR3d 1256.

Sec. 19.05.090. Declaration of taking in the form of an order signed by the commissioner, or by a designee of the commissioner within the department, declaring that the real property, or interest in it, or an easement, is necessary for the public use of the state vests title in the state. However, a declaration of taking is not effective until eminent domain proceedings have been instituted in the proper court, and a copy of the declaration of taking has been filed in the office of the recorder in the district where the land is located. The department shall pay from the appropriate fund into court the amount it considers represents a reasonable valuation for the lands, easement or materials taken. (§ 1 art I title IV ch 152 SLA 1957; am § 1 ch 88 SLA 1967)

§ 19.05.100

HIGHWAYS AND FERRIES

§ 19.05.122

Cross references. — For general provisions concerning eminent domain, see AS 09.55.240 — 09.55.460. For power of eminent domain, see AS 44.42.020(b).

facilities to exercise power of eminent domain, including declaration of taking, see AS 44.42.020(b).

NOTES TO DECISIONS

Access. — Although the language granting access was erroneously included in the declaration of taking of property for a controlled access facility, a party who purchased the remainder of the adjoining parcel for his insurance business acted reasonably in believing that he would have direct access and was entitled to compensation because he did not receive direct access. *State v. 18,018 square feet, more or less*, Sup. Ct. Op. No. 2232 (File No. 4637), 621 P.2d 887 (1980).

Sec. 19.05.100. Acquisition of excess lands. When a part of a parcel of land is taken and the remainder is in such shape or condition as to be of little value to its owner, or give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and may sell the remainder or exchange it for other property needed for state highway rights-of-way. (§ 2(1) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.110. Authority to condemn or acquire publicly owned property for the purpose of exchange. When property, which is devoted to or held for another public use for which the power of eminent domain may be exercised, is taken for highway purposes, the department may, with the consent of the person or agency in charge of the other public use, condemn the real property to be exchanged for the real property so taken. This section does not limit the authorization of the department to acquire, other than by condemnation, property for that purpose in any other manner. (§ 2(2) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.120. Authority to purchase property for the purpose of exchange. When the commissioner formally declares that it is in the best public interest of the state to do so, the department may acquire by purchase or otherwise privately or publicly owned land or an interest in it for the purpose of exchanging it for privately or publicly owned land which the department is authorized by law to acquire. (§ 2(3) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.122. Utility corridor for extension of the Alaska Railroad. (a) Not later than April 1, 1982, the interior division of the department shall delineate a proposed utility corridor for the extension of the Alaska Railroad to the Canadian border. The proposed utility corridor shall include a complete legal description of the proposed railroad right-of-way.

(b) Within 90 days after receiving a report transmitting the work of the interior division of the department under (a) of this section, the

is vacated, title to the strip inures to the owner of the tract of which it formed a part by the original survey. (§ 1 ch 123 SLA 1951; am § 1 ch 35 SLA 1953)

Opinions of attorney general. — For opinion discussing section line dedications for construction of highways, see 1909 Op. Att'y Gen., No. 7.

NOTES TO DECISIONS

Acceptance of federal grant. — The enactment of ch. 35, SLA 1953, was a positive act clearly manifesting the territorial legislature's intent to accept the federal grant under 43 U.S.C. § 532 of right of way for the construction of highways over public lands, not reserved for public uses. *Girves v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1168 (File No. 2016), 536 P.2d 1221 (1975).*

Scope of use of easement. — Although the state expressly reserved a section line

easement of 100 feet for use as a public highway when it sold two parcels of land, a development corporation planning to construct a public road along the easement could clear only the amount of trees reasonably necessary to construct the roadway. *Anderson v. Edwards, Sup. Ct. Op. No. 2274 (File No. 4586), 625 P.2d 282 (1981).*

Applied in *Wessells v. State, Dept. of Highways, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).*

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 22-24.

39A C.J.S., Highways, § 1.
Right of municipality or public to use of subsurface of street or highway for

purposes other than sewers, pipes, conduits for wires and the like. 11 ALR2d 180.

Description with reference to highway as carrying title to center or side of highway. 49 ALR2d 982.

Sec. 19.10.015. Establishment of highway widths. (a) It is declared that all officially proposed and existing highways on public lands not reserved for public uses are 100 feet wide. This section does not apply to highways which are specifically designated to be wider than 100 feet.

(b) Notwithstanding (a) of this section, a municipality may designate the width of a road which is not a part of the state highway system if the municipality maintains the road. (§ 1 ch 35 SLA 1963; am § 1 ch 158 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (b).

Collateral references. — Width and boundaries of public highway acquired by

prescription or adverse user. 76 ALR2d 535.

NOTES TO DECISIONS

Applied in *State v. I'Anson, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 186 (1974).*

Sec. 19.10.020. Designation of state highway system. The department may designate, locate, create, and determine what highways constitute the state highway system. In designating, locating, creating and determining the several routes of the state highway system, the department shall strive to attain the purposes and objectives set out in AS 19.05.125. (§ 1 art III title II ch 152 SLA 1957)

Sec. 19.10.030. Responsibility for system. The department is responsible for the construction and maintenance of the state highway system. (§ 2 art III title II ch 152 SLA 1957)

Sec. 19.10.040. Uniform system of marking and posting. The department shall classify, designate and mark highways under its jurisdiction and shall provide a uniform system of marking and posting these highways. The system of marking and posting shall correlate with and shall, as far as possible, conform to the recommendations of the Manual on Traffic Control Devices as adopted by the American Association of State Highway Officials. (§ 3 art III title II ch 152 SLA 1957)

Sec. 19.10.050. Traffic control signals. The department shall prescribe types of traffic control signals to regulate traffic on highways. These signals shall correlate with and, as far as possible, conform to the recommendations of the Manual on Uniform Traffic Control Devices as adopted by the American Association of State Highway Officials. The department shall prescribe uniform rules for the placing and installation of traffic control signals. (§ 4 art III title II ch 152 SLA 1957)

NO DECISIONS

Quoted in *State v. I'Anson, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 186 (1974).*

Sec. 19.10.052. Local control of traffic control device systems.
Transferred to AS 19.20.017.

Revisor's notes. — This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

HB 558

and reports it back as follows: Goll (Chairman), Koponen, Gruenberg, Phillips, Furnace, Marrou and Wallis recommend do pass. A letter of intent was attached.

The letter of intent, signed by Goll (Chairman), appears below:

House Community & Regional Affairs Committee
Letter of Intent
for
CSHB 558(C&RA)

"It is the intent of the Community and Regional Affairs Committee that the House Finance Committee review and, if necessary, make amendments to provide predictability regarding the date on which revenue sharing funds are paid to a municipality."

HB 558 was referred to the Finance Committee.

HB 600

The Transportation Committee has considered HOUSE BILL NO. 600 (relating to acquisition of rights-of-way by the Department of Transportation and Public Facilities; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 600 (Transportation) (same title) and reports it back as follows: Cato (Chairman), Pignalberi, Shultz and Marrou recommend do pass; Davis has no recommendation. A zero fiscal note was attached.

HB 600 was referred to the Finance Committee.

HB 634

The Health, Education & Social Services Committee has considered HOUSE BILL NO. 634 (relating to the Board of Nursing Home Administrators; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 634 (HESS) (same title) and reports it back as follows: Gruenberg and Koponen (Co-chairmen), Hurley, Taylor, Thompson and Hanley recommend do pass; Pettyjohn has no recommendation.

A zero fiscal note with analysis and a Sunset Review Report appear in House Journal Supplement No. 92.

HB 634 was referred to the Labor & Commerce Committee.

HB 407

The Rules Committee has considered HOUSE BILL NO. 407 (relating to the use of game as bait), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 407 (Rules):

"An Act relating to the use and sealing of certain game animals."

and reports it back as follows: M.W. Miller (Chairman) recommends do pass; Wallis recommends do not pass; Fuller, Grussendorf and Martin have no recommendation. A zero fiscal note was attached.

HB 407 was returned to the Rules Committee for placement on the calendar.

HB 512

The State Affairs Committee has considered HOUSE BILL NO. 512 (relating to appointments to the boards of fisheries and game), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 512 (State Affairs) (same title) and reports it back as follows: Jenkins recommends do pass; Navarre recommends do not pass; Hurley (Chairman), Cato and M.M. Miller have no recommendation. A zero fiscal note was attached.

HB 512 was referred to the Resources Committee.

HB 514

The Community & Regional Affairs Committee has considered HOUSE BILL NO. 514 (relating to fire prevention activities; effective date) and reports it back as follows: Goll (Chairman), Koponen, Phillips and Wallis recommend do pass; Marrou and Gruenberg have no recommendation. A zero fiscal note was attached.

HB 514 was referred to the Judiciary Committee.

HB 558

The Community & Regional Affairs Committee has considered HOUSE BILL NO. 558 (relating to revenue sharing and municipal assistance; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 558 (Community & Regional Affairs):

"An Act relating to time periods to be used for administering the tax equalization program and the municipal assistance program; and providing for an effective date."