SB

295

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 295
Title : Treatment of a mental or nervous condition in certain policies
Sponsor : Faiks
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Econ. Dev.
BRU : Consumer Protection
Components : Insurance

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : John George, Director Phone : 465-2515
Division : Insurance Date : _____

Approved by Commissioner : Loren H. Lounsbury Date : 1/15/86
Agency : Commerce and Economic Development

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

2227WA11586b,

FISCAL NOTE

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 295

Title: Treatment of a mental or nervous condition in certain policies

Sponsor: Faiks

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John George, Director Phone: 465-2515

Division: Insurance Date: 4/25/85

Approved by Commissioner: Loren H. Lounsbury Date: 4/26/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84

2227WA42585a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: SB 295
Title: An Act Requiring Insurers to offer coverage for the treatment of ...
Sponsor: Faiks
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: All State Agencies
BRU: Retirement and Benefits
Components: Retirement and Benefits (GHLB)

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: J.K. Humphreys, Director
Phone: 465-4470
Division: Retirement & Benefits
Date: 2/21/86

Approved by Commissioner: Eleanor Andrews
Date: 3/4/86
Agency: Department of Administration

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

Rev. 11/15/85

Senate Bill 295
Fiscal Note Analysis
Prepared by Division of Retirement & Benefits
Department of Administration
February 21, 1986

Analysis: Passage of this bill would require insurers to offer an option to receive certain minimum coverage for treatment of a mental or nervous condition.

It is our understanding that an employer, as policy holder of a group plan, could elect this option for covered employees. Employees in a group plan could not make this election on an individual basis.

The State of Alaska now provides mental health coverage for all eligible employees. The level of this coverage is somewhat less than that provided for in the bill in an effort of cost containment in the Plan. Health insurance benefits are determined at the bargaining table. This bill would not affect our present level of coverage or cost.

Should the higher level of coverage described in the bill be incorporated into the state's health plans, FY 87 costs to the state are estimated to increase by $1,522,024.

This cost is calculated as follows:

The increase of $2.65 per month health cost times the number of state employees (13,200) times 12 months equals	$419,760
The change in the PERS employer contribution rate (.12%) times the estimated FY 87 state PERS salaries ($590,176,728) equals	$708,212
The change in the TRS employer contribution rate (.075%) times the estimated FY 87 state TRS salaries ($68,569,578) equals	$ 51,427
The changes in the TRS state match contribution rate (.075%) times the estimated FY 87 TRS system salaries ($456,833,417) equals	$342,625
Total	$1,522,024

Introduced: 4/22/85
Referred: Labor & Commerce and
Health, Education & Social Services

IN THE SENATE BY FAIKS

SENATE BILL NO. 295

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer coverage for the treatment of a mental or nervous condition in certain health insurance policies."

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

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after the effective date of this section shall offer the insured an option to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

(2) 30 visits a year of outpatient treatment for each covered individual.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

SB 295

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for a mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment in the judicial district of this state where the treatment was rendered;

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment of more than 12 hours in a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, in a psychiatric hospital that is licensed under AS 18.20, or in a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means an impairment of psychobiological processes that is severe enough to cause social, psychological, or biological malfunctioning; "mental or nervous condition" includes a substantial disorder of thought, mood, perception, orientation, or memory that significantly impairs judgment, behavior, capacity to recognize, or ability to cope with the ordinary demands of life; mental retardation, epilepsy, drug addiction, and alcoholism do not constitute a mental or nervous condition although a person who suffers from one or more of these conditions may also be suffering from a mental or nervous condition;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided under the supervision of

(A) a psychiatrist who is licensed as a physician in the state and certified in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal government in this state and certified in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist or psychological associate licensed under AS 08.86.

* Sec. 2. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

Blue Cross
of Washington and Alaska

3111 C Street, Suite 100
P.O. Box 10-2480
Anchorage, Alaska 99510-2480
(907) 561-5065

January 22, 1986

JAN 3 0 1986

The Honorable Jan Faiks
The Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Faiks:

During the 1985 session of the legislature, you introduced Senate Bill 295, "an act requiring insurers to offer coverage for the treatment of a nervous and mental condition in certain health insurance policies."

Through the courtesy of your staff, I was asked to review the text of the bill, to point out areas which might be a problem to us, and to provide some general cost figures should such a benefit be elected by a group purchasing coverage for a nervous and mental condition from Blue Cross of Washington and Alaska. As I informed your staff, our Plan suggested four wording changes in the text of the bill. The first change appears on page 1, lines 15 and 16, "... condition of the insured or other person who would otherwise be covered by ...." We suggest the word "eligible" be inserted between the words "other" and "person" and that the phrase "who would otherwise be" be deleted. This addition and deletion would make the statement clearer as to who may be covered by the benefit.

The second change appears on page 2, lines 4-6. The bill reads "the usual, customary and reasonable charge for the treatment in the judicial district of the state where the treatment was rendered." This statement could put this section in conflict with the proposed usual, customary and reasonable part of the rules on unfair claims that are expected to be adopted by the Division of Insurance in late January or early February 1986. We suggest the deletion of the last 12 words of lines 4-6. It is important to Blue Cross of Washington and Alaska and other carriers to have uniform rules governing the administration of usual, customary and reasonable charges in order to avoid increased costs and confusion for the provider and patient alike.

BACK UP INFORMATION

Our third suggested change occurs where the word "certified" appears on both page 2, line 28 and page 3, line 2. We suggest the phrase "or eligible for certification" be added after the word "certified." This additional phrase may make it easier for a patient to access professional care. The eligible for certification language will access care from a physician who has completed their residency requirements in psychiatry but may be waiting for the results of the examinations.

The fourth wording change suggested by our Plan is found on page 3, lines 4 and 5, "a psychologist or psychological associate licensed under AS 08.86." I am suggesting the deletion of all words after "psychologist" on line 4. The scope of practice of the psychological associate (AS 08.64.164(a)(b)(c)and(d)) will prevent their providing services or supervision in situations unspecified by their license, registered with their board, or not approved by a supervising psychologist. It is important to the Plan that services for nervous and mental conditions be of high quality and provided in such a manner as to reduce excessive utilization.

Blue Cross of Washington and Alaska's Actuarial Department has made some general estimates regarding costs of providing this nervous and mental condition benefit to groups. These estimates are made without the knowledge of the mix of potential patients, locations of groups, or other medical or demographic information. More exact figures would be available if specific information were available. Using the following characteristics, Blue Cross of Washington and Alaska developed some very broad information on expected costs for this coverage.

Community size	11 to 24 persons
Deductable	$100.00
Co-insurance	20 percent

Limits of Coverage	Employee Only	Employee Spouse Children	Employee Spouse	Employee Children
45 days inpatient hospitalization	$0.65	$ 1.79	$ 1.30	$1.17
50 hours per year outpatient care	4.55	12.51	9.10	8.19
	$5.20	$14.30	$10.40	$9.36

The offering of benefits for specific situations, illnesses or conditions is an equitable method of providing coverage to groups and their members. The choice remains with the group where it may have been negotiated or otherwise determined by the group and its members. In this manner, the health benefit dollar can be utilized to provide the most appropriate benefits for that group. Requirements to provide coverage neglect consideration of the location of the group, the availability of competent providers, the needs of the employees and even the availability of funds to provide basic coverage.

I hope this letter will provide you with positive information for your consideration. If I can be of further assistance, please do not hesitate to contact me at the Anchorage District Office, 563-2728, or my Juneau home, 586-3141.

It will be a pleasure to work with you on the legislation.

Sincerely,

Martin E. Tirador, Senior Representative
Corporate Relations

Department of Commerce & Economic Development / POSITION PAPER

SB 295 "An Act requiring insurers to offer coverage for the treatment of a mental or nervous condition in certain health insurance policies."

The department does not favor the mandate of any kind of health insurance in a policy voluntarily purchased. The department has in the past supported legislation addressing provider discrimination or recipient discrimination. This proposal does not address a discrimination issue. It mandates specific levels of coverage for treatment of a nervous or mental condition.

While the bill does not directly impact the programs of the Division of Insurance, it does impact market availability of health insurance in this State. The areas of concern with this legislation include:

1. This bill conflicts with the ERISA preemption and the NLRA provisions relating to plans which are established pursuant to a collective bargaining agreement.

2. This bill will tend to force the small to medium sized insurer from the marketplace for lack of underwriting expertise relating to the mandated coverage or ability to write it economically.

3. A demand for the coverage has not become evident. If a coverage is economic and there is sufficient demand for it, competition will assure that coverage is available;

4. The bill does not apply to self-insurers and, since it does not, may lead to the self-insuring of risks that should not be self-insured.

5. The cost of the mandated coverage can be of such consequence as to discourage purchase at all or to force exclusion of more popular coverages such as vision care and dental care. To the degree that available dollars for health care are fixed, this bill has the effect of decreasing health care dollars for things now covered.

6. The Federal Government is currently considering a tax on the cost of benefits above a certain amount. It would be unfair to force a person into a position where coverages he or she dos not want or does not need cause taxation for coverages that are wanted and needed.

Loren H. Lounsbury, Commissioner

Date: 1/15/86

2227WB11586b

Bannister
2/13/86

[redacted] = CS changes

Original sponsor: Faiks

mv state opt. - private

BY THE LABOR AND COMMERCE COMMITTEE

IN THE SENATE

CS FOR SENATE BILL NO. 295 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer coverage for the treatment of a mental or nervous condition in certain health insurance policies."

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

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after the effective date of this section shall offer the insured (agency) an option (a mandatory) to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other eligible person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

hrs of equivalent treatment

(2) 30 [visits] a year of outpatient treatment for each covered individual.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for a mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment; IN the judicial district where treatment IS RENDERED.

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment of more than 12 hours in a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, in a psychiatric hospital that is licensed under AS 18.20, or in a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means an impairment of psychobiological processes that is severe enough to cause social, psychological, or biological malfunctioning; "mental or nervous condition" includes a substantial disorder of thought, mood, perception, orientation, or memory that significantly impairs judgment, behavior, capacity to recognize, or ability to cope with the ordinary demands of life; mental retardation, epilepsy, drug addiction, and alcoholism do not constitute a mental or nervous condition although a person who suffers from one or more of these conditions may also be suffering from a mental or nervous condition;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided under the supervision of

(A) a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal

government in this state and certified in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist licensed under AS 08.86. OR psychological ASSOCIATE

* Sec. 2. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shal be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

Version #1
Bannister
4/15/86

Original sponsor: Faiks

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 295 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer certain coverage for the treatment of a mental or nervous condition in certain health insurance policies."

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

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after January 1, 1987, shall offer the insured an option to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

(2) a total of 50 hours a year of outpatient treatment for each covered individual, accumulated in any increments of time.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for a mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment;

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment during a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, a psychiatric hospital that is licensed under AS 18.20, or a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means a mental disorder identified in

(A) the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) published by the American Psychiatric Association; or

(B) the ICD-9-CM (First Edition) published by the Commission on Professional and Hospital Activities;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided by one or more of the following, or by a person who is under the direct supervision of one or more of the following, has a master's or doctorate degree in psychology, nursing, or social work, and is employed by the same health care facility as the person or persons providing the direct supervision,

(A) a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal

government in the state and certified or eligible for certification in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist licensed under AS 08.86.

* Sec. 2. AS 21.36.090(d) is amended to read:

(d) Except to the extent necessary to comply with AS 21.42.365, a [A] person may not practice or permit unfair discrimination against a person who provides a service covered under a group disability policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, dentist, osteopath, optometrist, chiropractor, or nurse midwife.

* Sec. 3. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

April 22, 1985

MEMORANDUM

TO: Members of Senate Labor and Commerce Committee

FROM: Senator Jan Faiks

SUBJECT: Background on Senate Bill 295

This bill will require insurers to offer their customers the opportunity to purchase minimum mental health coverage in all health insurance policies sold in Alaska.

Currently, twelve states have passed similar laws which require that policy holders be given the opportunity to purchase mental health insurance. Fourteen other states take a stronger position; they do not give the policy holders an option, but rather require that minimum mental health coverage be included in every health insurance policy.

This bill adopts the "mandatory option" approach because it allows subscribers to decide whether the benefits of mental health coverage are worth the added premium costs, and it preserves this option for the collective bargaining process.

Most states that require mental health coverage also define the minimum coverage that must be offered. Senate Bill 295 requires a minimum of 45 days of inpatient treatment and 30 visits of outpatient treatment per year.

These requirements are consistent with the requirements of other states. For inpatient services, four states require a minimum of 30 days, while two other states require 45 days. For outpatient services, minimum requirements are expressed in either visits (one other state calls for thirty per year) or dollar limits (six state have minimums ranging from $500 to $1000 per year). The remaining states require only that mental health benefits be on par with those offered for other illnesses.

When mental health coverage is offered, usually the benefits are much less tha those available for other treatment. Insurers will often require that their customers pay a higher deductible or a greater portion of the cost of mental health services.

In a 1980 survey of health insurance plans in Alaska, 87% offered inpatient coverage and 74% offered outpatient coverage for mental illness. If these plans follow a national pattern which was identified in a 1983 study, only half of our plans will offer inpatient and less than 10% will offer outpatient benefits that are equal to coverage that is offered for other illnesses.

In order that mental health coverage be given parity with other coverages, then, this bill requires that the former be offered under the same terms as the latter.

There are several myths that have impeded the requiring of mental health coverage in health insurance policies. According to one belief, the costs of psychiatric treatment are unpredictable and uncontrollable.

This belief stems in part from the common perception of mental illness in terms of only its more serious forms, like schizophrenia. However, only 15% of persons who are treated in private mental hospitals suffer from this acute disease. For most forms of mental illness, only one hospital stay with several follow-up visits are all that is needed for successful treatment.

From seven to ten percent of subscribers use mental health benefits when these are available in their policies. This is approximately the same rate that subscribers use extra care from other medical specialists.

There is no evidence that mental health benefits are abused at a rate that differs from other health benefits. If insurers are concerned about accountability, they can subscribe to peer review services that will review the validity of individual claims. These services have shown a costs-to-savings ratio of 1:100.

It is true that mental health coverage will mean higher premium cost to subscribers. However, this cost is not substantial. A national survey of 79 major corporate plans revealed that the average annual premium increase for each subscriber was $29.47.

On the other hand, psychotherapy produces savings in the form of increased employee productivity and reduced absenteeism. The Equitable Life Assurance Society has verified that every dollar invested in mental health treatment results in a three dollar increase in productivity.

Medical science has long recognized the correlation between physical disease and mental health. Many dollars that are now paid for other medical services are actually paid for the indirect treatment of mental impairments. In addition, studies have proven that direct treatment of mental problems results in lower costs for other medical care.

In a 1983 study, a moderate amount of psychotherapy was shown to significantly reduce hospital costs for persons suffering from four different types of chronic disease. Another study that same year showed that patients who received outpatient psychotherapy treatment used 56% fewer medical services than those who had not been treated.

Finally, there is a cost savings that will be enjoyed by the State of Alaska. Nationwide, the state governments pay about 50% of the total cost of our mental health bill. When subscribers are given access to mental health coverage on the same basis as other medical benefits, more of this burden will be shifted from the State to the private sector.

CHAIRMAN'S INFORMATION: SB 295

1) BILL TITLE: "An act requiring insurers to offer certain coverage for the treatment of a mental or nervous condition in certain health insurance policies."

   a) Introduced: Sen Faiks

   b) Co-sponsors:

2) INTENT: Measure requires insurers to offer an option for minimum mental health coverage in all health insurance policies sold in Alaska after Jan 1, 1987.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: HESS and Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public Witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from committee?
   d) Close public hearings?

6) COMMITTEE ACTION?

   a) amendments?
   b) CS adoption? Need to adopt the L&C CS for purposes of discussion.

#1

SCS CSHB 305(L&C)
Amendment #1
by Sackett
Zharoff and

Page 4, line 9, add a new Sec. 8 AS 08.13.140 is amended to read:

Section 08.13.140. Lapsed License. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, or otherwise at the discretion of the Board, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Renumber remaining sections accordingly

#2

AMENDMENT #2

by Sackett
Zharoff and

SCS CSHB 305(L&C), relating to barbers, hairdressers, and cosmetologists,

Page 3, line 6: following the word "instructor" delete the period, add a semi-colon and the word or, and on line 7, add a new subsection to read:

(6)have completed a combination of coursework and apprenticeship acceptable to the board. (Sec. 1 Ch 159 SLA 1980).

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 295 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer certain coverage for the treatment of a mental or nervous condition in certain health insurance policies."

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

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after January 1, 1987, shall offer the insured an option to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

(2) a total of 50 hours a year of outpatient treatment for each covered individual, accumulated in any increments of time.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment;

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment during a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, a psychiatric hospital that is licensed under AS 18.20, or a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means a mental disorder identified in

(A) the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) published by the American Psychiatric Association; or

(B) the ICD-9-CM (First Edition) published by the Commission on Professional and Hospital Activities;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided by one or more of the following, or by a person who is under the direct supervision of one or more of the following, has a master's or doctorate degree in psychology, nursing, or social work, and is employed by the same health care facility as the person or persons providing the direct supervision,

(A) a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal

government in the state and certified or eligible for certification in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist licensed under AS 08.86.

* Sec. 2. AS 21.36.090(d) is amended to read:

(d) Except to the extent necessary to comply with AS 21.42.365, a [A] person may not practice or permit unfair discrimination against a person who provides a service covered under a group disability policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, dentist, osteopath, optometrist, chiropractor, or nurse midwife.

* Sec. 3. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

SB

297

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 5/7/86

REQUEST

Bill/Resolution No.: CSSSSB 297 (L&C)
Title: An Act relating to the practice of naturopathy; and providing for an effective date.
Sponsor: Senate Labor & Commerce
Requester:
Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components:

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE		.6	**	**	**	.6

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill changes the composition of the Board of Chiropractic Examiners to add a sixth nonvoting ex officio naturopathic member, and amends the title of the board to the Board of Chiropractic and Naturopathy Examiners. The bill authorizes the board to license and regulate the practice of naturopathy in Alaska. Costs of

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 5-7-86

Approved by Commissioner: Laura L. Lodsmuny Date: 5/7/86
Agency: Commerce and Economic Development

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSSSB 297 (L&C)

adding a sixth member are minimal and will be absorbed by the division.

This fiscal note differs from the previous fiscal note in that assuming the new member will be appointed from the Anchorage area where expenses would be minimal, costs would be absorbed by the division.

REVENUE:

Although there may be as many as six naturopaths in Alaska. we are certain of three practicing naturopaths, and therefore revenues are based on the three practitioners.

AS 08.20.180 currently es... hes fees for licensure. Revenues shown are 'new' revenues to be generat ... rom licensing naturopaths. These revenues will be in addition to the ...ues generated through the licensing of Chiropractors.

Initial license fee (quadrennial renewal period) = $200 x 3 = $600

Revenues may increase within the quadrennial cycle depending on the number of new practitioners who obtain licensure.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSSSB 297 (L&C)
Title: An Act relating to the practice of naturopathy; and providing for an effective date.
Sponsor: Senate Labor & Commerce
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		1.2	1.2	1.2	1.2	1.2
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		1.2	1.2	1.2	1.2	1.2
CAPITAL						
REVENUE		.6	**	**	**	.6

FUNDING: (Thousands of dollars)

GENERAL FUND		1.2	1.2	1.2	1.2	1.2
FEDERAL FUNDS						
OTHER						
TOTAL		1.2	1.2	1.2	1.2	1.2

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill amends the Board of Chiropractic Examiners to include naturopaths, therefore creating the Board of Chiropractic and Naturopathy Examiners. It increases the composition of the board from five to six members by adding one nonvoting ex officio naturopath member. Costs mentioned above result from adding the sixth member to a board that already meets twice each year and administers exams in conjunction with

Prepared by: Jennifer Strickler, Management Analyst — Phone: 465-2144
Division: Occupational Licensing — Date: 5/6/86
Approved by Commissioner: Dan L. Hennsbury — Date: 5/6/86
Agency: Commerce and Economic Development

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

10/25/85

each meeting. Travel costs of $1.2 could be reduced to $.7 if the composition of the board were to remain at five members. If reduced by attrition, the replacement of one chiropractic member from Anchorage could be replaced with a naturopath as early as July 1986, therefore reducing per diem costs by $.5.

An explanation of travel costs follow:

Based on two meetings with exams held in Anchorage -

Transportation from Juneau to Anchorage = $352 x 2 =	$ 704.00
Per diem based on three days at $80 per day = $240 x 2 =	480.00
	$1,184.00

REVENUE:

Although there may be as many as six naturopaths in Alaska, we are certain of three practicing naturopaths, and therefore revenues are based on the three practitioners.

AS 08.20.180 currently establishes fees for licensure. Revenues shown are 'new' revenues to be generated from licensing naturopaths. These revenues will be in addition to the revenues generated through the licensing of Chiropractors.

Initial license fee (quadrennial renewal period) = $200 x 3 = $600

Revenues may be increased by the end of four years depending on the number of new practitioners who obtain licensure in the interim.

POSITION PAPER

SENATE BILL NO. 297

"An Act relating to the licensing of practitioners of naturopathic medicine; and providing for an effective date."

BACKGROUND

The Bill defines naturopathy as a "system of healing the human body that includes diagnosis and treatment through the use of natural agencies, forces, processes, and products with emphasis on the response of the individual to the disease rather than its treatment in isolation."

There is controversy over the scientific basis of naturopathic medicine. In a 1968 study, the U.S. Department of Health, Education and Welfare stated that "naturopathic theory and practice are not based upon the body of basic knowledge related to health, disease and health care which has been widely accepted by the scientific community." This position has remained unaltered. There is apparently also some division within the ranks of naturopathic physicians with some ascribing solely to "hygienic and prophylactic measures" while others include diagnostic procedures, minor surgery and the use of certain drugs within the scope of naturopathic practice.

There are two four-year colleges of naturopathic medicine in the United States, one in Portland and one in Seattle. In addition, there is a correspondence curriculum in naturopathy available from the Bernadean University in Van Nuys, California but graduates of that program would not be eligible for Alaska licensure under the terms of this Bill.

Alaska currently has no statute providing for the licensure of naturopathic physicians. The Attorney General has held that, to the extent that naturopathy constitutes the practice of medicine as defined in the Alaska Statues, any person practicing naturopathy would be required to be licensed by the State Board of Medical Examiners. Proponents of naturopathy consider a requirement for medical licensure to be unfair since their discipline is considered, in their view, to be quite distinct from conventional medicine.

DISCUSSION

While certain conditions may be amenable to treatment through naturopathic methods, others would not. A few examples would include malignancies, diabetes in certain age groups or of certain degrees of severity, certain types of infectious diseases, etc. Similarly, it is not always possible to determine the benign or malignant nature of a superficial lesion by its gross appearance. Protection of the public would require that the public clearly understands the limitations of the naturopathic approach and that the practitioner be able to recognize those conditions in which his or her therapy would not be beneficial.

POSITION PAPER/Department of Health & Social Services

While naturopathic practitioners are eligible for licensure in some states, several of those states impose restrictions limiting practice to "drugless therapy" and, in some cases, prohibiting surgery.

DEPARTMENTAL POSITION

The Department has reservations about the appropriateness of naturopathic treatment for certain types of illnesses. However, the Department recognizes that certain health care consumers desire to use the services of a naturopath and is, therefore, neutral on this bill. The Department defers to the Department of Commerce and Economic Development on the merits of licensure and the establishment of a Board.

Recommended by: David Bruce for
Robert I. Fraser, M.D.
Director
Division of Public Health

Date: 4/29/85

Approved by: John R. Pugh
John R. Pugh
Commissioner
Department of Health and Social Services

Date: 4/30/85

Department of Commerce & Economic Development / POSITION PAPER

SSSB 297: An Act relating to the licensing of practitioners of naturopathic medicine; and providing for an effective date.

The Department of Commerce and Economic Development and the Division of Occupational Licensing are opposed to SSSB 297, An Act relating to the Practice of Naturopathy, as currently written.

The bill establishes a new chapter under Title 8, Businesses and Professions, to recognize the practice of naturopathy in Alaska. The bill both recognizes the practice of naturopathy and exempts the practice from the provisions of the Medical Practice Act, 08.64. The division does not object to recognizing the practice of naturopathy in Alaska, but opposes the exemption from the Medical Practice Act.

Apparently, the proposed exemption is one means of resolving the current controversy over what practices are acceptable in naturopathy and what practices are, instead, the practice of medicine. To date, there has been no comprehensive definition of the field of naturopathy distinct from the definition of the practice of medicine. The difficulty in developing such a definition is understandable, given the current definition of the practice of medicine in AS 08.64.380:

(2) "practice of medicine" or "practice of osteopathy" means

(A) for a fee, donation or other cosideration, to diagnose, treat, operate on, prescribe for, or administer to, any human ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition; or to attempt to perform or represent that a person is authorized to perform any of the acts set out in this subparagraph;

(B) to use or publicly display a title in connection with a person's name including "doctor of medicine," "physician," "M.D.," or "doctor of osteopathic medicine" or "D.O.," or a specialist designation including "surgeon," "dermatologist," or a similar title, or any title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured;

It appears that, because it remains difficult to define the practice of naturopathy, a proposal is being made to simply exempt naturopaths from the Medical Practice Act. The result of this, however, would be that a naturopath who meets the minimal requirements in 08.45.010 can practice medicine just as a licensed physician can, and with no licensing constraints.

Although the division is sympathetic to the problem, the division cannot support this proposal, which has the potential for severe threat to the public safety.

The division would not oppose the recognition in statute of practice of naturopathy, especially if that will lend credence to naturopaths in their effort to define the allowable practices of naturopaths. Although there are few naturopaths in the state, there is strong support for naturopathy as an alternative health service which should be acknowledged.

However, it is important to understand that recognition of naturopaths is likely to be interpreted incorrectly by the general public as regulation or licensing of naturopaths. In fact, it is clear that this is the understanding from literature being distributed by supporters of the bill. This bill would not regulate or license naturopaths, and passage may, instead, provide a false sense of security that the state is checking the credentials of naturopaths before practice and revoking licenses where naturopaths do not meet the educational standards in the bill. This is not correct. As written, the bill would provide authority to the division to respond only to complaints that a naturopath is practicing medicine without an exemption from the Medical Practice Act.

Nancy Dunn, Director, 465-2534
Division of Occupational
Licensing

Date: 4/28/86

Loren H. Lounsbury, Commissioner
Department of Commerce and
Economic Development

Date: 4/29/86

Department of Commerce & Economic Development / POSITION PAPER

SB 297: "An Act relating to the licensing of practitioners of naturopathic medicine and providing for an effective date."

The Department of Commerce and Economic Development and the Division of Occupational Licensing would support this legislation with proposed amendments.

One objective of licensing in Alaska is to ensure that practitioners providing services to consumers are competent and qualified in order to protect the health, welfare and safety of the public. The division is concerned that this legislation proposes licensing a group whose scope of practice encompasses that of other licensed professions, but whose educational level is not comparatively equivalent to practitioners of those occupations.

Information from other naturopathic licensing jurisdictions indicates that the education level of naturopathic practitioners is comparatively lower than that of medical doctors. Most licensing jurisdictions require a naturopath to have undertaken two years of undergraduate studies and to be a graduate of a four-year naturopathic college. By comparison, most medical colleges require a four-year degree prior to entry into a four-year medical program and one to three years of residency internship depending on specialty area. In addition to minor surgery, Section 08.45.160 also authorizes the scope of naturopathic practice to include aspects of the practices of psychology, physical therapy, and medicine.

The following amendments are proposed:

Section 08.45.150. FEES, should be amended to reference AS 08.01.065 to allow licensing fees to be set in regulations. Standard language used in other licensing areas states "The department shall set fees under AS 08.01.065 for each of the following: (1) application fee; (2) examination fee; (3) initial license fee; (4) renewal license fee." This amendment will allow examination costs to be included as part of the total costs of the licensing function. Note that the present fiscal note reflects only an estimate of the costs for examinations since we have not yet located an available naturopathic licensing exam.

Section 08.45.160. SCOPE OF NATUROPATHIC MEDICINE, would authorize a new licensing group to provide services that are traditionally medical (minor surgery, sutures, acupuncture, to draw blood, etc.). Of the seven states which license naturopathic medicine, we are aware that two states (Oregon and Utah) allow "minor surgery" to be performed. We recommend that "minor surgery" be defined extensively or eliminated from the scope of practice.

Section 08.45.170. RENEWAL, should be amended to require that licenses be renewed biennially on a date set by the department. The division suggests the following language be incorporated into Section 08.45.170 "(a) A license issued under this section shall be renewed biennially on a date set by the department." This amendment is consistent with AS 08.01.100 and would simplify administrative processing of license renewals.

Nancy Dunn, Director
Division of Occupational Licensing

Date: 3/15/86

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 3/17/86

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Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSSSSB 297(L&C): Sectional Analysis

Section 1) Expands the Board of Chiropractic Examiners to include "naturopathy", increases the membership from 5 to 6 members, and states that there will be one nonvoting ex officio member.

Section 2) Provides that the ex officio member of the board shall be a licensed practitioner of naturopathy.

Section 3) Technical change

Section 4) Technical change

Section 5) Technical change

Section 6) Establishes naturopath licensure criteria; i.e. degree form a 4 year accredited college and a degree from a school of naturopathy that required 4 years of attendance.

Section 7) Technical change

Section 8) Disclosure requirements for naturopath's patients, and restrictions placed on naturopathic practitioner. Naturopath may not give or recommend prescription drugs, controlled substances, poisons, or engage in the practice of surgery, or use the word "physician" in title.

Section 9) Technical change

Section 10) Technical change

Section 11) Technical change

Section 12) Technical change

Section 13) Technical change

Section 14) Technical change

Section 15) Definitions under AS 08. This section also defines the practice of "naturopathy" in (3).

Section 16) Technical changes

Section 17) Technical changes

Section 18) Additional definitions necessary under AS 09

Section 19) Technical changes

Section 20) Definitions under AS 47;

Section 21) Immediate effective date

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 297 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the practice of naturopathy; and providing for an effective date."

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

* Section 1. AS 08.20.010 is amended to read:

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC AND NATUROPATHY EXAMINERS. There is created the Board of Chiropractic and Naturopathy Examiners consisting of six [FIVE] members appointed by the governor, including one nonvoting ex officio member.

* Sec. 2. AS 08.20.020 is amended to read:

Sec. 08.20.020. MEMBERS OF BOARD. Four members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. One member of the board shall be a person with no direct financial interest in the health care industry. The ex officio member shall be a person who is licensed under this chapter to practice naturopathy. Each member serves without pay but is entitled to per diem and travel expenses allowed by law.

* Sec. 3. AS 08.20.100 is amended to read:

Sec. 08.20.100. PRACTICE OF CHIROPRACTIC OR NATUROPATHY WITHOUT LICENSE PROHIBITED. A person may not practice chiropractic or naturopathy in the state without a license.

* Sec. 4. AS 08.20.110 is amended to read:

Sec. 08.20.110. APPLICATION FOR LICENSE. A person desiring to practice chiropractic or naturopathy shall apply in writing to the

board.

* Sec. 5. AS 08.20.120(b) is amended to read:

(b) The board may issue a license to practice chiropractic without examination to an applicant under AS 08.20.140.

* Sec. 6. AS 08.20.120 is amended by adding a new subsection to read:

(c) An applicant shall be issued a license to practice naturopathy if the applicant provides proof satisfactory to the board that the applicant has a degree from

(1) an accredited 4-year college or university; and

(2) a school of naturopathy that required four years of attendance at the school.

* Sec. 7. AS 08.20.140 is amended to read:

Sec. 08.20.140. LICENSURE BY CREDENTIALS. The board may issue a license without examination to an applicant for a license to practice chiropractic if the applicant presents [PRESENTING] satisfactory proof of the possession of a license or certificate of registration in good standing in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of the applicant's license were essentially equivalent to those in this chapter for a license to practice chiropractic.

* Sec. 8. AS 08.20 is amended by adding new sections to read:

Sec. 08.20.145. DISCLOSURES REQUIRED BY PERSON WHO PRACTICES NATUROPATHY. (a) A person who practices naturopathy shall clearly disclose that the person's training and practice is in naturopathy

(1) to each patient; and

(2) on all material used in the practice of naturopathy and made available to patients or to the public.

(b) A person who practices naturopathy without being covered by malpractice insurance shall disclose to each patient that the person

does not have the insurance.

Sec. 08.20.147. RESTRICTIONS ON PRACTICE OF NATUROPATHY. A person who practices naturopathy may not

(1) give, prescribe, or recommend in the practice

(A) a prescription drug;

(B) a controlled substance;

(C) a poison;

(2) engage in surgery;

(3) use the word "physician" in the person's title.

* Sec. 9. AS 08.20.160 is amended to read:

Sec. 08.20.160. TEMPORARY PERMITS. Temporary permits <u>to practice chiropractic</u> may be issued to persons apparently qualified until the next regular meeting of the board.

* Sec. 10. AS 08.20.175(a) is amended to read:

(a) When it finds that a <u>licensee under this chapter</u> [CHIROPRACTOR] is guilty of an offense under AS 08.20.170, the board may impose the following sanctions singly or in combination:

(1) permanently revoke the [CHIROPRACTOR'S] license to practice;

(2) suspend the [CHIROPRACTOR'S] license for a determinate period of time;

(3) censure the <u>licensee</u> [CHIROPRACTOR];

(4) issue a letter of reprimand to the <u>licensee</u> [CHIROPRACTOR];

(5) place the <u>licensee</u> [CHIROPRACTOR] on probationary status and require the <u>licensee</u> [CHIROPRACTOR] to

(A) report regularly to the board upon matters involving the basis of probation;

(B) limit practice to those areas prescribed;

(C) continue professional education until a satisfactory degree of skill has been attained in areas determined by the board to need improvement;

(6) impose limitations or conditions on the practice of the licensee [CHIROPRACTOR].

* Sec. 11. AS 08.20.175(b) is amended to read:

(b) The board may withdraw probationary status of a licensee [CHIROPRACTOR] if it finds that the deficiencies which required the sanction have been remedied.

* Sec. 12. AS 08.20.175(c) is amended to read:

(c) The board may summarily suspend a [CHIROPRACTOR'S] license before final hearing or during the appeals process if the board finds that the licensee [CHIROPRACTOR] poses a clear and immediate danger to the public health and safety if the licensee [CHIROPRACTOR] continues to practice. A licensee [CHIROPRACTOR] whose license is suspended under this section is entitled to a hearing by the board no later than seven days after the effective date of the order. The licensee [CHIROPRACTOR] may appeal the suspension after a hearing to a court of competent jurisdiction.

* Sec. 13. AS 08.20.200 is amended to read:

Sec. 08.20.200. UNLICENSED PRACTICE A MISDEMEANOR. A person who practices chiropractic or naturopathy in the state without a license in violation of AS 08.20.100 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000. or by imprisonment for not more than a year, or by both. [IN PROSECUTIONS UNDER THIS SECTION, EVIDENCE THAT THE DEFENDANT HAS FAILED TO FILE THE DEFENDANT'S CERTIFICATE OF REGISTRATION WITH THE BOARD IS PRIMA FACIE EVIDENCE THAT THE DEFENDANT IS NOT A LICENSED CHIROPRACTOR.]

* Sec. 14. AS 08.20.210 is amended to read:

Sec. 08.20.210. FRAUDULENT CERTIFICATES. A [ANY] person who obtains or attempts to obtain a chiropractic or naturopathic certificate by dishonest or fraudulent means, or who forges, counterfeits, or fraudulently alters a [ANY SUCH] certificate is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both.

* Sec. 15. AS 08.20.220 is amended to read:

Sec. 08.20.220. DEFINITIONS [CHIROPRACTIC DEFINED]. In this chapter,

(1) "chiropractic" means [CHIROPRACTIC IS] the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery;

(2) "controlled substance" has the meaning given in AS 11.-71.900;

(3) "naturopathy" means the use of hydrotherapy, dietetics, electrotherapy, sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body

* Sec. 16. AS 08.01.010(2) is amended to read:

(2) Board of Chiropractic and Naturopathy Examiners (AS 08.20.010);

* Sec. 17. AS 08.03.010(c)(2) is amended to read:

(2) Board of Chiropractic and Naturopathy Examiners

(AS 08.20.010) -- June 30, 1988.

* Sec. 18. AS 09.55.560 is amended to read:

Sec. 09.55.560. DEFINITIONS. In AS 09.55.530 - 09.55.560

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.20; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; a corporate entity covered under AS 21.88.050(b)(12); and an employee of a health care provider acting within the course and scope of employment;

(2) "board" means an arbitration board established under AS 09.55.535;

(3) "panel" means an expert advisory panel established under AS 09.55.536.

* Sec. 19. AS 47.08.050 is amended to read:

Sec. 47.08.050. SERVICES EXCLUDED FROM COVERAGE. Annually, the committee shall determine in light of appropriated funds and expected need the medical expenses reimbursable under this chapter, except that the following are not reimbursable:

(1) dentistry and optometry unless prescribed by a licensed dentist or physician as medically necessary as the result of the injury or illness;

(2) elective medical or surgical procedures;

(3) drugs and medications not prescribed by a licensed

physician;

(4) services received as a result of a pregnancy or birth without unusual complications;

(5) private psychological or psychiatric treatment or private alcoholism treatment, unless not available from public agencies or programs;

(6) chiropractic services and services provided by a person who practices naturopathy;

(7) services not of a medical nature;

(8) medical services currently provided to persons in the custody of the Department of Corrections;

(9) costs incurred before July 1976.

* Sec. 20. AS 47.17.070 is amended to read:

Sec. 47.17.070. DEFINITIONS. In this chapter

(1) "child" means a person under 18 years of age;

(2) "child abuse or neglect" means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

(3) "child care provider" means an adult individual, or an employee of an organization, who provides care and supervision to a child for compensation;

(4) "department" means the Department of Health and Social Services;

(5) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(6) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(7) "organization" means a group or entity that provides care and supervision for compensation to a child not related to the caregiver, and includes a child care facility, pre-elementary school, head start center, child foster home, residential child care facility, recreation program, children's camp, and children's club;

(8) "person responsible for the child's welfare" means the child's parent, guardian, foster parent, a person responsible for the child's care at the time of the alleged child abuse or neglect, or a person responsible for the child's welfare in a public or private residential agency or institution;

(9) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, optometrists, osteopaths, naturopaths, physical therapists, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, religious healing practitioners, and surgeons;

(10) "sexual exploitation" means

(A) permission or encouragement to a child for prostitution prohibited by AS 11.66.100 - 11.66.150 by a person responsible for the child's welfare;

(B) permission, encouragement, or activity involved in the unlawful exploitation of a minor prohibited by AS 11.41.-455 by a person responsible for the minor's welfare.

* Sec. 21. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 4/23/85
Referred: Labor & Commerce,
Health, Education & Social Services
and Finance

IN THE SENATE BY ABOOD

SENATE BILL NO.297

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of practitioners of naturopathic medicine; and providing for an effective date."

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

* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

(26) regulation of naturopathy or naturopathic medicine under AS 08.45.

* Sec. 2. AS 08 is amended by adding a new chapter to read:

CHAPTER 45. NATUROPATHS.

ARTICLE 1. REGULATION OF NATUROPATHY.

Sec. 08.45.010. DUTIES AND POWERS. The department shall

(1) evaluate the qualifications of applicants for licenses under this chapter;

(2) conduct hearings and keep records necessary to carry out the purposes of this chapter; and

(3) license naturopaths and renew licenses in accordance with AS 08.45.100 - 08.45.170.

ARTICLE 2. LICENSING OF NATUROPATHS.

Sec. 08.45.100. LICENSE REQUIRED. A person may not engage in the practice of naturopathy or naturopathic medicine unless that person has a valid license issued under this chapter.

Sec. 08.45.110. REQUIREMENTS FOR A LICENSE. To be eligible for a license to practice naturopathy or naturopathic medicine, an applicant must have the following qualifications:

(1) a high school diploma or its equivalent;

(2) completion of three full years of postsecondary education at an accredited college or university;

(3) graduation from a school of naturopathy or naturopathic medicine that requires for graduation the successful completion of a course of resident instruction as follows:

(A) nine or more months of attendance a year for four years;

(B) successful completion of a course of instruction totaling 4,000 hours or more; the course of instruction must include 1,500 hours of clinical experience, and the following subjects: anatomy, physiology, histology and embryology; microbiology; pathology; immunology; public health; physical, clinical, and x-ray diagnosis; first aid and emergency medicine; obstetrics and gynecology; orthopedics; minor surgery and proctology; otolaryngology; physiotherapy and manipulative techniques; dietetics and clinical nutrition; botanical medicine; naturopathic theory; therapeutics and clinical practice; and jurisprudence;

(4) successful completion of an examination given by the department; the department may waive the examination if the applicant has successfully passed a similar examination in another state or in Canada;

(5) no history of suspension or revocation for disciplinary reasons of a license to practice naturopathy issued by another state or a province of Canada;

(6) United States citizenship or lawful admission as a permanent resident to this country; and

(7) good moral character.

Sec. 08.45.120. EXAMINATION. (a) The department shall hold an examination for a license to practice naturopathy or naturopathic medicine at a time, place, and manner determined by the department. The department shall hold the examination at least twice a year if the demand exists. The department shall limit the examination to the subjects listed in AS 08.45.110(3). Each of the subjects listed in AS 08.45.110(3) constitutes a separate examination section. The examination must be objective and written, but the department may supplement the written examination with oral examinations and demonstrations or other practical tests.

(b) A passing grade on the examination is an average of 75 percent for the entire examination with a score below 70 percent for no more than two sections.

Sec. 08.45.130. RECIPROCITY. The department may license a person to practice naturopathy or naturopathic medicine if the person is currently licensed to practice naturopathy or naturopathic medicine in another state or a province of Canada and

(1) that state or province maintains professional licensing standards equivalent to or higher than those in this chapter;

(2) that state or province extends the same licensing privilege to those holding a license to practice naturopathy or naturopathic medicine in this state; and

(3) the person demonstrates to the satisfaction of the department qualifications equal to those required of a person licensed under this chapter.

Sec. 08.45.140. DENIAL OF RENEWAL, SUSPENSION OR REVOCATION OF LICENSE. The department may, to the extent necessary to protect the public, reprimand or prescribe rehabilitation or education for, or suspend, revoke, or decline to renew the license of, a licensee who

(1) has obtained a license under this chapter by fraud or deceit;

(2) wilfully violates a provision of this chapter or a regulation adopted under this chapter;

(3) habitually overuses alcoholic beverages;

(4) unlawfully uses a controlled substance;

(5) impersonates a medical doctor;

(6) practices naturopathy or naturopathic medicine under an assumed name;

(7) is incompetent;

(8) engages in dishonest or misleading business practices; or

(9) is convicted of a crime involving moral turpitude, including murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery.

Sec. 08.45.150. FEES. The department shall charge the following fees:

(1) application for examination $100

(2) license issuance or biennial renewal 200

Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A naturopath may

(1) perform physical examinations, write prescriptions for substances authorized by this chapter, and sign birth and death certificates;

(2) use systems of diagnosis for which the naturopathic physician has been trained under AS 08.45.110(3);

(3) treat patients by physiological, nutritional, psychological, mechanical, electrical, manual, hydrotherapeutic, or phytotherapeutic methods, that are recognized naturopathic methods,

including acupuncture and the use of mineral and organic substances and agencies;

(4) draw blood for laboratory purposes, and use electrical or other methods for the repair and care of superficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in superficial structures; and

(5) practice natural childbirth, including related minor surgical procedures.

(b) A naturopath may not

(1) except as provided under (a)(5) of this section, perform surgery;

(2) use controlled substances;

(3) use radiation therapy; or

(4) use drugs, except local anesthetics, minerals, and extracts, compounds or concentrates obtained from plants or animals.

Sec. 08.45.170. RENEWAL. (a) A license issued under this section is valid for two years from the date of issuance.

(b) Before the department renews a license issued under this chapter, the licensee shall submit to the department evidence that the licensee has completed 20 hours of continuing education.

(c) The department may exempt a licensee from the continuing education requirement of (b) of this section if a licensee submits an application setting out extenuating circumstances that justify granting the exemption. The department may not give to a licensee more than one exemption under this subsection in a five-year period.

(d) The department shall prescribe by regulation the courses that will satisfy the continuing education requirements of this section.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.45.200. TITLES AND ABBREVIATIONS. (a) A person licensed under this chapter may use the following titles: "Naturopath," "Naturopathic Physician" or its abbreviation, "N.P.," "Doctor of Naturopathy" or its abbreviation, "N.D." A person licensed under this chapter may not use a title in a manner that suggests that the person practices a form of medicine or a healing art other than naturopathy or naturopathic medicine.

(b) A person may not use a title or abbreviation listed in (a) of this section unless the person is licensed under this chapter.

Sec. 08.45.205. VIOLATIONS. (a) Except as provided in (b) of this section, a person is guilty of a class B misdemeanor if the person

(1) fraudulently obtains or furnishes a license, renewal, or record required by this chapter;

(2) wilfully violates a provision of this chapter or a regulation adopted under this chapter.

(b) A person who practices naturopathy or naturopathic medicine without a valid license issued under this chapter is guilty of a class A misdemeanor.

Sec. 08.45.220. DEFINITIONS. In this chapter

(1) "controlled substance" has the meaning given in AS 11.-71.900;

(2) "department" means the Department of Commerce and Economic Development;

(3) "naturopath" means a person who practices naturopathy or naturopathic medicine;

(4) "naturopathy" or "naturopathic medicine" means a system of healing the human body that involves diagnosis and treatment through the use of natural agencies, forces, processes, and products,

with an emphasis on the response of the individual to the disease rather than treatment of the disease in isolation.

* Sec. 3. Notwithstanding AS 08.45.110 as enacted in sec. 2 of this Act, a person may apply for and receive a license to practice naturopathy if the person

(1) is a resident of the state;

(2) is practicing naturopathy in the state on the effective date of this Act;

(3) has a valid license to practice naturopathy issued, after examination, by another state or a province of Canada;

(4) has graduated from a school of naturopathy that satisfies the requirements of AS 08.45.110(3) as enacted in sec. 2 of this Act; and

(5) applies for the license within 30 days of the effective date of this Act.

* Sec. 4. This Act takes effect July 1, 1986.

Scott Jamison
Paul Doyle

CHAIRMAN'S INFORMATION: CSSSSB 297(L&C)

1) BILL TITLE: "An act relating to the practice of naturopathy; and providing for an effective date."

a) Introduced: Sen Abood

b) Co-sponsors:

2) INTENT: This measure provides for the licensure of "naturopathic" practitioners, and would place them under the Board of Chiropractic Examiners. It provides for the expansion of the Board including the appointment of a nonvoting "ex officio" naturopath.

The bill also limits the practice of naturopathy to prevent the use of prescription drugs, controlled substances, poisons, the practice of surgery, and the use of the word physician in the person's title.

FISCAL NOTE: 0 for the original bill

3) ADDITIONAL REFERRALS: HESS, Finance , Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the Senate L&C CS

MEMORANDUM State of Alaska

TO: Michael Thill, Staff Assistant
Senate Labor & Commerce Committee

DATE: April 11, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General
By: Peter B. Froehlich
Assistant Attorney General

SUBJECT: Pettijohn v. State, -- naturopath appeal

You asked by telephone yesterday about the effect and meaning of the March 28, 1986 Decision and Order in Pettijohn v. State (Case No. 3AN-84-160 consolidated), by Judge Shortell. The decision affirmed the Medical Board's September 20, 1984 decision and order which prohibits Patton D. Pettijohn from performing in the course of his naturopathy practice, activities which constitute the practice of medicine because he is not licensed under AS 08.64. The decision does not change, but rather merely upholds, the prohibition against practicing medicine without a license that has existed since at least 1949 (AS 08.64.170(a)) and the definition of the practice of medicine which was rewritten in 1983 (AS 08.64.380(2).

Neither the recent superior court decision nor any existing statutes or regulations prohibit the practice of naturopathy itself. Naturopaths can continue to practice naturopathy as long as they do not at the same time practice medicine in any way. To the extent the two practices overlap, however, naturopaths are still barred from all activities included within that overlap. Naturopaths can also, of course, practice lay midwifery under ch. 33, SLA 1985.

We expect the March 28 Decision and Order to be appealed, but we are confident of our ability to successfully defend it. We will be consulting with the division of occupational licensing and the medical board concerning the practical and enforcement ramifications of the court's decision and order. It is likely that the 4 or 5 known naturopaths in the state will be contacted to ensure that they understand the limits within which they can practice naturopathy under the existing laws which have been upheld by the court.

A copy of both the court's and the board's decisions and orders are attached, along with the board's March 1, 1984 answers to clarifying questions. Please let us know if we can provide any further information.

PBF:md

POSITION PAPERS

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM April 14, 1986

SUBJECT: Liability of state for exempting the practice of naturopathy from the practice of medicine

TO: Senator Fred Zharoff
Chair, Labor and Commerce Committee

FROM: Theresa L. Bannister TLB
Legislative Counsel

You have requested an opinion whether or not the state would be liable for injuries suffered by a patient of a naturopath if the state passed a law exempting the practice of naturopathy from the practice of medicine. The short answer is that the state would not be liable for such injuries. There do not appear to be constitutional problems with the general concept of enacting such an exemption, and the doctrine of sovereign immunity would prevent a tort action for such injuries against the state.

Under the doctrine of sovereign immunity, the state is immune from liability unless the state provides by statute for liability. The reason behind this immunity is to limit judicial reexamination of decisions properly entrusted to other branches of government. See Industrial Indemnity Co. v. State, 669 P.2d 561, 563 (Alaska 1983). AS 09.50.250 states the actions that can be brought against the state and includes tort actions. However, subsection (a) of that statute contains two major exceptions that are relevant to your question.

One exception prohibits a claim based on the negligence of a state employee or agency when performing a discretionary function or duty. Decisions that rise to the level of planning or policy-making are considered discretionary acts that do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be discretionary acts and therefore are not immune from liability. See, e.g., State v. I'Anson, 529 P.2d 188, 193 (Alaska

1974). Since the making of statutes is certainly policy-making, the enactment of such a statute by the legislature and the planning and policy-making in the implementation of the statute would be discretionary acts for which the state could not be held liable in tort for personal injuries, even if it were claimed that these acts were performed without due care.

The other exception prohibits tort actions based upon an act or omission of a state employee who exercises due care in the execution of a statute or regulation, whether or not the statute or regulation is valid. Therefore, if the state implemented such a bill with all due care, the state would not be liable for patient injuries, whether the particular implementing act amounted to a discretionary or operational act.

Therefore, it does not appear that the enactment or implementation of a statute exempting the practice of naturopathy from the practice of medicine would expose the state to liability for the personal injury claims of patients of naturopaths. The liability of the state regarding such a statute would be no different from its ordinary liability exposure for carrying out governmental functions.

If I can be of further assistance, please advise.

TLB:mkr
m4/103

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 297

Title: Licensing of naturopaths

Sponsor: Abood

Requestor:

Date of Request: 4-26-85

FISCAL DETAIL

Agency Affected: Dept. Health & Social Serv.

Program Category Affected: Public Health

BRU, Program or Subprogram(s) Affected: State Health Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert I. Fraser, M.D. RIF/DB Phone: 465-3090

Division: Public Health Date:

Approved by Commissioner: John R. Pugh JRP Date: 4-30-85 fcc

Agency: Department of Health & Social Services

preparing fiscal note):

FISCAL NOTE

SB
304

Kenai River Fishing Guide Association

P.O. Box 624----Kenai, Ak. 99611

March 9,1985

Harry Gaines
PRESIDENT
R.L. Parker, Jr.
Vice President
Bill Coghill
Secretary-Tresurer

Alaska Professional Sportfishing Association
P. O. Box 6748
Anchorage, Alaska 99502

Attention: Bud Hodson
Sec Treas APSA

Dear Mr. Hodson:

Thank you for your letter and material regarding the licensing of Sportfishing Guides Statewide.

We have examined the material very closely and agree with all points of the proposed statutes.

The sportfishing guide industry must be regulated. It has always been the contention of this association to establish some type of regulations and/or statutes relating to sportfishing guides.

The only possible change in the proposed wording relates to 08.xx.210 Unlawful Acts. We would like to see a more definite time of reporting offenses. We feel that a too long of reporting time allows "non-resident" violators the opportunity to avoid prosecution.

I urge the Administration, State Legislators andall other interested parties to consider for adoption some statutes for regulating sportfishing guides.

Yours Truly

Harry Gaines

Harry Gaines

CC: Gov. Sheffield
Lenny Boston
Sen. Pat Rodey
Sen. Dick Schultz

ALASKA PROFESSIONAL SPORTFISHING ASSOCIATION

P.O. Box 6349
Anchorage, Alaska 99502
907-248-1714

Subject: The licensing of Sportfishing Guides Statewide

As much as we dislike regulations or government interference, it is apparent that the state needs regulations governing sportfishing guides and outfitters, to protect the public, resources and sportfish guiding industry. It is also apparent that the industry needs controls to protect the aesthetic value of a "wilderness experience".

The commercial sportfishing industry is growing at an accelerated pace. A study in 1982 by ADF&G Habitat Div. showed the Sportfish guiding and outfitting industry generated over 30 million dollers for guiding and or related services, in the Bristol Bay area. For 1985 we think that figure will top 40 million dollers. It is fast becoming "Big Business". We feel that state wide, the industry is worth over 100 million dollers annually.

The most publicize problem area for our industry is the Kenai River. The problem there is simply too much impact. A river can hold only so many guides and anglers. This problem is associated with the large population of Anchorage and the road access to the Kenai peninsula.

The problem areas go far beyond the Anchorage vicinity rivers. For example: U.S. Fish & Wildlife service has placed a moratorium on issuing any additional guiding permits for the Togiak National Wildlife Refuge and also the Yukon Delta Wildlife Refuge. The U.S. Fish & Wildlife Service has determined that rivers within these refuges have to much guiding impact. These areas of the state are as remote as you can get. According to a report from U.S.F&WS on guided anglers for the Togiak Wildlife Refuge in 1983, there were a total of 1521 clients for 5489 client use days, in 1984 there were 2073 clients for 10,086 client use days. Other areas of the state have been equally impacted.

We feel that our industry still has room to grow and that growth is healthy but on the other hand the uncontrolled growth and popularity of sportfishing in Alaska is presenting a lot of problems.

Reactions from bush communities and thier fears of local rivers becoming another "Kenai River" situation has created a negative outlook on our industry.

Nonresident and resident individuals and companies are portraying themselves as expert and knowledgeable guides advertising and selling guided trips to rivers and areas where they have never been before and in some cases have never been to Alaska before.

ALASKA PROFESSIONAL
SPORTFISHING ASSOCIATION

P.O. Box 6349
Anchorage, Alaska 99502
907-248-1714

Unethical and naive guides are abusing the resource, trespassing on native lands, littering and conducting unsafe operations.

There is a growing concern amongst local sportfishermen who do use guides, that the guides are dominating all of the "fishing Holes".

These are some of the problems that we are encountering and that give our industry and Alaska a bad reputation. To take a guided sportfishing trip in Alaska is not cheap. The prices range from $100 to $400 per day not including travel to and from the state. Because of the high prices it is quite appealing to get into the business, especially when all it takes is a couple of rafts and tents to get started in the float trip business. Unfortunatly the fishermen are usually the ones that get burned on this kind of deal.

With an industry of this size and expanding to the point of saturating the state it is our position that some sort of state regulations should be adopted to control quality, safety and expansion of the Sportfish Guiding Industry.

Governor Bill Sheffield
Office of the Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

January 9, 1985

Dear Bill:

Pursuant to our conversation in Juneau with reference to suggested legislation to regulate sportfishing guides. The enclosed is our suggested wording for a statute to accomplish these goals.

With the help of the Alaska Professional Sportfishing Association and other interested parties including the Attorney General's Office and the Division of Occupational Licensing, we have spent over 500 man hours compiling these suggested regulations. It is our feeling and that of the big game Guide Licensing and Control Board members, that to license and regulate possibly 3000 sportfishing guides and 450 big game guides with a single combined board would be counter productive and not to the best interest of the resource and the public.

In light of the fact that a suggested fee of $100 per resident license and $250 for a non-resident license, in excess of $300,000 could be generated to the general fund to substantiate budgetary requirements for a separate board. If additional revenues are required to justify a separate board, than the industry is supportive of increasing the license fees. One possibility is to have the licensing fees set by regulation rather than statute, to facilitate any increases in revenue requirements as needed to administer the board.

In consideration of the size and diversity of the industry which includes: Fixed lodges, wilderness camps, float trips, charter boats, air taxies and freelance guides. We have determined that this legislation could not directly address the problems of the industry but could set up a vehicle to do so. This legislation is intended to:

1: Make the guides competent and responsible.
2: Protect the public and resources.

3: provide a fair vehicle for new licensees to qualify.
4: Promote the orderly growth of the industry.
5: Create a board to administer and implement regulations as required.

It is not our intent that a value should be placed on any license or permit at the time of transfer.

At the meeting hosted by the Alaska Professional Sportfishing association on December 14, 1984. The following agencies were represented for a review of the proposed wording and the over all concept of the legislation. In attendance were representatives from: Alaska Dept of Fish & Game Sportfish Division, Alaska State Parks, U.S. Park Service, U.S. Fish & Wildlife Service, U.S. Forest Service. Comments made by those in attendance were positive and supportive of the proposed legislation. It was felt that this licensing proposal would compliment and simplify the different agencies administrative responsibilities and that the board would provide a vehicle for cooperation and communication between the agencies and the guiding industry.

With out further help from the Attorney Generals office, we felt it unwise to include wording for a grand-father clause at this time. It is our intent that those currently in the sportfish guiding business that are qualified, should be grand-fathered in.

As much as we dislike regulations or government interference, it is apparent that the State needs regulations to protect both the public and the resources. It is also apparent that the industry needs controls to protect the aesthetic value of a "wilderness trip". If I can be of any further help, please call at me at your convenience.

Sincerely,

151

Chuck Wier

CW:bh

Enclosures;

MAY 13 1985

Alaska State Legislature

COMMITTEES:

VICE-CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES

JUDICIARY

FINANCE SUB-COMMITTEE
ON COURT SYSTEM

JOINT COMMITTEE ON
FOREIGN TRADE



P.O. BOX 1441
WRANGELL, ALASKA 99929
(907) 874-2316

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4905

House of Representatives

ROBIN L. TAYLOR

MEMORANDUM

DATE: May 10, 1985

TO: Senator Fred Zharoff R.L.T.

FROM: Representative Robin L. Taylor

RE: SB 304

SB 304 regarding sport fishing guide licenses is currently in the Senate Labor and Commerce Committee.

Several constituents have contacted me about SB 304 and I would appreciate it if you could keep me informed of Committee hearing dates.

Thank you.



L&L OUTFITTERS

Jack Lechner

P.O. Box 1616
Kodiak, Alaska, 99615
(907) 486-5851



JANUARY 27, 1986

FEB 3 1986

SENATOR FRED ZHAROFF
ALASKA STATE LEGISLATURE
POUCH V (MS3100)
JUNEAU, ALASKA 99811

DEAR SENATOR ZHAROFF:

I'VE BEEN REVIEWING TWO SENATE BILLS THAT ARE CURRENTLY IN COMMITTEE (NUMBER 294 AND 304). BOTH BILLS HAVE FAR REACHING AFFECTS UPON THE ECONOMIC INTERESTS OF MANY PEOPLE IN KODIAK. BOTH BILLS ARE DIFFICULT TO UNDERSTAND, IN RESPECT TO THE ACTUAL OBJECTIVES.

I'LL FIRST COMMENT UPON BILL NO. 294, WHICH I ASSUME IS RELATED TO THE SENATE CONCURRENT RESOLUTION NO. 18, THAT ESTABLISHES OBJECTIVES AND DETAILED CRITERIA FOR ASSIGNMENT OF GUIDE AREA PERMITS. CERTAINLY A BETTER TRACKING OF AREA PERMITS ISSUED BY THE GUIDE BOARD HAS BEEN LONG OVERDUE.

SENATE BILL NO. 294 MAY ASSIST IN SERVING SOME OF THESE CONSIDERATIONS, BUT LIKE MOST BILLS, FINDS INCLUSION OF ITEMS THAT COULD BE VERY SELF SERVING FOR THE SUPPORTERS OF THE LEGISLATION. MY MAIN CONCERN IS SEC. 08.54.090 OF THE BILL, WHICH ESTABLISHES AN OUTFITTERS LICENCE. I HAVE NO PROBLEM WITH AN OUTFITTERS LICENCE, IF IT SHOULD BE A NECESSARY MONITORING SYSTEM OR A DEFINITE DEFINITION OF OUTFITTING THAT WOULD BE IN HARMONY WITH PRESENT ESTABLISHED OUTFITTER OPERATIONS. I CERTAINLY OBJECT TO PART (1) AND (2) , THAT WOULD PLACE THIS TYPE OF BUSINESS UNDER COMPLETE CONTROL OF MASTER AND REGISTERED GUIDES.

I CAN ONLY SPEAK FOR KODIAK ISLAND, INWHICH THE OUTFITTING BUSINESS HAS BEEN A MORE RECENT EXPANSION OF ECONOMIC GAIN FOR A GREAT NUMBER OF THE ISLANDS RESIDENTS. MOST OF THIS ACTIVITY HAS BEEN GENERATED BY PROVIDING SERVICES FOR DEER HUNTING AND SPORTFISHING.

OVER THE PAST TWO YEARS, I HAVE INVESTED CONSIDERABLE MONEY INTO THIS TYPE OF SERVICE AND HAVE DEVELOPED PHOTOGRAPHY AND SIGHTSEEING TYPES OF OPERATIONS, WHICH HOPEFULLY WILL EXPAND IN THE FUTURE.

IT IS OBVIOUS THAT ANY BILL OF THIS NATURE NEEDS TO BE CAREFULLY STUDIED, TO INSURE THAT EXISTING OPERATORS WILL NOT FIND THEMSELVES LEGISLATED OUT OF BUSINESS, FOR THE BENEFIT OF A SELECT FEW. IT SHOULD BE KEPT IN MIND, THAT THE MAJORITY OF THE REGISTERED GUIDES, DO NOT RESIDE IN KODIAK AND MANY OPERATE BY REMOTE CONTROL FROM OTHER AREAS OF THE STATE AND POSSIBLY EVEN FROM LOCATIONS OUT OF THE STATE. I'VE ACCEPTED THE BEAR HUNTING GUIDE SYSTEM, AS A CLOSED ENTRY OPERATION, SINCE IT WAS A LONGTERM ESTABLISHED SYSTEM, THAT WAS EMBRACED BY BOTH FEDERAL AND STATE REGULATORY SUPPORT. I CERATINLY OBJECT TO THIS EXCLUSIVE RIGHT BEING APPLIED TO ALL OTHER TYPES OF RESOURCE UTILIZATION. I HAVE DIFFICULTY IN ACCEPTING THIS EXPANSION OF RIGHTS TO SUBSISTENCE TYPE GAME, SMALL GAME, SIGHTSEEING AND PHOTOGRAPHY UTILIZATION OF OUR RESOURCES.

referred to L+C

IN RESPECT TO SENATE BILL 304, I FIND EXTREME DIFFICULTY TO REALLY UNDERSTAND WHAT IT MEANS. CURRENTLY, TO THE BEST OF MY KNOWLEDGE, THE ONLY SPORTFISH GUIDING RESTRICTIONS IS THE KENIA RIVER, EXCEPT FOR REFUGE LAND USE PERMITS (ATTACHED EXAMPLE). THE BILL PROVIDES FOR NO DEFINED ENTRY OF SPORTFISH GUIDES LOCATED IN THE REMAINDER OF THE STATE. CURRENTLY YOU ARE A SPORTFISH GUIDE, IF YOU CHOOSE TO PROVIDE THAT TYPE OF SERVICE OFF FEDERAL LANDS (REFUGE) ON KODIAK, ISLAND. THE SAME APPLIES FOR PHOTGRAPHY, SIGHTSEEING, SMALL GAME AND ANY OTHER TYPE OF GUIDING REQUIRING KNOWLEDGE OF THE LOCAL AREA.

AGAIN, I HAVE NO PROBLEM WITH A LICENCING REQUIREMENT, IF THIS TYPE OF ACCOUNTABILITY IS NECESSARY, BUT WOULD LIKE TO SEE WHAT THE ACTUAL REQUIREMENTS WILL BE, PAST PARTICIPATION CONSIDERATIONS, SO THAT EXISTING OPERATIONS WOULD NOT BE ELIMINATED FROM THIS TYPE OF BUSINESS.

BASICALLY I'VE NEVER BEEN A GREAT ADMIRER OF THE OPERATIONS OF THE GUIDE BOARD AND WOULD RATHER SEE THESE FUNCTIONS BE CONTROLED BY THE BOARD OF FISHERIES AND THE GAME BOARD.

THANK YOU FOR YOUR TIME AND HOPE THAT ANY PROGRESS OF THESE BILLS WILL ALLOW AMPLE REVIEW.

SINCERELY,

Jack

JACK LECHNER

FORM 3-1383
(REV. 11/75)

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. Fish and Wildlife Service

Kodiak National Wildlife Refuge

SPECIAL USE PERMIT

Permit number	Sta. No. to be credited
KD-21-85	74530

Contract number

Date: March 26, 1985

Permittee *(Name and address)*

Jack Lechner
P. O. Box 1616
Kodiak, Alaska 99615

Period of use *(inclusive)*

From April 1 1985
To December 31 1985

Purpose *(Specify in detail privilege requested, or units of products involved)*

To conduct a commercial sport fish guiding operation and photography guiding operation on specified Refuge lands.

Description *(Specify unit numbers; metes and bounds; or other recognizable designations)*

Use involving overnight camping is allowed only within the Spiridon and Little River drainages. Day use is permitted on all Refuge lands/waters. Photography guiding is not subject to overnight camping area restrictions listed above. All special conditions for sportfish guiding also apply to photography guiding.

Amount of fee $ 100.00 If not a fixed fee payment, specify rate and unit of charge: _____

[X] Full payment

[ ] Partial payment-Balance of payments to be made as follows:

Record of Payments

Payment received 3/27/85, check # 528

Special Conditions

1. See attached supplemental Special Conditions.
2. The following items are required for completion of this permit:
   a. Permit fee.
   b. Proof of liability insurance (see special condition number 7).
   c. Letter of concurrence if operations will be conducted on Native selected lands.

This permit is issued by the U.S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations, expressed or implied therein, and to the conditions and requirements appearing on the reverse side.

Permittee *(Signature)* Jack Lechner

Issuing Officer *(Signature and title)* Jay R. Bellinger, Refuge Manager

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 304
Title: Establishing sport-fishing guide licenses

Sponsor: Senate Judiciary
Requester: Senate Labor & Commerce
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		33.1	34.8	36.5	38.4	40.3
TRAVEL		.6	.6	.6	.7	.7
CONTRACTUAL		2.5	8.2	8.6	9.1	9.5
SUPPLIES		1.0	1.1	1.1	1.2	1.2
EQUIPMENT		3.3				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		40.5	44.7	46.8	49.4	51.7
CAPITAL						
REVENUE		562.5	237.4	661.7	261.4	766.5

FUNDING: (Thousands of dollars)

GENERAL FUND		40.5	44.7	46.8	49.4	51.7
FEDERAL FUNDS						
OTHER						
TOTAL		40.5	44.7	46.8	49.4	51.7

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

This bill establishes the licensing of sport-fish guides in two categories, registered and assistants. Although the bill authorizes the licensing function to be administered by the department, it places the sport-fish act under AS 08.54 which establishes the Guide Licensing and Control Board to oversee the practice of hunting guides in Alaska.

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 3/3/86

Approved by Commissioner: Lorn S. Lounsbury Date: 3/3/86
Agency: Commerce and Economic Development

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 304

PERSONAL SERVICES:

1 Licensing Examiner I, Range 12A, GGU, 12 months in Juneau 33.1

TRAVEL:

This would provide travel and per diem funding for the Licensing Examiner to administer an examination in Homer since a large number of sport-fish guides are from the Kenai Peninsula area. $352 x 240 (3 days per diem) = $592.00

An additional examination can be administered in Juneau for the Southeast area at no additional travel costs.

CONTRACTUAL:

In FY 87, funding of $2.5 would provide the following:

-Design of a sport-fish licensing examination under contract, based on costs incurred during a similar contract agreement with the hunting guide exams. 1.5

-Miscellaneous operating costs for telephone, printing of applications and statute books; and other publications such as public notices in accordance with the Administrative Procedure Act for two exams at $20 per notice x 3 papers. 1.0

In FY 88, funding of $8.2 would provide the following:

-Litigation costs for hearing officers, court reporters, witnesses, etc., based on similar costs incurred by hunting guides which amount to approximately 5% of the allocated contractual funds for this purpose. 7.2

-Miscellaneous operating costs for telephone, printing of applications and statute books, renewal forms; and other publications such as public notices in accordance with the Administrative Procedure Act for two exams at $20 per notice x 3 newspapers. 1.0

Succeeding years are based on a 5% increase.

SUPPLIES:

This funding will provide stationary, envelopes, pens, pencils and other desk top supplies to support the licensing function. 1.0

EQUIPMENT:

This funding will provide standard office equipment for the Licensing Examiner position. 3.3

Expenditures identified in this fiscal note are less than for other proposed licensing bills because of the absence of a board. While revenues appear to be high, they are the result of estimated numbers of eligible licensees provided by supporters of the bill.

If the fee structure is amended to allow licensing fees to be established by regulations under AS 08.01.065, fees will be amended to reflect the actual cost of the licensing activity.

Supporters of the bill have advised that there may be as many as 2500 registered sport-fish guides eligible for licensure upon enactment of the bill. However, we are unable to identify the number of assistant sport-fish guides who may be eligible for licensure. Therefore, based on Section 08.54.790(f) which states "a registered sport-fish guide may not employ or supervise more than three assistant sport-fish guides at the same time", this fiscal note is based on three assistant sport-fish guides to each registered sport-fish guide for a total of 7500 assistant sport fish guides in the first year (2500 x 3 = 7500).

REVENUES are based on licensing fees established in the current bill.

FY 87:	2500 Registered sport-fish guides x $150 biennial fee	= $	375.0
	7500 Assistant sport-fish guides x $25 annual fee	=	187.5
		$	562.5

There is no sure method upon which a reasonable estimate of new registered sport-fish guides can be determined. Therefore, a 5% increase in the number of new applicants over the 2500 licensed in the first year has been added. The revenue figures are subject to change if more concrete numbers of eligible licensees are identified.

FY 88:	7500 Assistant sport-fish guides renewing x $25	= $	187.5
	375 new Assistant sport-fish guides x $25	=	9.4
	125 new Registered sport-fish guides, assuming that at least half are non-residents:		
	62 non-resident registered sport-fish guides x $450	=	27.9
	63 resident registered sport-fish guides x $150	=	9.5
	125 new Registered sport-fish guides x $25 exam fee	=	3.1
		= $	237.4

FY 89:	7875 Assistant sport-fish guides renewing x $25	= $	196.9
	394 new Assistant sport-fish guides x $25	=	9.9
	131 new Registered sport-fish guides, assuming that at least half are non-residents:		
	65 non-resident registered sport-fish guides x $450	=	29.3
	66 resident registered sport-fish guides x $150	=	9.9
	131 new registered sport-fish guides x $25 exam fee	=	3.3
	2625 registered sport-fish guides renewing of which 62 are non-residents:		
	62 x $450 biennial fee	=	27.9
	2563 x $150 biennial fee	=	384.5
		= $	661.7

FY 90:	8269 Assistant sport-fish guides renewing x $25	= $	206.7
	413 new Assistant sport-fish guides x $25	=	10.3
	137 new Registered sport-fish guides, assuming that at least half are non-residents:		
	68 non-resident registered sport-fish guides x $450	=	30.6
	69 resident registered sport-fish guides x $150	=	10.4
	137 new Registered sport-fish guides x $25 exam fee	=	3.4
		= $	261.4
FY 91:	8682 Assistant sport-fish guides renewing x $25	= $	217.1
	434 new Assistant sport-fish guides x $25	=	10.9
	138 new Registered sport-fish guides, assuming that at least half are non-residents:		
	69 non-resident registered sport-fish guides x $450	=	31.1
	69 registered sport-fish guides x $150	=	10.4
	138 new Registered sport-fish guides x $25 exam fee	=	3.5
	2762 Registered sport-fish guides renewing of which 264 are non-residents:		
	264 x $450 biennial fee	=	118.8
	2498 x $150 biennial fee	=	374.7
		= $	766.5

Department of Commerce & Economic Development / POSITION PAPER

SB 304: "An Act establishing sport-fishing guide licenses."

The Department of Commerce and Economic Development, Division of Occupational Licensing, is neutral on this bill. We are aware that the bill is directed at reducing congestion on the Kenai and other popular fishing rivers. In addition, the Office of the Governor and the Department of Natural Resources favor the regulation of guides in general.

As the bill is written, this reduction would be accomplished by establishing requirements for examination, recommendations, bonding, insurance and a record free of certain convictions. However, the bill does not provide for the assignment of exclusive guiding areas, which is how the existing Guide Board currently limits hunting pressure by guides within a specific geographic area. Thus, the bill does not provide guaranteed relief from overcrowding in popular areas.

The division supports the opportunity to discuss whether or not regulation of sport-fish guides is needed at this time for reasons of consumer protection, which are more directly related to the intent of licensing and enforcement.

Division staff contacted the following agencies for records of complaint against sport-fish guides with the following results: Consumer Protection has no complaints on file for FY 84-FY 86 in Juneau and Fairbanks offices; the Anchorage office shows 5-6 per year. Fifty percent of those complaints were resolved amicably between the guide and complainant. The Better Business Bureau reported no complaints statewide for that period. The Anchorage Chamber of Commerce reported two complaints in 1985.

It is possible that other complaints bypass these offices and that small claims lawsuits are filed instead. However, without further documentation of complaints in this area, it would appear that the bill establishes a complex system of regulation out of proportion to need in terms of consumer protection.

In the event this bill passes, the department prefers that the responsibility of licensing sport-fish guides be placed under the existing Guide Licensing and Control Board, to provide for exchange of information regarding resource management, to ensure that complaints are acted on by professionals with knowledge of the field, and in the eventuality that area assignments are required. Such a step may require reformation of the Guide Board to include licensed sport-fish guides.

The division also recommends that Section 08.54.780 be amended to delete reference to more than one complaint as the basis for disciplinary action. The Division of Legislative Audit recommended deletion of a similar provision in the currently existing Guide Board statutes on the basis that such a provision is a constraint to effective disciplinary action.

We have also proposed several amendments to the bill in the interest of conforming to existing statutes controlling the division's administrative responsibilities, including the handling of complaints. Other proposed amendments are made in the interest of clarity.

Nanty Dunn, Director
Division of Occupational Licensing

Date: 3/17/86

Loren H. Lounsbury, Commissioner
Department of Commerce and
Economic Development

lt4909t-3/4

The Division of Occupational Licensing offers the following amendments to SB 304, An Act establishing sport-fish guide licenses.

Section 08.54.710(9) on page 2, line 14, delete ". . . [PREPARED AND]." This amendment will allow the division to contract with someone knowledgable in the field of sport-fish guiding to prepare an examination similar to the contract which developed the exam for hunting guides.

Section 08.54.720, page 2, line 27, consider the deletion of "[IS EMPLOYED AND]" from the requirements for an Assistant Sport-fish guide license. It appears that this language is based on current guide statutes. However, the level of supervision required in sport-fish guiding may be less needed than that of hunting guides. This section as written could be construed as unnecessarily restricting entry into the profession.

Section 08.54.730, page 3, amend language to read:

Sec. 08.54.730. DURATION OF SPORT-FISHING LICENSES. [(a)] A [REGISTERED] sport-fishing guide license issued under this chapter expires biennially on a date set by the department [TWO YEARS FROM THE DATE OF ISSUANCE].

[(b) An assistant sport-fishing guide license expires on year from the date of issuance.]

Combining both (a) and (b) into one section will make this section conform with standard language found throughout other licensing statutes and in AS 08.01, the Central Licensing Act. The purpose of this amendment is to set one date on which all licenses shall be renewed. This allows renewals to be processed more efficiently.

Section 08.54.740, page 3, lines 16 - 21, amend to read: (a) The department shall, by regulations adopted under AS 08.01.065, establish fees for sport-fishing professionals for the following: [LICENSE FEES FOR REGISTERED SPORT-FISHING GUIDES ARE AS FOLLOWS]

(1) application fee;
(2) examination fee;
[1] (3) nonresident registered sport-fishing license and renewal fee; [, BIENNIAL . . . . $450]
[2] (4) resident sport-fishing license and renewal fee; [, BIENNIAL . . . . 150]
[3] (5) assistant sport-fishing license and renewal fee; [, ANNUAL . . . . 25]

This amendment will allow licensing fees to be established by regulations to reflect the actual costs of the activity for which the fee is charged.

Section 08.54.760, Examination Fee. Delete this section since it is incorporated into the previous section 08.54.750.

Section 08.54.770, page 3, regarding complaints should be amended to read:

> "Sec. 08.54.770. COMPLAINTS. The department shall notify an individual licensed under AS 08.54.700 - 08.54.900 of each complaint received against the individual within two weeks of receiving the complaint, unless in the department's opinion, the complainant is a flight risk or to do so may otherwise jeopardize the conduct of an investigation."

An alternative would be to delete this entire section since the Administrative Procedure Act, (AS 44.62.360) establishes the formal procedure to be followed when acting on complaints.

Section 08.54.780(a)(1), page 4, lines 1 - 7, delete. It is contrary to public protection to wait until three complaints have been filed against a licensee before initiating a hearing. One valid complaint should be substantial reason to start the hearing process.

Section 08.54.780(b), page 4, line 11, delete "[RENEWAL OF]." The section as presently written would allow the department to take disciplinary action against renewal of a license. After a hearing, the department should be able to take action against the license under any circumstances, and not limited to the renewal.

08.54.780(b)(1), lines 13-14. Language in this section gives the board or the department broad authority to define what constitutes an activity which "adversely affects the natural resources of the State." We recommend that this section be more specific.

08.54.780(c)(3), lines 24-25. This section is unclear regarding the types of violations that would constitute the two violations necessary to revoke a license. Must the violations be two federal, two state or could they be one "federal" and one "state"?

08.54.780(e), amend this subsection to specifically identify the agencies to be contacted. Presently, all contact with other agencies for hunting guide licenses are conducted by the Division of Fish and Wildlife Protection in the Department of Public Safety.

Section 2, page 7, line 2 and all references to Game Guides thereafter, delete 'Game' if licensing is to be administered by the department, and refer to our original suggestion of placing Sport-fish Guides under a separate chapter.

Section 4 (a)(4), page 7, line 13-14, and amend to read: ". . . board if a board regulates the act or practice involved under AS 08.01.010" or as determined by the department [UNDER AS 08.54.700 - 08.54.900 FOR SPORT-FISHING GUIDES];

Section 4 (a)(9), lines 21-22, amend to read the same as mentioned in section (a)(4).

Patrick M. Rodey
Senator

Alaska State Legislature

Senate

1024 W. 6th Avenue, Suite 308
Anchorage, Alaska 99501
(907) 276-6731

During Session:
Pouch V
Juneau, Alaska 99811
(907) 465-3717

February 14, 1986

FEB 17 1986

TO : Senator Fred Zharoff, Chairman
Senate Labor & Commerce Committee

FROM: Senator Patrick M. Rodey Pat

RE : Senate Bill relating to sport-fishing guide licensing

I would appreciate your assistance in having the above-referenced bill scheduled for committee consideration as soon as possible.

I have discussed this bill with a number of sport-fishing businesses throughout the state who support the proposal.

If you have any questions about the proposal, or need additional information, please feel free to contact my office.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

312

THE ALASKA RAILROAD CORPORATION

Senate Bill No. 312

Free Transportation to Senior Citizens

Financial Impact Statement

The Alaska Railroad Corporation (ARRC) provides this statement of the financial impact of Senate Bill No. 312, if enacted. The bill would require that the ARRC provide free transportation of Senior Citizens over 65 years of age on its passenger trains on a space-available basis. These comments speak only to the financial impact of the Senate bill, important legal concerns will be discussed in a separate letter.

Because the majority of the passengers carried on the railroad ride during the four-month summer tourist season and travel for scenic enjoyment as opposed to necessity, the percentage of senior travelers is extremely high. In addition, over 90% of these persons are visiting Alaska as tourists for only a few days or weeks. Only four or five thousand Alaskans would benefit from this provision annually, while as many as 164,000 non-resident tourists would be eligible for free transportation.

The financial affect of this action on the ARRC's passenger services would be devastating. In 1984 this service lost $1.8 million. We project a $1.5 million loss in 1985. Final figures are expected in February. In 1986 due to more efficient operations, the loss is expected to total $1 million. If S.B. 312 were enacted, the 1986 losses would escalate to $2.9 million, a 292% increase. With this massive increase in passenger losses ARRC would request a state appropriation for the purpose of offsetting passenger losses.

Each passenger riding the express trains serving Denali National Park pays an average of $43.00 for tickets. A Whittier Shuttle patron contributes an average of $6.00 for passage on this shorter journey. Thus, substantial amounts of ARRC revenue are jeopardized should free transportation be allowed for a major portion of our ridership.

Based on ARRC statistics and a 1983-84 Alaska Department of Labor tourism study, approximately 72% of our Denali Park passengers, and 40% of our Whittier Shuttle riders, are seniors over 65 years of age.

These passengers share the following characteristics:

- Over 65 years of age,
- In a tourist status,
- Not a resident of Alaska,
- Traveling on the railroad as part of a 10-18 day Alaska vacation,
- Are traveling as part of a vacation itinerary which requires advance reservations months ahead,
- Making a "once in a lifetime" visit to the 49th State.

"SPACE-AVAILABLE" TRANSPORTATION WOULD CREATE MAJOR PUBLIC PROBLEM

Because tourist must plan and book various transportation and attraction facilities months in advance of travel, it is paramount that they reserve train reservations in the same manner. This provision helps the ARRC plan for space and to provide equipment and services as required.

The space-available free transportation option may encourage many visitors and travel agents to forego advance reservations. Unpredictable numbers appearing on the day of travel for ticketing may lead to unhappy situations involving passengers and between passengers and the railroad. Such a result would adversely impact the Alaska tourism program and injure railroad transportation . In addition, the costs of handling passengers in this manner would further escalate the losses that the ARRC bears in handling passengers.

Trains would become consistently late even before they left their starting point as persons waiting for "space available" seats eventually could outnumber reserved and pre-ticketed patrons. On trains such as the Whittier Shuttle, which interconnects with the scheduled state marine highway system, the result would be unacceptable to passengers and the railroad.

ATTACHMENT: Statistical and Financial Impact Table

THE ALASKA RAILROAD CORPORATION

EFFECTS ON PASSENGER SERVICES UPON ENACTMENT OF S.B. NO. 312

CALENDAR YEAR 1985

PASSENGERS CARRIED		SENIOR CITIZENS ARRC ESTIMATE		ESTIMATED FINANCIAL IMPACT	
TRAIN	NUMBER CARRIED	PERCENT OF TOTAL	NUMBER CARRIED	1985 REVENUE	REVENUE AFTER S.B.3
Denali Express	83,138	72%	59,859	$3,574,934	$1,000,981
Whittier Shuttle	147,558	40%	59,023	$885,348	$531,208
			TOTAL	$4,460,282	1,532,189

NET LOSS OF REVENUE --- $ 2,928,093

Sources of data:

- ARRC statistics,
-Alaska Department of Labor

CHAIRMAN'S INFORMATION:

1) BILL TITLE: "An act relating to free passenger service for seniors on the Alaska Railroad."

a) Introduced: Sen Kerttula

b) Co-sponsors:

2) INTENT: Measure grants free passenger service to seniors (65 years old or older) on the Alaska RR. Provides that RR shall give free passage on a space available basis, and along routes and during periods that passenger service is provided to the general public.

FISCAL NOTE: ARRC estimates that the enactment of this bill would boost passenger service losses to $2.9 million for 1986; ARRC feels they would need an appropriation to off set passenger losses.

NOTE: Situation with the free RR transport is a little different than the ferry. Passengers normally board the ferry in Seattle, but RR people would already have to be in Alaska to get on at Whittier. ARRC feels this bill will have negative impacts on the RR. These include:

1) impact planning and reservations
2) unpredictable numbers of people would show on the day of transportation; may result in bad P.R. for RR; may have bad impact on tourism;
3) may impact schedule of RR

3) ADDITIONAL REFERRALS: Sen Finance

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

ISSUES TO COME BEFORE THE SENATE LABOR AND COMMERCE COMMITTEE:

1) SUNSET REVIEWS:

   a) APUC
   b) Real Estate Commission
   c) Board of Veterinary Examiners

2) INSURANCE

   a) Tort Reform
   b) Self insurance proposals for fishing industry, day care, municipalities;

3) LOCAL HIRE:

   Possible public hearing in Anchorage with the Alaska First Committee to take testimony from the public regarding resident hire issues. Tentatively scheduled for February 14th, coinciding with the Resource Development Council, and Senate Resources meetings in Anchorage that week.

4) The committee needs to be aware of the potential impacts of the national Gramm Rudman legislation, as well as federal cuts that may result from US Dept of Labor "devolution" proposals.

5) Currently AS 44.66.050 (d) requires that sunset review reports be submitted by the committee of reference to the presiding officer of each house by the 60th day of session.

   Given the limitations of a 120 day session, I am considering legislation to amend this statute to extend that period to the 90th day.

   Would the committee prefer a personal bill, a committee bill, or approaching the Rules Committee for legislation to effect that end?

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

ISSUES TO COME BEFORE THE SENATE LABOR AND COMMERCE COMMITTEE:

1) SUNSET REVIEWS:

   a) APUC
   b) Real Estate Commission
   c) Board of Veterinary Examiners
   d) Board of Electrical Examiners

60 days

2) INSURANCE

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   b) Self insurance proposals for fishing industry, day care, municipalities;

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RECEIVED JAN 16 1986

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

JCS

16 January, 1986

MEMORANDUM:

TO: Senator Eliason, Vice Chairman
Senator Bennett
Senator Ray
Senator Sackett

FROM: Senator Zharoff, Chairman
Senator Labor and Commerce

I have attached, for your review, a list of bills currently in the Senate Labor and Commerce Committee. If you are interested in requesting a hearing on any of these measures, please contact Michael Thill, of my staff, at 3844. Thank you.

NOT ONE

LABOR&COMMERCE COMMITTEE SUMMARY PAGE 01 OF 03

BILL #	ABBREVIATED TITLE	SPONSOR	DATE	REFERRALS
HB 55	WARNING SIGNS/TAXIS FOR INTOXICATED PERSO	COLLINS	05/07/85	JUDICIARY
HB 79	EXAMINATIONS OF FINANCIAL INSTITUTIONS	RULES	04/29/85	FINANCE
HB 123	EXTENDING BOARD OF PHARMACY	RULES	05/12/85	RULES
HB 217	INTEREST RATES FOR VARIOUS LOANS/CONTRACT	DUNCAN	04/29/85	FINANCE
HB 251	EXTEND BOARD OF VETERINARY EXAMINERS	LABOR&COMM	03/25/85	RULES
HB 319	HARMFUL PHYSICAL AGENTS IN WORKPLACES	POURCHOT	05/07/85	FINANCE
HB 392	LEASE-PURCHASE AGREEMENTS FOR STATE BLDGS	RULES	05/06/85	JUDICIARY
SB 6	INTEREST ON ESCROW ACCTS FOR MORTGAGE LOA	RAY	01/14/85	FINANCE
SB 31	STATE HIRING IN RURAL COMMUNITIES AND ARE	ZHAROFF	01/14/85	FINANCE
SB 46	APPROP: GOLDEN VALLEY ELECTRIC LINES	COGHILL	01/14/85	FINANCE
SB 64	RECOVERING ADMINISTRATIVE EXPENSES OF APU	RULES	01/18/85	FINANCE
SB 88	AK LIFE/DISABILITY INSURANCE GUAR ASSOC	RULES	01/23/85	JUDICIARY
SB 89	SALE/LEASE OF PUBLIC BLDGS/LAND BY ASHA	RULES	02/25/85	RULES
SB 111	REAL ESTATE BROKERS' FEES AND SURETY FUND	RULES	01/30/85	FINANCE
SB 116	ALLOW INVESTMENTS IN AFRICAN DEV'MENT BAN	RODEY	02/01/85	FINANCE
SB 127	COURT JURISDICTION; CONTRACTOR BOND CLAIM	JUDICIARY	02/04/85	JUDICIARY
SB 156	FORM OF PAYMENT FOR INSURANCE SETTLEMENTS	RODEY	02/14/85	RULES
SB 166	COMPETITIVE BIDDING RQRMTS FOR STATE GRAN	FAHRENKAMP	02/20/85	STATE AFFA
SB 189	AWARDING OF CONTRACTS BY MUNICIPALITIES	JOSEPHSON	02/25/85	C&RA
SB 191	ALASKA HIRE; STATE-FUNDED CONSTRUCTION	FISCHER.V	02/26/85	JUDICIARY

LABOR&COMMERCE COMMITTEE SUMMARY PAGE 02 OF 03

BILL #	ABBREVIATED TITLE	SPONSOR	DATE	REFERRALS
SB 195	MISC. AMDMTS CONCERNING BDS/COMM'S/COUNCI	RULES	02/26/85	FINANCE
SB 214	PROCESSOR VESSELS; MARINE PILOT EXEMPTION	ZHAROFF	03/06/85	RESOURCES
SB 221	PAYMENT FOR BUILDING MATERIALS	FERGUSON	03/08/85	FINANCE
SB 238	PLUMBING CODE; SOLAR ENERGY, HOT TUBS	LABOR&COMM	03/18/85	RULES
SB 253	HARMFUL PHYSICAL AGENTS IN WORKPLACES	JOSEPHSON	03/25/85	FINANCE
SB 256	WORKPLACE EXPOSURE TO MICROWAVE RADIATION	COGHILL	03/26/85	RULES
SB 259	PRACTICE OF PUBLIC ACCOUNTING	ZHAROFF	03/28/85	JUDICIARY
SB 265	ALASKA POWER AUTHORITY BOARD	ZHAROFF	04/02/85	RESOURCES
SB 286	PAYMENT FOR OVERTIME; GOOD FAITH EXCEPTIO	ZHAROFF	04/23/85	FINANCE
SB 288	LIQUOR LICENSE HOLDERS' INSURANCE CORP.	JOSEPHSON	04/18/85	FINANCE
SB 290	DIRECT SERVICE CHARGES FOR APA POWER SALE	RULES	04/19/85	RESOURCES
SB 291	TRANSFER 2 APA PROJECTS TO PUBLIC UTILITI	RULES	04/19/85	RESOURCES
SB 292	PLACING APA STAFF IN THE EXEMPT SERVICE	RULES	04/19/85	STATE AFFA
SB 295	MENTAL HEALTH DISABILITY INSURANCE	FAIKS	04/22/85	HESS
SB 297	LICENSING OF NATUROPATHS	ABOOD	04/23/85	HESS
SB 304	SPORT-FISHING GUIDE LICENSES	JUDICIARY	04/30/85	RESOURCES
SB 312	ALASKA RR/FREE PASSENGER SERV FOR SENIORS	KERTTULA	05/07/85	FINANCE
SB 313	REQUIRING CABOOSES ON CERTAIN TRAINS	KERTTULA	05/07/85	TRANSPORTA
SB 333	ASHA NAME CHANGE	KERTTULA	01/13/86	FINANCE
SB 340	SURPLUS LINES INSURANCE BROKERS	RULES	01/13/86	FINANCE

LABOR&COMMERCE COMMITTEE SUMMARY PAGE 03 OF 03

BILL #	ABBREVIATED TITLE	SPONSOR	DATE	REFERRALS
SB 342	REAPPROPRIATING SUSITNA/BRADLEY/POWER FUN	RULES	01/15/86	RESOURCES
SCR 6	ACCESS TO WHITTIER-SHOTGUN COVE	JOSEPHSON	04/11/85	FINANCE
SJR 2	CONSTITUTIONAL SPENDING LIMIT; 1985 FREEZ	FERGUSON	01/14/85	STATE AFFA

****

January 22, 1986

Senate Labor & Commerce Committee

AMENDMENT

SB 312

amend line 12, "passenger service on the Alaska Railroad for state residents [PEOPLE] 65 years of age. . ."

ALASKA RAILROAD CORPORATION

P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

January 21, 1986

Members of the Senate Commerce Committee
Alaska State Legislature
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Re: Senate Bill No. 312 "An Act relating to free passenger service for seniors on the Alaska Railroad"

Dear Members of the Senate Commerce Committee:

Thank you for this opportunity to provide comments upon Senate Bill No. 312, an act directing the Alaska Railroad Corporation ("ARRC") to provide free passenger transportation for seniors.

Where they can be accommodated, special provisions for those persons 65 years of age and older serve laudable goals in our communities as a means of rewarding important economic and societal contributions and supplementing retirement incomes. Our comments concerning SB No. 312 should not be misconstrued as a failure to recognize the respect deserving of our older Americans. We do, however, wish to express serious reservations with regard to this proposal.

ARRC concerns are legal and financial in nature. Preliminarily, common carriers subject to the jurisdiction of the Interstate Commerce Commission ("ICC") are prohibited from providing transportation to passengers without charge except as specifically noted. 49 USCA §11905. Exceptions include caretakers of livestock, milk, or fruit, newspaper carriers, baggage agents, employees and their families, etc. Seniors are not named as a separate exception. As a part of the transfer of the Alaska Railroad into state ownership, the federal government required, and Alaska agreed, that the state-owned railroad would be subject to ICC jurisdiction. Beyond this important legal impediment, the legislation also raises significant financial concerns.

ARRC passenger service is already in trouble. Although the corporation has acted aggressively in reducing losses, $1.5 million in lost operating revenue resulted last year and 1.8 million in 1984. A separate ARRC financial impact statement projects a 292% increase in 1986 passenger service losses in 1986 should seniors travel for free on the Alaska Railroad. Free passage to such a large contingent of our summer guests would jeopardize the entire program without state subsidization of passenger service. Any purposeful reduction of railroad revenues also contradicts an earlier legislative mandate and erodes the original administrative and legislative mission charted for the railroad. The state Alaska Railroad Corporation Act ("ARCA") specifies that the ARRC shall be a "viable economic entity" operating the Alaska Railroad self-sufficiently according to sound business management practices. Slashing passenger revenues will certainly endanger the viability of this concept.

If our comments presented at this time raise questions or concerns, please contact us at your convenience. Although our admiration for seniors and their important contributions has not diminished, we do request your close scrutiny of the legal and financial ramifications of SB 312.

Sincerely,

Larry D. Wood
Chief Counsel

cc: F. G. Turpin, President and Chief Executive Officer, ARRC
Members of the Board of Directors, ARRC

THE ALASKA RAILROAD CORPORATION

Senate Bill No. 312

Free Transportation to Senior Citizens

Financial Impact Statement

The Alaska Railroad Corporation (ARRC) provides this statement of the financial impact of Senate Bill No. 312, if enacted. The bill would require that the ARRC provide free transportation of Senior Citizens over 65 years of age on its passenger trains on a space-available basis. These comments speak only to the financial impact of the Senate bill, important legal concerns will be discussed in a separate letter.

Because the majority of the passengers carried on the railroad ride during the four-month summer tourist season and travel for scenic enjoyment as opposed to necessity, the percentage of senior travelers is extremely high. In addition, over 90% of these persons are visiting Alaska as tourists for only a few days or weeks. Only four or five thousand Alaskans would benefit from this provision annually, while as many as 164,000 non-resident tourists would be eligible for free transportation.

The financial affect of this action on the ARRC's passenger services would be devastating. In 1984 this service lost $1.8 million. We project a $1.5 million loss in 1985. Final figures are expected in February. In 1986 due to more efficient operations, the loss is expected to total $1 million. If S.B. 312 were enacted, the 1986 losses would escalate to $2.9 million, a 292% increase. With this massive increase in passenger losses ARRC would request a state appropriation for the purpose of offsetting passenger losses.

Each passenger riding the express trains serving Denali National Park pays an average of $43.00 for tickets. A Whittier Shuttle patron contributes an average of $6.00 for passage on this shorter journey. Thus, substantial amounts of ARRC revenue are jeopardized should free transportation be allowed for a major portion of our ridership.

Based on ARRC statistics and a 1983-84 Alaska Department of Labor tourism study, approximately 72% of our Denali Park passengers, and 40% of our Whittier Shuttle riders, are seniors over 65 years of age.

These passengers share the following characteristics:

- Over 65 years of age,
- In a tourist status,
- Not a resident of Alaska,
- Traveling on the railroad as part of a 10-18 day Alaska vacation,
- Are traveling as part of a vacation itinerary which requires advance reservations months ahead,
- Making a "once in a lifetime" visit to the 49th State.

"SPACE -AVAILABLE" TRANSPORTATION WOULD CREATE MAJOR PUBLIC PROBLEM

Because tourist must plan and book various transportation and attraction facilities months in advance of travel, it is paramount that they reserve train reservations in the same manner. This provision helps the ARRC plan for space and to provide equipment and services as required.

The space-available free transportation option may encourage many visitors and travel agents to forego advance reservations. Unpredictable numbers appearing on the day of travel for ticketing may lead to unhappy situations involving passengers and between passengers and the railroad. Such a result would adversely impact the Alaska tourism program and injure railroad transportation . In addition, the costs of handling passengers in this manner would further escalate the losses that the ARRC bears in handling passengers.

Trains would become consistently late even before they left their starting point as persons waiting for "space available" seats eventually could outnumber reserved and pre-ticketed patrons. On trains such as the Whittier Shuttle, which interconnects with the scheduled state marine highway system, the result would be unacceptable to passengers and the railroad.

ATTACHMENT: Statistical and Financial Impact Table

THE ALASKA RAILROAD CORPORATION

EFFECTS ON PASSENGER SERVICES UPON ENACTMENT OF S.B. NO. 312

CALENDAR YEAR 1985

PASSENGERS CARRIED		SENIOR CITIZENS ARRC ESTIMATE		ESTIMATED FINANCIAL IMPACT	
TRAIN	NUMBER CARRIED	PERCENT OF TOTAL	NUMBER CARRIED	1985 REVENUE	REVENUE AFTER S.B.3
Denali Express	83,138	72%	59,859	$3,574,934	$1,000,981
Whittier Shuttle	147,558	40%	59,023	$885,348	$531,208
			TOTAL	$4,460,282	1,532,189

NET LOSS OF REVENUE --- $ 2,928,093

Sources of data:

- ARRC statistics,
-Alaska Department of Labor

Introduced: 5/7/85
Referred: Labor and Commerce
and Finance

IN THE SENATE BY KERTTULA

SENATE BILL NO. 312

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to free passenger service for seniors on the Alaska Railroad."

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

* Section 1. AS 42.40 is amended by adding a new section to read:

Sec. 42.40.255. PASSENGER SERVICE FOR SENIORS. Notwithstanding other provisions of this chapter, the corporation shall provide free passenger service on the Alaska Railroad for Alaskan residents ~~people~~ 65 years of age and older on a space-available basis during periods and along routes passenger service is provided to the general public.



43 5000
2/5000



AOAP

ASSOCIATION OF OLDER ALASKANS PROGRAMS

SB-312

MAY

Office of the Senior Citizen Ombudsman

Senator Jalmar Kerttula
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

Re: Older Alaskans of Whittier

I have received a petition from twenty-nine senior citizen residents of Whittier, Alaska (which constitute over ten percent of the population of the city) requesting that senior citizens over age sixty years be afforded travel on the Alaska Railroad with the same privilege as granted under the Alaska Marine Highway System.

As you know, the city of Whittier is isolated from direct access by road and, during the winter, from access by water. The only transportation into the city is by train. Travel to and from Anchorage for needed medical services is expensive for those living on fixed incomes.

Specifically, the Older Alaskans of Whittier request that residents over sixty years of age who reside in a city not served by road and where the Alaska Railroad is the only transportation provider be afforded free transportation as granted by the Alaska Marine Highway System.

Our office processes complaints on behalf of older Alaskans and this petition is outside the scope of this office. I am therefore forwarding it to you for your consideration.

The contact person in Whittier on behalf of the Older Alaskans of Whittier is Mr. Austin Simonds, PO Box 753, Whittier, Alaska 99693.

Thank you very much.

Very truly yours,

William O'Connor
Senior Citizen Ombudsman

BACK-UP

1317 West Northern Lights Blvd., Suite 9, Anchorage, AK 99503-2306 • Telephone 279-2232

PETITION TO THE ALASKA RAILROAD

We the undersigned, being members of the "Older Alaskans of Whittier" and residents of the community, hereby petition the Alaska Railroad that any person at least sixty years of age of any Alaskan community located along the railroad service area which is isolated year round from the rest of Alaska, except by the train service rendered by the Alaska Railroad, that Senior Citizens of such communities shall be allowed free transportation. Senior Citizens of Alaska wishing to travel to such isolated communities by railroad will be granted the same fare reduction.

All Senior Citizens of Alaska will be accorded a 50% discount on fares except as outlined above.

NAME	ADDRESS	DATE
Kay Hopkins	Apt. 1111 Begich Towers P.O. Box 727 Whittier 99693	
Virginia L Burch	Apt 607 Begich Towers Box 747 Whittier Ak. 99693	
Leon A. Burch	Apt 607 Begich Towers Box 747 Whittier Ak 99693	
Laurel Simonds	Apt. 701 Begich Towers Box 735 Whittier, AK	
Marilyn C. Scott	Apt 304 Begich Towers Box 608, Whittier AK	
Bernadine Zeigler	Apt 511 Begich Towers Whittier Whittier AK	
Roscoe Harrell	Apt 513 Begich Towers Box 634 Whittier AK	
Austin Simonds	Apt 701 BTI	Box 735 Whittier AK
Catherine J. Cawthon	Apt 112 BTI	Box 753 Whittier
James B Cawthon	Apt 912 BTI	Box 753 Whittier
Lloyd McKinley	Apt # 910 BTI	Box 657 Whittier AK
Doris V Bender	Apt 505 BTI.	Box 711 Whittier
Charles Hutchinson	Apt 305 B.T.I.	Box Box 711 Whittier
Marjorie Simmons	Apt 914 BTI	PO Box 822
Lucille J Harrell	Apt 1513 Begich Towers	P. O Box 634
George Haritos	Apt. 1403 Begich Towers	Box 672
Cecil Zeigler	Apt 511 Begich Towers	Box 686
Elmer S Teagle	BAY'S HM'S WHITTIER MANOR	PO Box 653 Whittier
Wendy Hazelwood	Apt 1111 Begich Towers PO Box 746 Whittier	1-2-85
Lenny Palmer	Box 726 Whittier	1/4/85
Florence Rairhouser	Box 685 Whittier AK 99693	4-2-85
Edward Strandberg	Box 627 Whittier, AK 99693	4/13/85
R. Wilson	Box 614 Whittier AK 99693	
Darlene K. McCahill	Box 604 1210 Begich Towers Whittier, AK 99693	
Tom H McCahill	Box 604 Whittier ak. 99693	
Cynthia A. Paulson	PO Box 694 Whittier ak. 99693	
Agnes A. Tyree	PO Box 748 Whittier 99693	
Patricia Parage	Box 664, Whittier AK 99693	
Marie Strandberg	Box 627 Whittier AK 99693	

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

4189 SLAB SB 313 - SB 360

1069

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

313

FEB 1 8 1986

DELIVER TO: JPOM

ORIGINAL
SENT: 02/17/86 TIME: 12:05
FROM: MICKI HENSON
SUBJECT: POM
PRINT DATE: 02/17/86 TIME: 12:05

TO: SENATE LABOR AND COMMERCE COMMITTEE.

SENS. ZHAROFF, ELIASON, SACKETT, BENNETT, RAY

FROM: KENT AND MARIE LOCKETT, 5631 SAMOYA ST., ANC 99507
PHONE: 562-6936

SUBJECT: SB 313-PROPERLY STAFFED AND EQUIPED CABOOSE

PLEASE VOTE TO PASS SB 313.

FEB 1 8 1986

DELIVER TO: JPOM

ORIGINAL
SENT: 02/17/86 TIME: 13:03
FROM: MICKI HENSON
SUBJECT: POM
PRINT DATE: 02/17/86 TIME: 13:04

TO: SENATE LABOR AND COMMERCE COMMITTEE

SENS. ZHAROFF, ELIASON, SACKETT, BENNETT, RAY

FROM: BILL D. HIGHTOWER, 8817 HONEYSUCKLE, ANC 99502
PHONE: 248-5780
SUBJECT: SB 313- PROPERLY STAFFED AND EQUIPPED CABOOSE
I SUPPORT SB 313.

HEALTH
INSURANCE
ASSOCIATION
OF AMERICA
1350 East Touhy Avenue, Suite 380W, Des Plaines, IL 60018 (312) 297-1490

APR 21 1986

April 18, 1986

Senator Fred Zharoff
State Capitol, Room 121
P.O. Box V
Juneau, Alaska 99811

RE: Opposition to House Bill 313, Relating to Mandated Insurance Coverage of Mental Health Treatments

Dear Senator Zharoff:

The Health Insurance Association of America (HIAA) opposes House Bill 313 as introduced, which would require insurers to provide specified benefit coverage for treatment of mental or nervous conditions.

The HIAA is a national trade association representing 338 insurance companies who write approximately 86% of the private health insurance sold in the United States. Most of the companies licensed to sell health insurance in the state of Alaska are members of the HIAA. While the volume of business that these companies conduct in Alaska is small in relation to their overall business, we nevertheless take Alaskan legislation that is adverse to the industry quite seriously.

The HIAA favors the freedom of contract that allows insurance purchasers to obtain the kind of available benefit coverage they need or want and can afford. We oppose legislative mandates that restrict consumers' freedom to choose the benefits they wish to purchase and that limit insurers' ability to control costs and keep rates down. House Bill 313 would impose such mandates. Mental health benefits are among the most costly, if not the most costly of benefit coverages, and House Bill 313 would mandate mental health benefit coverage levels sig ificantly higher than those required in any other state that has addressed the issue of mental health insurance coverage. In addition, the bill would provide no upper limit to the dollar amount of such coverage. The cost to an insurer of paying benefits for the required two months of hospitalization, three months of partial hospitalization and thirty out-patient treatment visits per year would be staggering. It is conceivable that affordable premium rates could not be established for individual policies that would be adequate to make such benefit coverage feasible to an insurer.

The net effect of mandating the level of benefits coverage in House Bill 313 would be to increase the cost of benefit coverage to insurers and to drive up the price of insurance premiums to the consumer. This would result in increasing the cost of doing business for employers who offer group coverage to their employees and could lead to their deciding either to discontinue group coverage entirely or to self-insure.

The increased costs of private insurance caused by mandated benefit laws has, in fact, caused employers nationwide to drop their commercial group coverage. Over four years, 1980 - 1984, the percentage of American employers who self-insure jumped from 19% to 57%. Self-insurers are not regulated by state insurance laws and cannot be required to offer specified insurance benefits, nor can employees of self-insureds invoke the protections afforded by insurance laws to employees covered by commercial group insurance. Self-funding therefore has the negative effect of leaving those included in such plans unprotected by insurance regulation against such things as the plan's insolvency. It also results in a loss of revenue to the states, since self-insured plans are not subject to premium tax liability.

For all of the cited reasons the HIAA opposes House Bill 313. If you have any questions concerning our position, or if I can be of any assistance in providing additional information, please do not hesitate to contact me at the Chicago Legal Office of the Association (telephone: 312/297-1490) or Gordon Evans, who is our registered lobbyist in Juneau.

Very sincerely,

Amanda Sheedy
Assistant Counsel

AS/bb

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

333

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 333 Synopsis:

This measure would change the name of the Alaska State Housing Authority to the Alaska State Building Authority. This was one of the recommendations of the Governor's Task Force on State Office Complex Financing (Oct 1985), as an enhancement to the image of ASHA with the national bond rating agencies.

See back up in committee files (page 4, highlighted material) for text of this recommendation.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 333
Title: An Act changing the name of ASHA
Sponsor: Kerttula
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
BRU: ASHA
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: Barbara Morse-Quinn
Division: Alaska State Housing Authority
Phone: 562-2813
Date: February 24, 1986

Approved by Commissioner: Joan M. Lounsbury
Agency: Commerce and Economic Development
Date: February 24, 1986

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

0201k22486a

Bette Kerttula

IN THE SENATE BY KERTTULA

SENATE BILL NO. 333

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act changing the name of the Alaska State Housing Authority."

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

* Section 1. AS 18.55.020(a) is amended to read:

(a) There is created in the Department of Commerce and Economic Development the Alaska State Building [HOUSING] Authority consisting of the commissioner of commerce and economic development or the commissioner's [HIS] designee and four residents of the state.

* Sec. 2. To be consistent with the change made by sec. 1 of this Act, wherever in the Alaska Statutes and in regulations adopted under those statutes "Alaska State Housing Authority" is used, it shall be read as referring to the Alaska State Building Authority. Under AS 01.05.031 the revisor of statutes shall implement this section in the statutes, and, under AS 44.62.125(b)(6), the regulations attorney shall implement this section in the administrative regulations.

SB 333

THIS MEASURE CHANGES THE NAME OF THE ALASKA STATE HOUSING AUTHORITY TO THE ALASKA STATE BUILDING AUTHORITY. THIS CHANGE WAS A RECOMMENDATION OF THE GOVERNOR'S TASK FORCE ON STATE OFFICE COMPLEX FINANCING, TO ENHANCE THE IMAGE OF A.S.H.A. WITH THE NATIONAL BOND RATING AGENCIES.

CHAIRMAN'S INFORMATION: SB 333

1) BILL TITLE: "An act changing t' name of the Alaska State Housing Authori+

a) Introduced: By Sen Kerttula

b) Co-sponsors:

2) INTENT: This measure changes the name of the Alaska State Housing Authority to the Alaska State Building Authority. This change was a recommendation of the Governor's Task Force on State Office Complex Financing, to enhance the image of ASHA with the national bond rating agencies.

FISCAL NOTE: 0

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OFFICE COMPLEX FINANCING TASK FORCE

October 29, 1985

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Governor Sheffield:

On June 28, 1985, you appointed the State Office Complex Financing Task Force and requested that this Task Force "explore the concept of lease-purchasing as a viable means of obtaining adequa' and reasonably priced State office facilities, and to make recommendations to you and the Legislature as to the comprehensive public policy in this area that ensures the State's needs are met in the most efficient manner possible." More particularly, this assignment related to the "financing of large-scale State office complexes." In accordance with this charge, the Task Force has conducted a series of hearings which have involved evaluations by a large number of knowledgeable individuals, including representatives from the State government, legal counsel, and advisors and underwriters of governmental securities. In additon, a series of background documents were prepared to assist the Task Force in conducting its evaluation. It should be emphasized that, r rsuant to to vour charge, our efforts focused on financing options as opposed to many other factors that critically impact

BACK UP INFORMATION

the leasing or purchasing of State office buildings. Certain of these other items will be identified later in this letter.

This letter of transmittal sets forth in summary form our recommendations for the financing of large-scale State office buildings. The material contained in this letter is discussed in more detail in the accompanying two documents: "Lease-Revenue Bonds: Preferred Approach for Financing Public Ownership of State Office Buildings," dated October 11, 1985, and "Review of Alternatives to the State of Alaska for Purchasing or Leasing Office Space," dated September 10, 1985.

We would like to emphasize that our recommendations apply to financing office facilities which meet two criteria. First, space requirements in a particular location, such as Anchorage, Fairbanks, or Juneau, would have to be large; and second, the State would have to desire, as a governmental efficiency measure, to consolidate its office space and operations. During the course of our examination, we reviewed the primary and conventional forms of purchasing or leasing office space, consisting of: (1) the use of cash, (2) State general obligation bonds, (3) the true or operating lease, (4) certificates of participation, and (5) lease-revenue bonds.

We have concluded that the best way of financing State office complexes that meet the above criteria would be

lease-revenue bonds. However, we would like to emphasize that it is possible that a future environment would alter this approach as the most cost-effective and appropriate form for the State to pursue.

The principal reasons for this recommendation are: (1) the advantages of public ownership, (2) the economics related to the program, (3) the credit implications for the State, and (4) administrative efficiency. First, State leases of facilities under private ownership are generally renegotiated or rebid every three to five years. Through public ownership, vulnerability to rent increases would be reduced. At the same time, recent Federal legislation has reduced the benefits of the private ownership option when space is used by tax-exempt entities within a single structure. Second, extensive financial analysis was performed on the five options identified above, and it was concluded that the lowest cost to the State would be lease-revenue bonds, unless the State decided to sell general obligation bonds with a maturity substantially longer than the present maturity structure which corresponds to the "Prudhoe Bay curve." Third, while the State could decide to alter its maturity structure and sell general obligation bonds for this purpose, we concluded that the use of lease-revenue bonds, while a liability of the State's general fund, would be less likely to affect the State's credit standing than the issuance of general obligation debt for this purpose. Early

on, the Task Force adopted the principle that its recommendation should have the least effect on the State's general obligation rating. Finally, the State has utilized lease-revenue bonds in the past to finance State office complexes. Thus, administratively, the use of lease-revenue bonds is simple, straight-forward and has an acceptable track record, as demonstrated by the previous debt sold by the Alaska State Housing Authority.

The major features of our recommendation are as follows. First, the State would sell lease-revenue bonds for the purposes identified above through an existing State authority. Second, the debt sold by the authority to finance the obligations would be secured by periodic lease payments made by the State to the authority. If the Alaska State Housing Authority (ASHA) were selected for the financing of State office buildings, we would propose that ASHA be identified as the Alaska State Building Authority; the Task Force received testimony and concluded that there should be interest rate benefits with this slight modification because of the greater acceptance in the credit markets of State office building bonds than of housing securities. While we at present envision that lease-revenue securities would be the most cost-effective form of financing of buildings to meet our criteria, we recommend that the issuing authority also have the ability to sell certificates of participation. Finally, we propose that the

financing structure, individual financings and other debt management aspects of the program be subject to approval by the State Bond Committee to make sure that efforts are consistent with overall State debt management goals and practices.

In referring to ASHA as an appropriate entity through which the financing would flow, we did not and do not exclude the Alaska Industrial Development Authority (AIDA) as a possible financing entity. Although it has been primarily a tool to enhance private sector investment, AIDA possesses authority to own and operate State projects and presently is actively pursuing the road and port development for the DeLong Mountains transportation system which will be owned and operated by the State.

We would like to emphasize that there was a series of important areas related to State office building purchasing and financing which fell outside the scope of our work. Among the issues which we thought we should specifically identify as being outside the scope of our responsibility were: an evaluation of the impact of our recommendations on the affected local real estate and on the local tax base; the appropriate use of small leases or leases for office space that did not fit the criteria identified above; the public policy of legislative or other authorization of the recommended financing structure; various construction aspects, such as "design-build-factors"; and the State's specific space requirements on either an

aggregate or a local basis.

Additionally, we did not address the matter of public participation in the decision-making process. Obviously, some projects, such as office buildings, should be developed in cooperation with the planning and zoning commissions of the affected municipalities. Other projects may require a wholly different method of public participation. It appeared to us that the choice as to method of public participation would largely be dictated by the type of project and its location.

Finally, the choice between lease-revenue bond financing and general obligation bond financing was made because of the recognition that some essential State projects, such as roads, may require general obligation bond financing. Because State office buildings may suitably be financed through lease-revenue bonds, we believed that the general obligation debt capacity of the State should be reserved for those projects for which lease-revenue bond financing would not be suitable.

We appreciate the opportunity to provide this assistance to you and the State of Alaska. We are hopeful that our recommendations satisfy your requirements at this time, and we stand ready to answer any questions and to provide any further information that you or other members of your administration

may request.

Best regards,

Jim Lentine

Don Madsen

Bill Pargeter

Bill Scott

Bill Swain

Steve Frank

Jalmar M. Kerttula

RECORDS
CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
340

DELIVER TO: JPOM

Note: This is a correction of previously sent POM (1-15-86)

ORIGINAL
SENT: 01/15/86 TIME: 13:47
FROM: LANA TRUJILLO
SUBJECT: POM
PRINT DATE: 01/15/86 TIME: 13:49

6

TO: SENATE LABOR AND COMMERCE COMMITTEE

SENS. ZHAROFF, ELIASON, SACKETT, BENNETT, RAY

FROM: BOB NESTEL, P.O. BOX 771753, EAGLE RIVER, 99577, HM, 694-4372

SUBJECT: SB 340, SURPLUS LINES INSURANCE

WHEN COMMITTEE HEARINGS ARE SCHEDULED, PLEASE CALL. NO ZERO FISCAL IMPACT WITH SB 340. IT DOESN'T REDUCE THE BROKERS RESPONSIBILITY, JUST REMOVES THE BOND FOR PAYMENT OF CLAIMS. THIS PAYMENT IS THE INSURANCE COMPANY'S RESPONSIBILITY. THE $200,000 BOND IS STILL IN PLACE, AND THE 4 PER CENT SURPLUS LINES TAX IS STILL PAID.

Department of Commerce & Economic Development / POSITION PAPER

SB 340: "An Act changing the conditions for licensing surplus lines insurance brokers."

The department is not in favor of this legislation. This legislation removes access by insureds to the $200,000 surplus lines broker's bond. It provides that the bond will no longer be available to guarantee return premiums or payment of proper losses. It would respond only to guarantee taxes and fines payable to the State.

The surplus lines broker is the licensee who can place insurance business in markets that are not subject to regulation under Alaska insurance law, the nonadmitted market. This broker is the "expert" upon whom insureds rely for the placement of their insurance with reliable, solvent and secure insurance companies. If the broker fails in this responsibility, the insured has only the broker's bond for his protection. The current bond was adopted in 1984 to provide some public protection for business placed in the nonadmitted market. Prior to that time there was no public protection, and there were instances where such was needed, particularly with aviation and marine coverages.

This legislation does not suggest an alternative form of protection for the public and would leave the court as the only remedy open to an aggrieved insured. The legislation in which the bond was adopted also included provisions that would allow the brokers to establish a degree of self-regulation as a further protection for the public. To date there has been no effort in that direction. We believe that removal of this protection is not acceptable to the public. Accordingly, we oppose the bill.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/26/86

John L. George, Director of Insurance

Date: 2/25/86

DK/cw0232K
22486b

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

354

CC. Sen. Zharoff

February 12, 1986

Senator John Binkley
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

FEB 1 8 1986

Dear John:

I would like your assistance on Senate Bill 354, "An Act relating to reinstatement of certain nonprofit historical aircraft corporations to corporate status; and providing for an effective date", I would like you to vote no on this bill.

As you know I have been in the aviation business for the past 10 years. I have always been interested in aviation history and have tried to work with all of the museums.

But the above bill deals strictly with a corporation, (Alaskan Historical Aircraft Society), that has been operating illegally for the past 5 years. The State of Alaska dissolved it for not filing there annual reports for 1979. But they have continued to act as a nonprofit museum to the general public. They have sought moneys and donations claiming to be a museum; received aircraft for the museum to have and preserve, but have turned around and sold them to people in California; are now trying to buy a 1930 vintage aircraft for $150,000. while the owners only paid $30,000. for the aircraft. The Internal Revenue Service is looking into the Society because of various complaints they have received about donations and tax write offs.

John, I hope you will help me by voting no on this bill and letting others know why. I can't believe that the legislature would introduce a bill defending such illegal actions.

Thank you for your time.

Sincerely,

Richard Odgers

Richard Odgers
Broke Aircraft & Salvage
Pouch 720
Kenai, Alaska 99611

18090-D

State of Alaska

Department of Commerce & Economic Development

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY
Ted M. Spencer
2397 East 47th Ct.
Anchorage, Alaska 99507

CERTIFICATE OF INVOLUNTARY DISSOLUTION

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, and by virtue of the authority vested in him by law, and pursuant to Section 10.20.325, Alaska Statutes, of the Alaska Nonprofit Corporation Act, hereby dissolves the Certificate of Incorporation of

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY

for the reason that the corporation has failed to file its annual reports, pay fees and penalties within the time prescribed, and/or failed to maintain a registered agent, as set forth below:

FAILED TO FILE 1979 ANNUAL REPORT **********

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Juneau, the Capital, this 16th day of November, A.D. 1981.

Charles R. Webber

CHARLES R. WEBBER
COMMISSIONER OF COMMERCE
& ECONOMIC DEVELOPMENT

08-151, Rev. 11/81

Internal Revenue Service

District
Director

Department of the Treasury

310 K Street, Anchorage, Alaska 99501

Person to Contact:
Olga A. Rhodes

Telephone Number:
261-4396

Refer Reply to:
RM:D

Date:

OCT 22 1985

Paul A. Fox
United States Historical
Aircraft Preservation Museum
P.O. Box 6813
Anchorage, Alaska 99502

Dear Mr. Fox:

This is in response to your letter dated July 18, 1985 concerning the tax exempt status of the Alaskan Historical Aircraft Society.

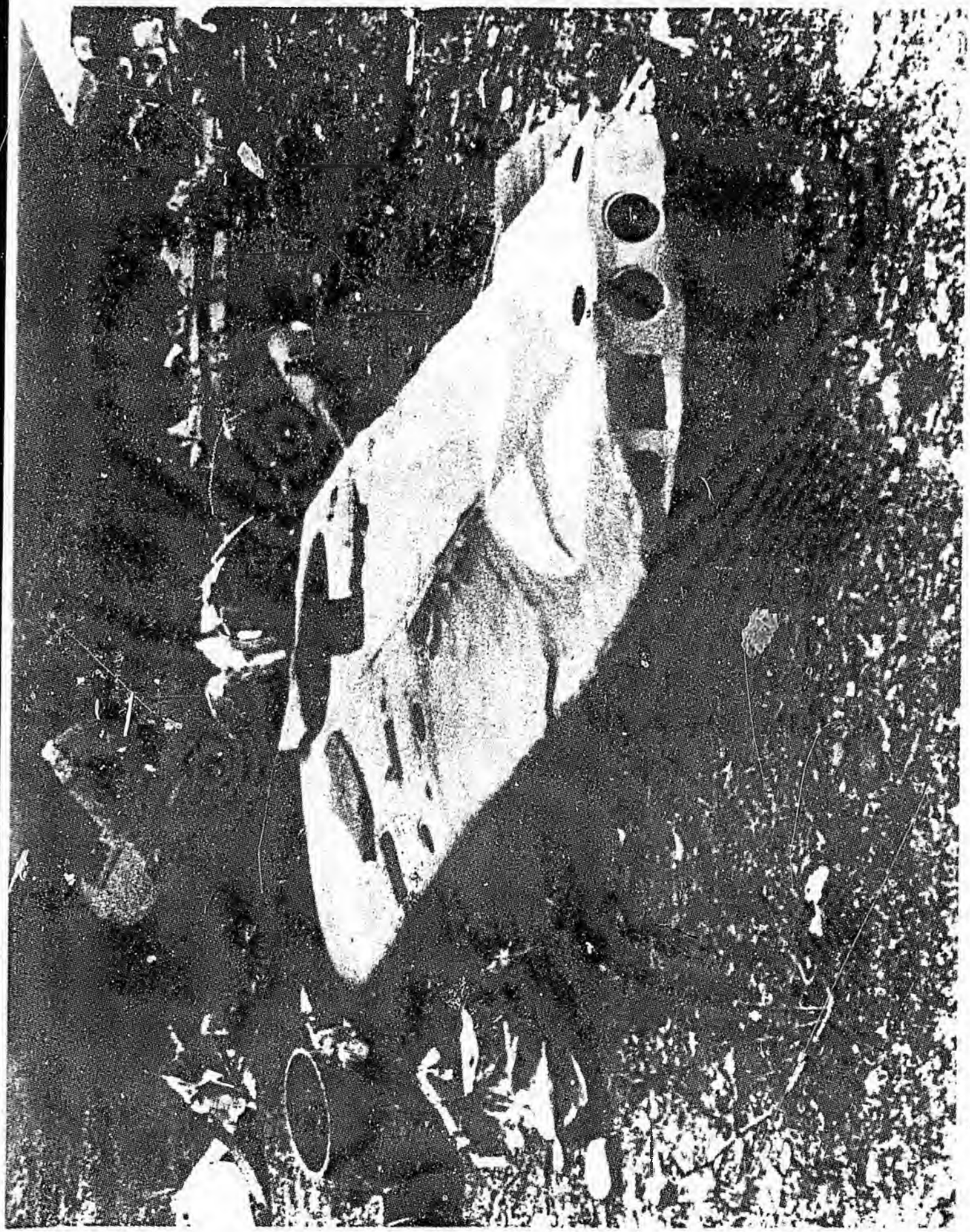
After extensive search efforts it has been determined that we have no record that the organization is a tax exempt organization under 501(a) of the Internal Revenue Code by virtue of an approved application; therefore we no documents responsive to your request.

Sincerely,

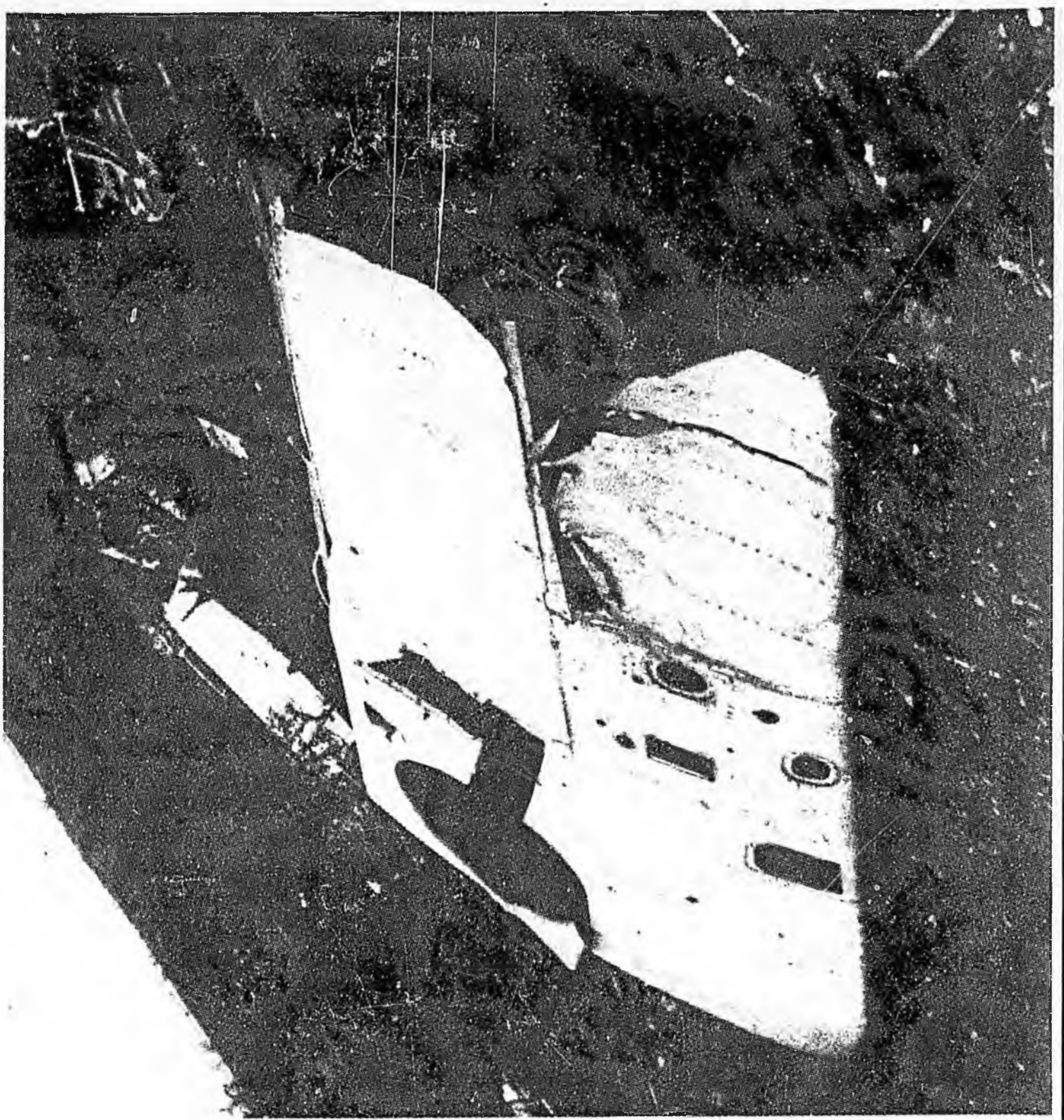
Olga A Rhodes

Olga A. Rhodes
Disclosure Officer

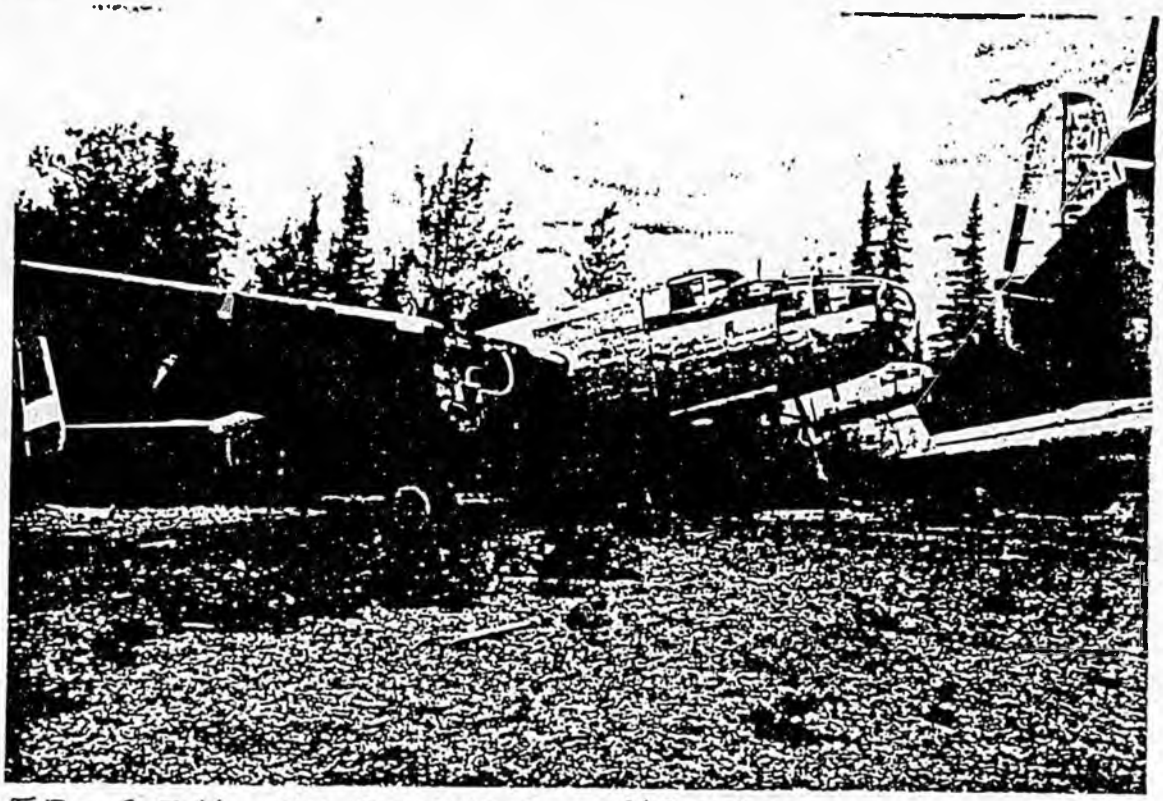
This PHOTO Was taken & sent to me from a friend in Nome. This is the before shot -



This is the after shot, after Mr. Spencer took an ax to remove the STAR. Ruining the wing. This Wing was located in the Nome dump



These 2 aircraft are the ones sold.



TB-25N, 44-29943A, N9444Z



TB-25N, 44-30756, N9936Z

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

0 0 0 0 0 2 2 2 6 5 8 6 6 0

12-1

FOR AND IN CONSIDERATION OF $ THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS:

UNITED STATES REGISTRATION NUMBER: N9444Z

AIRCRAFT MANUFACTURER & MODEL: NORTH AMERICAN TB-25N

AIRCRAFT SERIAL No.: 44-29943A

DOES THIS 1ST DAY OF JAN, 19 81 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO:

CONVEYANCE RECORDED

Apr 17 8 30 AM '85

FEDERAL AVIATION ADMINISTRATION

Do Not Write In This Block
FOR FAA USE ONLY

PURCHASER

NAME AND ADDRESS
[IF INDIVIDUAL(S), GIVE LAST NAME, FIRST NAME, AND MIDDLE INITIAL]

ALASKAN HISTORICAL AIRCRAFT SOCIETY
6610 TESHLAR DRIVE
ANCHORAGE, ALASKA
99507

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF HAVE SET HAND AND SEAL THIS DAY OF 19

SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S) (IN INK) (NOT REQUIRED FOR EXPEDITED PDC EXPIRATION, SEE BELOW)	TITLE (TYPED OR PRINTED)
COLGO AVIATION INC	[signature]	PRESIDENT

ACKNOWLEDGMENT [NOT REQUIRED FOR INDIVIDUALS OR FOR RECORDATION, BUT MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THE INSTRUMENT.]

10.00 1
1606 255 1 02/09/81

ORIGINAL: TO FAA

AC FORM 8050-2 (OCT) [SUPERSEDES]

$5,000

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

G58661 13-1

CONVEYANCE RECORDED
APR 17 8 30 AM '85
FEDERAL AVIATION ADMINISTRATION
Do Not Write In This Block
FOR FAA USE ONLY

FOR AND IN CONSIDERATION OF $ 5,000. THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS:

UNITED STATES REGISTRATION NUMBER N 9444Z

AIRCRAFT MANUFACTURER & MODEL
North American TB-25N

AIRCRAFT SERIAL No.
44-29943A

DOES THIS 20th DAY OF Feb. 19 85
HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO:

PURCHASER

NAME AND ADDRESS
(IF NATURAL PERSON(S), GIVE LAST NAME, FIRST NAME, AND MIDDLE INITIAL.)
Richard A. Benner, Jr.
P.O. BOX 875186
Wasilla, AK 99686

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF I HAVE SET MY HAND AND SEAL THIS DAY OF 19

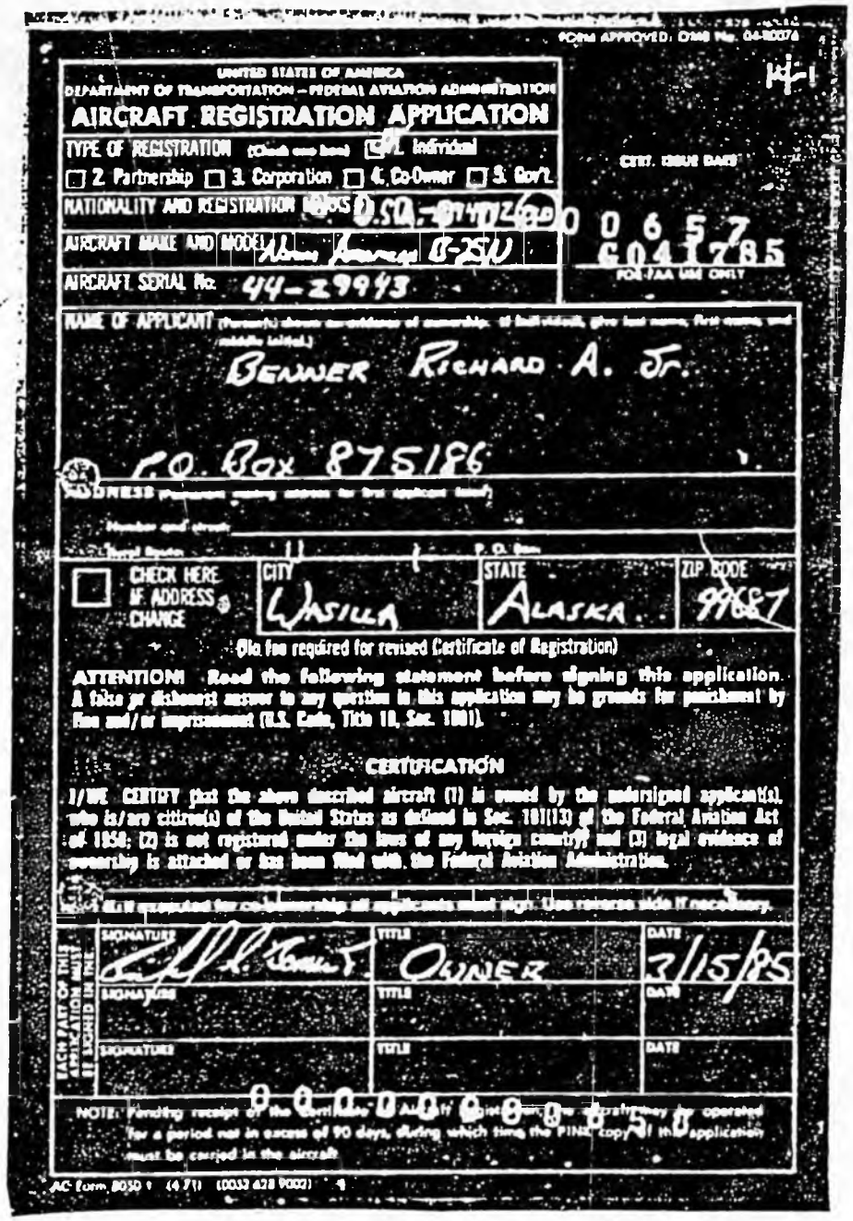
SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S) (IN INK) (IF CORPORATION, GIVE CORPORATE NAME, BY WHOM SIGNED AND CAPACITY SIGNED)	TITLE (TYPED OR PRINTED)
Alaskan Historical Aircraft Society	Ted M. Spencer	President

ACKNOWLEDGMENT (NOT REQUIRED FOR APPROVAL BY FAA UNDER 49 USC 1403, BUT MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THIS INSTRUMENT.)

$.00 REG

ORIGINAL: TO FAA 1:57 PM 5907 0 265 A 03/27/85



FORM APPROVED: OMB No. 04-R0076

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION—FEDERAL AVIATION ADMINISTRATION

AIRCRAFT REGISTRATION APPLICATION

TYPE OF REGISTRATION (Check one box) ☑ 1. Individual ☐ 2. Partnership ☐ 3. Corporation ☐ 4. Co-Owner ☐ 5. Gov't.

CERT. ISSUE DATE

NATIONALITY AND REGISTRATION MARK N 0 6 5 7 G

AIRCRAFT MAKE AND MODEL North American B-25W 6041785

AIRCRAFT SERIAL No. 44-29943

FOR FAA USE ONLY

NAME OF APPLICANT (Person(s) shown on evidence of ownership. If individuals, give last name, first name, and middle initial.)

BENNER RICHARD A. JR.

ADDRESS (Permanent mailing address for first applicant listed)

P.O. Box 875186

Number and street: _____ Rural Route: _____ P. O. Box: _____

☐ CHECK HERE IF ADDRESS CHANGE

CITY: WASILLA STATE: ALASKA ZIP CODE: 99687

(No fee required for revised Certificate of Registration)

ATTENTION! Read the following statement before signing this application. A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001).

CERTIFICATION

I/WE CERTIFY that the above described aircraft (1) is owned by the undersigned applicant(s), who is/are citizen(s) of the United States as defined in Sec. 101(13) of the Federal Aviation Act of 1958; (2) is not registered under the laws of any foreign country; and (3) legal evidence of ownership is attached or has been filed with the Federal Aviation Administration.

NOTE: All registered owners must sign. Use reverse side if necessary.

EACH PART OF THIS APPLICATION MUST BE SIGNED IN INK.

SIGNATURE	TITLE	DATE
[signature]	OWNER	7/15/85
SIGNATURE	TITLE	DATE
SIGNATURE	TITLE	DATE

NOTE: Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 90 days, during which time the PINK copy of this application must be carried in the aircraft.

AC Form 8050-1 (4-71) (0033-428-9002)

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

8-1

FOR AND IN CONSIDERATION OF $, THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS

D55052

UNITED STATES REGISTRATION NUMBER N9936Z

AIRCRAFT MANUFACTURER & MODEL NORTH AMERICAN TB-25N

AIRCRAFT SERIAL No. 44-30756

DOES THIS 1ST DAY OF JANUARY, 81 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO

CONVEYANCE RECORDED

JAN 5 19 at 11:05 AM Book 1103

FOR FAA USE ONLY

PURCHASER

NAME AND ADDRESS

ALASKAN HISTORICAL AIRCRAFT SOCIETY
6610 Teshlar Drive
Anchorage, Alaska 99507

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF

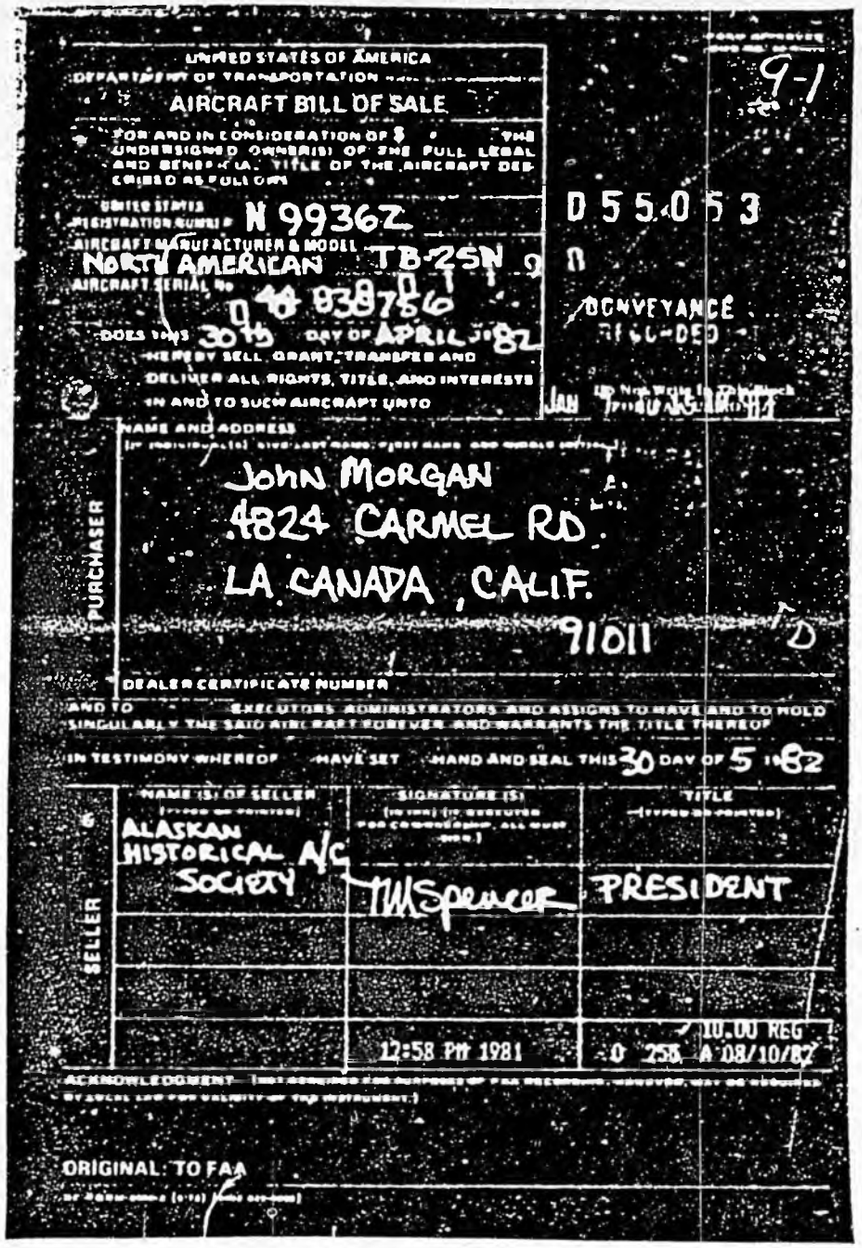
IN TESTIMONY WHEREOF HAVE SET HAND AND SEAL THIS DAY OF 19

SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S)	TITLE (TYPED OR PRINTED)
COLCO AVIATION INC	[signature]	PRESIDENT

ACKNOWLEDGMENT [NOT REQUIRED FOR PURPOSES OF FAA RECORDING; HOWEVER, MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THIS INSTRUMENT.]

ORIGINAL: TO FAA



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

9-1

AIRCRAFT BILL OF SALE

FOR AND IN CONSIDERATION OF $, THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS

UNITED STATES REGISTRATION NUMBER: N 9936Z

D 55053 D

AIRCRAFT MANUFACTURER & MODEL: NORTH AMERICAN TB-25N

AIRCRAFT SERIAL No. 44 86756

CONVEYANCE RECORDED

DOES THIS 30th DAY OF APRIL 82

HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTEREST IN AND TO SUCH AIRCRAFT UNTO

JAH

← JAN 83

PURCHASER

NAME AND ADDRESS

John MORGAN
4824 CARMEL RD.
LA CANADA, CALIF.
91011 D

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF

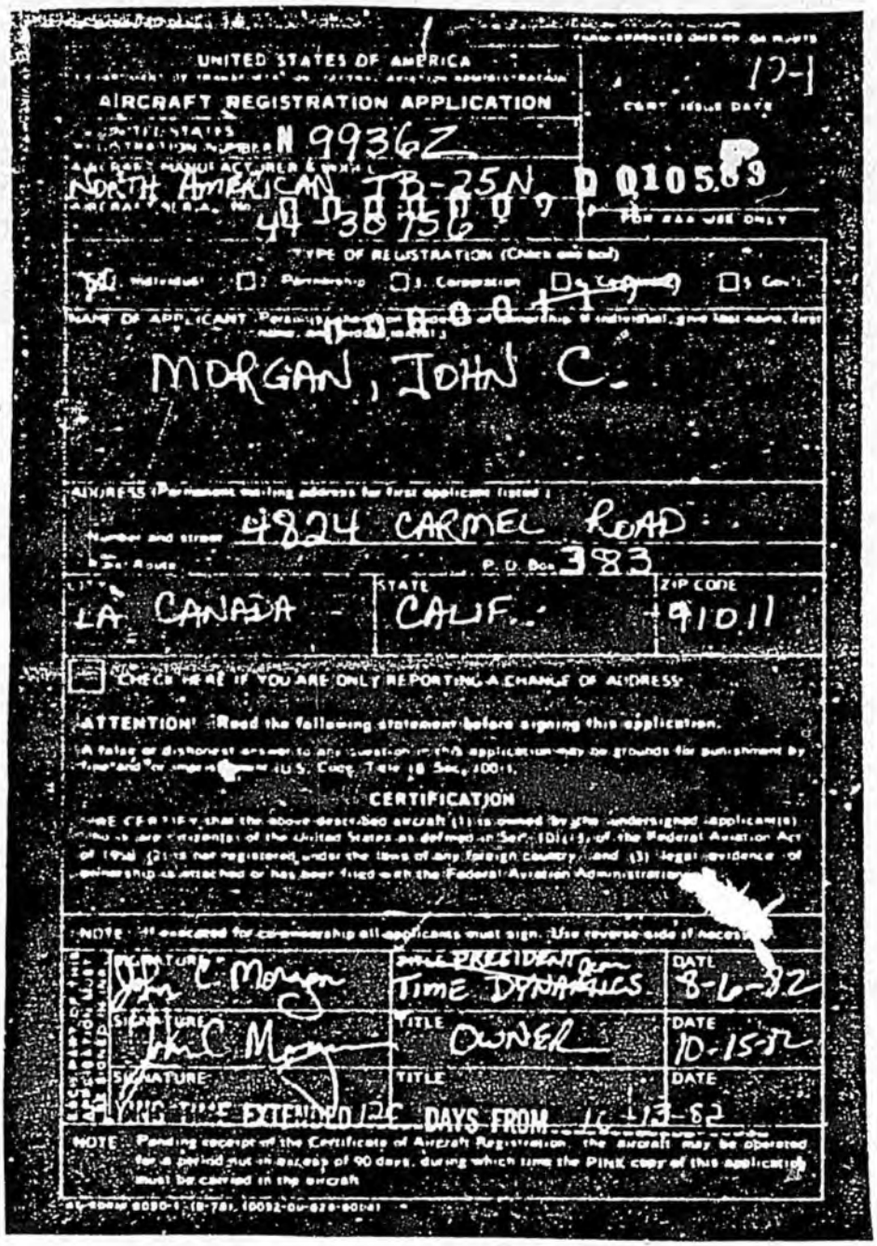
IN TESTIMONY WHEREOF HAVE SET HAND AND SEAL THIS 30 DAY OF 5 1982

SELLER

NAME(S) OF SELLER (TYPED OR PRINTED)	SIGNATURE(S) (IN INK) (IF SIGNATURE FOR CORPORATION, GIVE OFFICE HELD.)	TITLE (TYPED OR PRINTED)
ALASKAN HISTORICAL A/C SOCIETY	TM Spencer	PRESIDENT
	12:58 PM 1981	10.00 REG 0 258 A 08/10/82

ACKNOWLEDGMENT (NOT REQUIRED FOR PURPOSES OF FAA RECORDING, HOWEVER, MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THE INSTRUMENT.)

ORIGINAL: TO FAA



UNITED STATES OF AMERICA

AIRCRAFT REGISTRATION APPLICATION

12-1

CERT. ISSUE DATE

UNITED STATES N 9936Z

NORTH AMERICAN TB-25N

44 3875

D 0105.83

FOR FAA USE ONLY

TYPE OF REGISTRATION (Check one box)

1. Individual 2. Partnership 3. Corporation 4. Co-owned 5. Government

NAME OF APPLICANT (Person signing. If individual, give last name, first name, and middle initial)

MORGAN, JOHN C.

ADDRESS (Permanent mailing address for first applicant listed)

Number and street 4824 CARMEL ROAD

Rural Route P. O. Box 383

CITY LA CANADA STATE CALIF. ZIP CODE 91011

CHECK HERE IF YOU ARE ONLY REPORTING A CHANGE OF ADDRESS

ATTENTION! Read the following statement before signing this application.

A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001).

CERTIFICATION

I/WE CERTIFY that the above-described aircraft (1) is owned by the undersigned applicant(s) who is/are citizen(s) of the United States as defined in Sec. 101(16) of the Federal Aviation Act of 1958, (2) is not registered under the laws of any foreign country, and (3) legal evidence of ownership is attached or has been filed with the Federal Aviation Administration.

NOTE - If executed for corporate ownership all applicants must sign. Use reverse side if necessary.

SIGNATURE	TITLE	DATE
John C. Morgan	PRESIDENT for TIME DYNAMICS	8-6-82
John C. Morgan	OWNER	10-15-82
SIGNATURE	TITLE	DATE

ORIG. TEMP. REGIS. EXPIRES 12 DAYS FROM 10-13-82

NOTE: Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 90 days, during which time the PINK copy of this application must be carried in the aircraft.

AC Form 8050-1 (8-78) 0052-00-629-90041

H 5000

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

11-1

FOR AND IN CONSIDERATION OF $ 5000.00 THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT, DESCRIBED AS FOLLOWS:

813

UNITED STATES REGISTRATION NUMBER N 9936Z

06377

AIRCRAFT MANUFACTURER & MODEL North American T6-25J

AIRCRAFT SERIAL No. 44-30756

DOES THIS 7 DAY OF Sept 1984

HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTEREST IN AND TO SUCH AIRCRAFT UNTO

Do Not Write In This Block
FAA USE ONLY

PURCHASER

NAME AND ADDRESS

WRIGHT, RALPH
P.O. Box 1776
KODIAK, ALASKA
99615

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF I HAVE SET MY HAND AND SEAL THIS 7 DAY OF Sept 1984

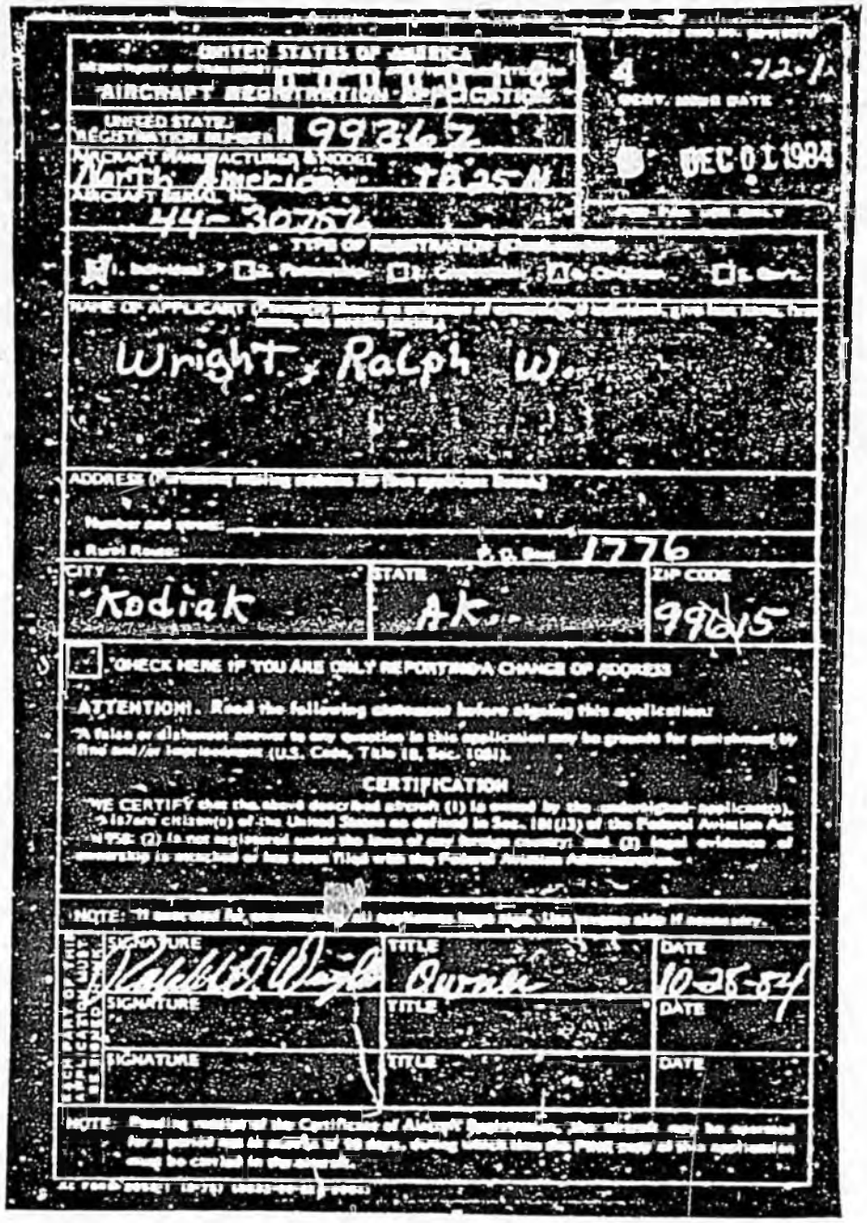
SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S) (IN INK)	TITLE (IF SIGNING FOR CORPORATION)
JOHN C. MORGAN	John C. Morgan	

ACKNOWLEDGMENT

1984 DEC 11 PM 12:58 0 255 A 11/07/84

ORIGINAL: TO FAA



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
AIRCRAFT REGISTRATION APPLICATION

4 -12-1
EXPIRY MONTH DATE

UNITED STATES REGISTRATION NUMBER N 99367

DEC 0 1 1984

AIRCRAFT MANUFACTURER AND MODEL North American T6G-NT

AIRCRAFT SERIAL NO. 44-30764

TYPE OF REGISTRATION (Check one box)
1. Individual 2. Partnership 3. Corporation 4. Co-owner 5. Other

NAME OF APPLICANT (First, Middle, Last)
Wright, Ralph W.

ADDRESS (Permanent mailing address for this applicant)
Number and street:
Rural Route: P.O. Box 1776

CITY: Kodiak | STATE: Ak | ZIP CODE: 99615

CHECK HERE IF YOU ARE ONLY REPORTING A CHANGE OF ADDRESS

ATTENTION! Read the following statement before signing this application.
"A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001)."

CERTIFICATION
"I/WE CERTIFY that the above described aircraft (1) is owned by the undersigned applicant(s), a citizen(s) of the United States as defined in Sec. 101(32) of the Federal Aviation Act of 1958; (2) is not registered under the laws of any foreign country; and (3) legal evidence of ownership is attached or has been filed with the Federal Aviation Administration."

NOTE: If aircraft is owned by co-partners, all co-partners must sign. Use reverse side if necessary.

	SIGNATURE	TITLE	DATE
APPLICANT'S SIGNATURE AS REGISTERED OWNER	Ralph W. Wright	Owner	10-25-84
	SIGNATURE	TITLE	DATE
	SIGNATURE	TITLE	DATE

NOTE: Pending receipt of the Certificate of Aircraft Registration, this aircraft may be operated for a period not to exceed 90 days, during which time this AC Form 8050-1 must be carried in the aircraft.

AC Form 8050-1 (3/79) OBSOLETE

cc: Sen. Zharoff

February 12, 1986

Senator Jan Faiks
Alaska State Legislature
Pouch V(MS3100)
Juneau, Alaska 99811

FEB 18 1986

Dear Senator Faiks:

I am writing to you in regards to Senate Bill 354. I understand this bill is to reinstated Ted Spencers Alaskan Historical Aircraft Society. I am asking you to vote "no".

As a small business person I have certain responsibilities to my clients and the general public. I am governed by many different agencies, federal, state and city. All of them require me to file annual reports and paperwork, and I know as a business I must file these to operate legally.

The Alaskan Historical Aircraft Society was dissolved by the State of Alaska in 1981 because they did not file there annual reports in 1979. The State waited 2 years before dissolving them. It now has been 6 years since those reports were to have been filed. I don't believe this cann be called an oversight on the part of the Alaskan Historical Aircraft Society.

Throughout these last 5 years they have been claiming to be a nonprofit museum, accepting and soliciting donations of money, aircraft and memorabilia, deceiving the public.

Two of these aircraft donated by Cal C. Aviation Inc. of Fairbanks (under the assumption the aircraft would be preserved as part of our heritage) have been sold to private individuals, one went to California and one to one of the Board of Directors.

IRS is presently investigating Ted Spencer and the Alaskan Historical Aircraft Society, because of the many complaints they have received from those who have donated to them and have found out they could not use there tax write offs they received from the Alaskan Historical Aircraft Society.

With this bill and especially lines 25 through 28 you would reinstate and grant a pardon for there fraudulent behavior. I hope you will receonsider and vote no on this bill, as I can not understand how the legislature could approve.

Sincerely,

Janie Munson
Grizzly Aircraft Services
330 Main Street Loop
Kenai, Ak. 99611

18090-D

State of Alaska

Department of Commerce & Economic Development

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY
Ted M. Spencer
2397 East 47th Ct.
Anchorage, Alaska 99507

CERTIFICATE OF INVOLUNTARY DISSOLUTION

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, and by virtue of the authority vested in him by law, and pursuant to Section 10.20.325, Alaska Statutes, of the Alaska Nonprofit Corporation Act, hereby dissolves the Certificate of Incorporation of

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY

for the reason that the corporation has failed to file its annual reports, pay fees and penalties within the time prescribed, and/or failed to maintain a registered agent, as set forth below:

FAILED TO FILE 1979 ANNUAL REPORT **********

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Juneau, the Capital, this 16th day of November, A.D. 1981.

Charles R. Webber

CHARLES R. WEBBER
COMMISSIONER OF COMMERCE
& ECONOMIC DEVELOPMENT

08-151, Rev. 11/81

Internal Revenue Service

District
Director

Department of the Treasury

310 K Street, Anchorage, Alaska 99501

Person to Contact:
Olga A. Rhodes

Telephone Number:
261-4396

Refer Reply to:
RM:D

Date:

OCT 22 1985

Paul A. Fox
United States Historical
Aircraft Preservation Museum
P.O. Box 6813
Anchorage, Alaska 99502

Dear Mr. Fox:

This is in response to your letter dated July 18, 1985 concerning the tax exempt status of the Alaskan Historical Aircraft Society.

After extensive search efforts it has been determined that we have no record that the organization is a tax exempt organization under 501(a) of the Internal Revenue Code by virtue of an approved application; therefore we no documents responsive to your request.

Sincerely,

Olga A Rhodes

Olga A. Rhodes
Disclosure Officer

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

360

AS36.10.005 DOCUMENT
CHAPTER = 36.10
SECTION = 36.10.005
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 10.
Employment Preference.
CITATION Sec. 36.10.005.
CATCH LINE
LEGISLATIVE FINDINGS.
TEXT (a) The legislature finds that

(1) because of its unique climate and its distance from the contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;

(2) the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;

(3) the rate of unemployment among residents of the state is one of the highest in the nation;

(4) the state has one of the highest ratios of nonresident to resident workers in the nation;

(5) the state has a compelling interest in reducing the level of unemployment among its residents;

(6) the construction industry in the state accounts for a substantial percentage of the available employment;

(7) construction workers receive a greater percentage of all unemployment benefits paid by the state than is typical of other states;

(8) historically, the rate of unemployment in the construction industry in the state is higher than the rate of unemployment in other industries in the state;

(9) it is appropriate for the state to consider the welfare of its residents when it funds construction activity;

(10) it is in the public interest for the state to allocate public funds for capital projects in order to reduce unemployment among its resident construction workers;

(11) the influx of nonresident construction workers contributes to or causes the high unemployment rate among resident construction workers because nonresident workers compete with residents for the limited number of available construction jobs;

(12) nonresident workers displace a substantial number

of qualified, available, and unemployed Alaska workers on jobs on state funded public works projects;

(13) the state has a special interest in seeing that the benefits of state construction spending accrue to its residents;

(14) the natural resources of land owned by the state belong to the citizens of the state;

(15) Alaskans have chosen to use the majority of the royalties derived from the state's natural resources to fund state government;

(16) the vast majority of the state's revenue is derived from natural resource income rather than from other forms of taxation;

(17) because the state has no personal income tax or sales tax, nonresident workers use services provided by the state but do not contribute fairly to the costs of those services; and

(18) Alaskans, more than the residents of other states, suffer economically when nonresidents displace qualified residents since resident workers contribute local taxes as well as their share of the royalties from natural resources.

(b) The legislature further finds that

(1) the state and its political subdivisions, when acting as a market participant in funding public works projects, should give Alaska residents an employment preference to promote a more stable economy;

(2) the state and its political subdivisions have a duty of loyalty to their citizens and should fulfill this duty by giving residents preference for employment on public works projects they fund;

(3) there is a legitimate and compelling governmental interest and that the public health and welfare will suffer if state residents are not afforded employment preference in state-funded construction-related work.

HISTORY (Sec. 1 ch 69 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS43.20.036 DOCUMENT
CHAPTER = 43.20
SECTION = 43.20.036
TITLE = 43
HEADINGS TITLE 43.
Revenue and Taxation.
CHAPTER 20.
Alaska Net Income Tax Act.
ARTICLE 1.
Persons Subject to Tax.
CITATION Sec. 43.20.036.
CATCH LINE
FEDERAL TAX DEDUCTIONS AND CREDITS.
TEXT (a) For purposes of calculating the income tax payable under this chapter, the taxpayer may not apply as a credit against his tax liability the foreign tax credit allowed as to federal taxes under 26 U.S.C. 33 (Internal Revenue Code).

(b) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability the investment credit allowed as to federal taxes under 26 U.S.C. 38 (Internal Revenue Code) upon only the first $20,000,000 of qualified investment, other than qualified investment for a special industrial incentive investment tax credit under AS 43.20.042, put into use in the state for each taxable year. This limitation does not apply to the amounts invested in equipment that meets the definition of a certified pollution control facility as defined in 26 U.S.C. 169 (Internal Revenue Code) as in effect on June 19, 1975, except that the date specified in 26 U.S.C. 169(d) (Internal Revenue Code) as a condition of qualifying a certified pollution control facility for a deduction does not apply.

(c) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as an exemption from his tax liability the tax exemption for domestic international sales corporations under 26 U.S.C. 991 (Internal Revenue Code), except those taxpayers who are engaged in the exportation of nonrenewable resources.

(d) _Repealed, sec. 10 ch 1 SSSLA 1980._
(e) _Repealed, sec. 10 ch 1 SSSLA 1980._
(f) _Repealed, sec. 10 ch 1 SSSLA 1980._
(g) _Repealed, sec. 10 ch 1 SSSLA 1980._
(h) _Repealed, sec. 10 ch 1 SSSLA 1980._
(i) _Repealed, sec. 10 ch 1 SSSLA 1980._

HISTORY (Sec. 1 ch 153 SLA 1975; sec. 1 ch 171 SLA 1975; am sec. 3 ch 22 SLA 1980; am sec. 10 ch 1 SSSLA 1980; am sec. 9 ch 2 SSSLA 1980; am sec. 1 ch 117 SLA 1981; am sec. 3 ch 60 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS43.23.005 DOCUMENT
CHAPTER = 43.23
SECTION = 43.23.005
TITLE = 43
HEADINGS TITLE 43.
Revenue and Taxation.
CHAPTER 23.
Permanent Fund Dividends.
CITATION Sec. 43.23.005.
CATCH LINE
ELIGIBILITY.
TEXT (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual applies to the department, and if on the date of application the individual

(1) is a state resident; and

(2) has been a state resident for a period of at least six consecutive months immediately preceding the date of application.

(b) In determining the minimum period of an individual's residency required under (a)(2) of this section, the department may include months of residency both in the current year and in the immediately preceding year.

(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a payment under this section.

HISTORY (Sec. 1 ch 102 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/18/86

REQUEST
Bill/Resolution No: SS SB 360
Title: Local Hire Tax Credit

Sponsor: Faiks, Bennett, et. al.
Requestor: Labor and Commerce
Date of Request: March 14, 1986

FISCAL DETAIL
Agency Affected: Revenue
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
* REVENUE	0	-33.2	-34.2	-35.4	-36.4	-38.1

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary (Revenue impacts are on a calendar year basis)

*Non-Petroleum Income Tax	0	-23,700	-24,700	-25,900	-27,300	-28,600
Petroleum Income Tax	0	- 9,500	- 9,500	- 9,500	- 9,500	- 9,500

See attached for narrative.

Prepared By: Al Zangri
Division: Research Section
Phone: 465-2173
Date: 3/18/86

Approved by Commissioner: Harold M. Heinbockel
Agency: Department of Revenue
Date: 3/18/86

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor

It is assumed that conditions are such that the bill will have its intended effect on employers. Specifically this implies the following assumptions. (1) Corporations that hire non-residents have enough tax liability to take advantage of at least some of the available credit. (2) Every employer takes full advantage of the available tax credit when making hiring decisions. (3) Projected non-petroleum corporate income taxes increase at the rate of inflation (i.e. constant real non-petroleum corporate income tax). (4) The distribution of projected corporate income taxes among industries remains constant. (5) The distribution of jobs between residents and non-residents for calendar year 1986 is the same as that shown for 1984 in the Department of Labor study of January 17, 1986[1] (6) Non-resident wages have grown at a rate equal to the inflation rate since 1984. (7) That the historic relationship between the unemployment rate in Alaska and the national unemployment rate continues.[2] It is also assumed that sufficient data is obtainable to establish causality between unemployment and significant social ills and between non-resident employment and resident unemployment.

The Department of Labor study shows a state-wide total of 63,280 jobs held by non-residents. Using the assumptions above to project taxes and non-resident wages by industry shows that if 14% of the positions held by non-residents are filled by State residents the non-petroleum corporate income tax will be reduced to zero. Additionally, if the oil and gas and mining industry fills all 3,156 of the non-resident jobs with State residents corporate petroleum income taxes will be reduced by $9.5 million. While the potential impact is to eliminate the corporate income tax the actual impact may differ depending upon: (1) how the Department of Labor determines unemployment areas, the cause of unemployment in underemployment areas and the existence of social ills in underemployment areas; (2) whether the increase in employed residents is enough to lower the unemployment rates in underemployment areas below the national average. The accompanying table shows the number and percentage of jobs now filled by non-residents that would need to be filled by residents in order to eliminate the corporate non petroleum income tax. The chart also shows the number of unemployment claims for each industry group and shows the number of those claims that come from residents if all industries employ the average percentage of non-resident workers.

---

1 Non-residents Working in Alaska, A Special Study to Measure the Economic Impact of Non-Residents on Alaska's Economy During Calendar Year 1984, Alaska Department of Labor, January 1986.

2 Since 1969 the only years that the Alaska, unemployment rate has been less than or equal to the national rate were 1975, 1976 and 1982. See Alaska's Economy Since Statehood: The ISER Map Economic Data Base, University of Alaska ISER February 1984. See also Annual Planning Information, Alaska Department of Labor, 1985.

Economic Impact

1. Increase in jobs available to Alaskans.
2. A drop in the instate unemployment rate due to drop in migration.
3. The tax credit may tend to increase job turnover as employers attempt to stay eligible for the credit.
4. Could tend to lower wages as employers require pay cuts to avoid layoffs.
5. Could provide a subsidy to union busting employers as the State picks up half of the first $6,000 in wages paid to new employees.
6. Incentives for fraudulent PFD claims may be greatly increased as employers may require proof of eligibility prior to hiring.
7. Could put pressure on the PFD program to certify eligibility more quickly and more often.

INDUSTRY GROUP	PROJECTED** 86 TAX	PROJECTED* NONRESIDENT AVERAGE '86 WAGE	TOTAL* NONRESIDENT JOBS	JOBS TO ELIMINATE TAX	% OF JOBS TO ELIMINATE TAX		TOTAL**** UNEMPLOY-MENT CLAIMS 1984	ASSUMED***** RESIDENT CLAIMS 1984
MINING (INCLUDES OIL&GAS)	***	27335	***	***			2459	1838
CONSTRUCTION	3494898	17996	12642	1232	9.74%		21170	15678
LUMBER & WOOD MFG	548230	8715	260	183	70.29%		1933	1451
FOOD PROCESSING	92514	5429	12068	34	0.28%		5325	3994
OTHER MFG	2428778	10153	1642	809	49.27%		1766	1325
TRUCKING & WAREHOUSING	1664?6	16791	913	55	6.03%			
WATER TRANSPORTATION	696836	18726	517	233	45.06%			
AIR TRANSPORTATION	752923	15090	1624	251	15.44%			
OTHER TRANSPORTATION	224316	5480	350	82	23.39%		5738	4341
COMMUNICATIONS	215822	28219	799	72	9.00%			
UTILITIES	477261	18502	247	159	64.41%			
FISHING HUNTING & TRAPPING	260957	7471	177	87	49.14%		346	260
WHOLESALE TRADE	1946470	11997	1935	649	33.53%			
RETAIL TRADE	6336080	4450	14093	2848	20.21%		9245	6934
FINANCE, INSUR & REAL EST	3011566	8991	2017	1004	49.77%		2076	1557
SERVICES	2280521	8307	17996	961	6.67%		11901	8926
NON-PETROLEUM CORP TAX	23737697		83280	8659				

* Source: Dept of Labor study January 1986

** Source: Dept of Revenue calendar year projection-does not include any collections from prior years.

*** This is the only sector that could fully utilize the $3000 credit without completely eliminating it's income tax liability. There are 3154 nonresident jobs shown in the Dept of Labor study

**** Source: "Unemployment Insurance Actuarial Study And Financial Handbook", Alaska Dept of Labor, December 1985

***** The Dept of Labor January study shows that the state averages 25% nonresident unemployment claims. This column shows the distribution of resident unemployment claims if each industry has the same 25% average.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 3/11/86

REQUEST
Bill/Resolution No: Sponsor Sub. SB 360
Title: An Act relating to tax credits for local hire and an effective date.
Sponsor: Faiks, Bennett, Zharoff, Rodey De Vries and P. Fischer
Date of Request: March 11, 1986

FISCAL DETAIL
Agency Affected: Department of Revenue
BRU: Audit

Components:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	OPERATING						
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	2.0	-0-	-0-	-0-	-0-
400	SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800	MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL OPERATING	-0-	2.0	-0-	-0-	-0-	-0-
	CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
	REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-2.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-2.0	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Please see attached.

Prepared By: Steven E. Kettel — Phone: 465-2320
Division: Audit Division — Date: March 11, 1986

Approved by Commissioner: — Date: 3/12/86
Agency: Revenue

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

Operating 2.0

Contractual services - forms design & printing

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SS SB 360
Title : "An Act relating to tax credits for employing and training residents...

Sponsor : Faiks, et. al.
Requestor : Labor and Commerce
Date of Request : 3/7/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Administrative Services

Components : Special Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		76.5	76.5	76.5	76.5	76.5
TRAVEL		Ø	Ø	Ø	Ø	Ø
CONTRACTUAL		55.0	48.4	50.3	52.3	54.4
SUPPLIES		1.5	1.6	1.7	1.8	1.9
EQUIPMENT		3.2	Ø	Ø	Ø	Ø
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	136.2	126.5	128.5	130.6	132.8
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		136.2	126.5	128.5	130.6	132.8
FEDERAL FUNDS						
OTHER						
TOTAL	0	136.2	126.5	128.5	130.6	132.8

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Judy Knight
Division : Administrative Services Division
Phone : 465-2725
Date : 3/12/86

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 3/12/86

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 360

This legislation requires an annual report that designates areas as underemployment areas. The determination in Sec. 43.20.041 (c) (2) that "nonresident employment is a significant contributing cause of the high resident unemployment" will require this department to collect extensive occupational information by resident status. We would need two additional staff persons, a Labor Economist II and a Statistical Clerk, to complete the required report. Costs associated with these positions are shown on the attached - Request for New Position forms. In addition to the position costs we would require $35,000 for data processing operations, $10,000 for data processing applications, and $6,050 a year for equipment lease and maintenance. $8,500 of the data processing applications expense would be a one-time item, while the rest of the costs would be ongoing. The following assumptions were made in preparing the fiscal note:

1. An annual report designating underemployment areas would be completed by January 31 each year beginning in 1987.

2. On-going collection of occupational titles would be required from employers, and extensive computer matching would be necessary to determine residency status.

3. Beginning in 1988 occupational displacement information would be highlighted requiring continuation of both the existing occupational information budget levels, and the additional information on the occupational titles.

4. The collection of occupational titles from firms will be phased in over a three year period. Industries identified as having the highest dollar payments to nonresidents in 1984 would be targeted first:

   First Year - construction, oil and gas mining, and food processing;

   Second Year - all first year industries plus business services, local government, miscellaneous services, eating and drinking places, air transportation, and state government; and

   Third Year - all industries.

5. "Economic region" will be defined as the six economic regions for which economic data is published by the Alaska Department of Labor.

6. Costs to determine that "resident unemployment has caused significant social ills" for each of the economic regions annually has not been included at this time. A thorough analysis of the available social data which can be released from other departments will require additional time. Case data would be required on all social problems in the state.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 360

The costs to accomplish this section will greatly exceed all of our other costs associated with this bill.

7. The Department of Revenue will be responsible for all enforcement actions and the collection of all wage and job training costs.

8. The list of approved training cost will be the same as that used for JTPA, and there will be coordination between employers and the Service Delivery Areas of JTPA to determine approved training programs.

9. Work would begin on the report on July 1, 1986.

10. Annual inflation of 4% on non-personal services items.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Labor Economist II	1	16A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	33,660	
Benefits	10,779	
Premium Pay		
Other		
Total Personal Services		44,439
Travel		0
Contractual		2,000
Commodities		500
Equipment		1,600
Other		
Total Cost		48,539

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	48,539
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position will have primary responsibility for the analysis of data and preparation of the annual resident hire report. Specifically the duties would include:

1. Coordinate the collection and monitor the validity of relevant resident hire related statistics from other agencies including the Department of Revenue and the Division of Labor Standards and Safety.
2. Coordinate the updating and crossmatching of resident hire related data files on the mainframe computer with the analyst programmer.
3. Analyze microcomputer resident hire data bases to generate resident hire related tables and reports. The reports will include data relating to occupational displacement of nonresidents by economic region and other related economic statistics associated with issue of resident hire.
4. Supervise the Statistical Clerk that will prepare the basic resident hire data tables for the report.
5. Prepare the annual resident hire report.

Contractual services costs include phone, training, printing, and other miscellaneous items. The equipment expense for a desk, chair, etc. would be a one time item.

Request For New Position

Agency: Labor
BRU: Administrative Services
Component: Special Services

Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disappr.
Statistical Clerk	1	8B	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12		Juneau		

Type of Expenditure	1	2	Amount 3
Salary		23,580	
Benefits		8,458	
Premium Pay			
Other			
Total Personal Services			32,038
Travel			0
Contractual			2,000
Commodities			1,000
Equipment			1,600
Other			
Total Cost			36,638

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	36,638
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position will support the labor economist in preparing an annual report on the effect of nonresident employment on Alaskans. Secondarily this position would assist on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:

1. Update tables of economic information by resident status.
2. Load information into spreadsheets to show occupational displacement of residents by nonresidents.
3. Assist in the quality control of the occupational displacement of residents by nonresident workers.

The other position will work on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:

1. Review detailed edit listings.
2. Update edit data files.
3. Call employers for clarification when necessary.
4. Correct occupational titles.
5. Prepare computer summaries of results.

Contractual costs for this position includes phone, training, printing, etc. Equipment expense for desk, chair, cabinets, etc. would be a one time item.

Request For New Position

Agency: Labor
BRU: Administrative Services
Component: Special Services

FY 87

Introduced: 3/6/86
Referred: Labor and Commerce
and Finance

BY FAIKS, BENNETT, ZHAROFF,
DEVRIES, RODEY AND P.FISCHER

IN THE SENATE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to tax credits for employing and training residents; and providing for an effective date."

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

* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and encourage the training of state residents so that they are better qualified to compete for job opportunities.

* Sec. 2. LEGISLATIVE FINDINGS. The legislature finds:

(1) the findings made in AS 36.10.005 continue to accurately describe the social, economic, and employment situation in the state;

(2) nonresident workers displace a substantial number of qualified, available, and unemployed residents, and the displacement is a substantial contributing cause of the high rate of unemployment among state residents;

(3) high and persistent unemployment breeds severe social problems including alcoholism and domestic violence;

(4) the findings of the Department of Labor of the State of Alaska in its report entitled "Nonresidents Working in Alaska; A Special Study to Measure the Economic Impact of Nonresidents on Alaska's Economy During Calendar Year 1984" support the need for a resident hiring preference;

(5) private sector investment in job training and vocational education programs will help qualify unemployed Alaskans for higher-skilled job opportunities.

* Sec. 3. AS 43.20.036 is amended by adding a new subsection to read:

(j) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability an Alaska hire credit under AS 43.20.041, for employment of state residents who satisfy the eligibility requirements, equal to the sum of

(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year;

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year; and

(3) 50 percent of the verifiable job training costs, as determined by regulations adopted by the commissioner of labor, to a maximum credit of $3,000 for each eligible first-year employee, and 25 percent of the verifiable job training costs to a maximum credit of $3,000 for each eligible second year employee.

* Sec. 4. AS 43.20 is amended by adding a new section to read:

Sec. 43.20.041. ALASKA HIRE TAX CREDIT. (a) An employer is entitled to claim an Alaska hire credit under AS 43.20.036(j) if the employer hires an eligible state resident.

(b) An employee is eligible under this section if the employee satisfies the residency requirements for eligibility for a permanent fund dividend under AS 43.23.005 on the date immediately preceding the

date of hire and on that date the employee was a resident of an underemployment area and

(1) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them;

(2) was not employed and had registered to find work with a public or private employment agency or a local hiring hall;

(3) was underemployed or marginally employed as determined under regulations adopted by the Department of Labor; or

(4) had completed a job training program approved by the Department of Labor and is either not employed or is engaged in employment that does not use the skills acquired in the job training program.

(c) The Department of Labor shall prepare an annual report that designates areas as underemployment areas. The department shall examine each economic region of the state and shall find that an area is an underemployment area if

(1) the area suffers from a resident unemployment rate that is higher than the national average;

(2) nonresident employment is a significant contributing cause of the high resident unemployment; and

(3) resident unemployment has caused significant social ills.

* Sec. 5. This Act applies to employees first hired by an employer on or after January 1, 1986.

* Sec. 6. This Act is retroactive to January 1, 1986.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 1/23/86
Referred: Labor and Commerce
and Finance

IN THE SENATE

BY FAIKS, BENNETT, ZHAROFF, DEVRIES, RODEY AND P. FISCHER

SENATE BILL NO. 360

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to tax credits for employing residents; and providing for an effective date."

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

* Section 1. AS 43.20.036 is amended by adding a new subsection to read:

(j) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability an Alaska hire credit, for employment of state residents who satisfy the residency requirements for eligibility for a permanent fund dividend under AS 43.23.005 on the date immediately preceding the date of hire, equal to the sum of

(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum of $6,000 in wages for each eligible employee, paid or incurred by the employer during the taxable year; and

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum of $6,000 in wages for each eligible employee, paid or incurred by the employer during the taxable year.

* Sec. 2. Section 1 of this Act is retroactive to January 1, 1986.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

WORK DRAFT WORK DRAFT WORK DRAFT

Cramer
4/14/86

Original sponsors: Faiks, Bennett,
Zharoff, et al

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to tax credits for employing and training residents; and providing for an effective date."

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

* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and encourage the training of state residents so that they are better qualified to compete for job opportunities. If the courts find that a portion of AS 43.20.036(j) or 43.20.041 is unconstitutional, the public interest requires that the remaining portions be implemented as fully as possible.

* Sec. 2. LEGISLATIVE FINDINGS. The legislature finds:

(1) the findings made in AS 36.10.005 continue to accurately describe the social, economic, and employment situation in the state;

(2) nonresident workers displace a substantial number of qualified, available, and unemployed residents, and the displacement is a peculiar source of the high rate of unemployment among state residents;

(3) high and persistent unemployment breeds severe social problems including alcoholism and domestic violence;

(4) the findings of the Department of Labor of the State of Alaska in its report entitled "Nonresidents Working in Alaska; A Special Study to Measure the Economic Impact of Nonresidents on Alaska's Economy

During Calendar Year 1984" support the need for a resident hiring preference;

(5) private sector investment in job training and vocational education programs will help qualify unemployed Alaskans for higher-skilled job opportunities.

* Sec. 3. AS 43.20.036 is amended by adding a new subsection to read:

(j) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability an Alaska hire credit under AS 43.20.041, for employment of state residents who satisfy the eligibility requirements, equal to the sum of

(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year;

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year; and

(3) 50 percent of the verifiable job training costs, as determined by regulations adopted by the commissioner of labor, to a maximum credit of $3,000 for each eligible first-year employee, and 25 percent of the verifiable job training costs to a maximum credit of $3,000 for each eligible second-year employee.

* Sec. 4. AS 43.20 is amended by adding a new section to read:

Sec. 43.20.041. ALASKA HIRE TAX CREDIT. (a) An employer is entitled to claim an Alaska hire credit under AS 43.20.036(j) if the employer employs an eligible state resident for at least six consecutive months for a tax credit on first-year wages and 18 consecutive

months for a tax credit on second-year wages. The credit for first-year wages may only be claimed in the tax year in which the resident completes 12 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first. The credit for second-year wages may only be claimed in the tax year in which the resident completes 24 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first.

(b) An employee is eligible under this section if the employee satisfies the residency requirements of AS 43.23.005(a) on the date immediately preceding the date of hire and on that date the employee was a resident of an underemployment area designated under (c) of this section and

(1) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them; or

(2) was not employed and had registered to find work with a public or private employment agency or a local hiring hall.

(c) The Department of Labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report may designate areas as underemployment areas. A designation is valid for two years immediately following a determination by the commissioner of labor. The commissioner of labor shall determine that an economic region of the state or the state as a whole is an underemployment area if the commissioner finds that

(1) the rate of unemployment within the area is

substantially higher than the national rate of unemployment;

(2) the lack of employment opportunities in the area has contributed to serious social or economic problems in the area; and

(3) employment of workers who are not residents is a peculiar source of the unemployment of residents of the area.

(d) An employer may not claim a tax credit under this section if the employer terminated the employment of a resident in the expectation of receiving a greater tax credit under AS 43.20.036(j). If an employer terminates the employment of a resident and then hires a resident to fill the position within three months after the termination and if the employer would be entitled to a greater tax credit under AS 43.20.036(j) for the subsequent employment, there is a presumption that the employer acted in expectation of a greater tax credit. The employer may overcome the presumption by showing by clear and convincing evidence that the employer terminated the employee for cause or that the employee left the employment voluntarily.

* Sec. 5. If a provision of AS 43.20.036(j) or 43.20.041, or the application of a provision to a person or circumstance, is held invalid, the remainder and the application to other persons or circumstances is not affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

* Sec. 6. This Act applies to employees first hired by an employer on or after January 1, 1986.

* Sec. 7. This Act is retroactive to January 1, 1986.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Jan 31st possible deletion

Cramer
5/6/86

Original sponsors: Faiks, Bennett,
Zharoff, et al

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

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* Sec. 2. LEGISLATIVE FINDINGS. The legislature finds:

(1) the findings made in AS 36.10.005 continue to accurately describe the social, economic, and employment situation in the state;

(2) nonresident workers displace a substantial number of qualified, available, and unemployed residents, and the displacement is a peculiar source of the high rate of unemployment among state residents;

(3) high and persistent unemployment breeds severe social problems including alcoholism and domestic violence;

(4) the findings of the Department of Labor of the State of Alaska in its report entitled "Nonresidents Working in Alaska; A Special Study to Measure the Economic Impact of Nonresidents on Alaska's Economy During Calendar Year 1984" support the need for a resident hiring preference;

(5) private sector investment in job training and vocational

education programs will help qualify unemployed Alaskans for higher-skilled job opportunities.

* Sec. 3. AS 43.20.036 is amended by adding a new subsection to read:

(j) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability an Alaska hire credit under AS 43.20.041, for employment of state residents who satisfy the eligibility requirements, equal to the sum of

(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year;

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year; and

(3) 50 percent of the verifiable job training costs, as determined by regulations adopted by the commissioner of labor, to a maximum credit of $3,000 for each eligible first-year employee, and 25 percent of the verifiable job training costs to a maximum credit of $3,000 for each eligible second-year employee.

* Sec. 4. AS 43.20 is amended by adding a new section to read:

Sec. 43.20.041. ALASKA HIRE TAX CREDIT. (a) An employer is entitled to claim an Alaska hire tax credit under AS 43.20.036(j) on first-year wages if the employer employs an eligible state resident for at least six consecutive months. An employer is entitled to claim an Alaska hire tax credit under AS 43.20.036(j) on second-year wages if the employer employs an eligible state resident for at least 18 consecutive months.

(b) The tax credit for first-year wages under (a) of this section may only be claimed in the tax year in which the resident completes 12 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first. The tax credit for second-year wages under (a) of this section may only be claimed in the tax year in which the resident completes 24 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first.

(c) An employee is eligible under this section if on the date immediately preceding the date of hire

(1) the employee satisfies the residency requirements of AS 43.23.005(a);

(2) the employee was a resident of a zone of underemployment designated under (d) of this section, the place of employment was located in that zone of underemployment, and the employee

(A) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them; or

(B) was not employed and had registered to find work with a public or private employment agency or a local hiring hall.

(d) The Department of Labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report may designate areas as underemployment areas. A designation is valid immediately and for the next two fiscal years following a determination by

the commissioner of labor. The commissioner of labor shall determine that a zone of underemployment exists if the commissioner finds that

(1) the rate of unemployment in the zone is substantially higher than the national rate of unemployment;

(2) a substantial number of residents in the zone have experience or training in occupations in which nonresidents are employed;

(3) the lack of employment opportunities in the zone has contributed to serious social or economic problems in the zone; and

(4) employment of workers who are not residents is a peculiar source of the unemployment of residents of the zone.

(d) An employer may not claim a tax credit under this section if the employer terminated the employment of a resident in the expectation of receiving a greater tax credit under AS 43.20.036(j). If an employer terminates the employment of a resident and then hires a resident to fill the position within three months after the termination and if the employer would be entitled to a greater tax credit under AS 43.20.036(j) for the subsequent employment, there is a presumption that the employer acted in expectation of a greater tax credit. The employer may overcome the presumption by showing by clear and convincing evidence that the employer terminated the employee for cause or that the employee left the employment voluntarily.

* Sec. 5. If a provision of AS 43.20.036(j) or 43.20.041, or the application of a provision to a person or circumstance, is held invalid, the remainder and the application to other persons or circumstances is not affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

* Sec. 6. This Act takes effect immediately in accordance with

AS 01.10.070(c).

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

MAY 5 1986

May 2, 1986

MEMORANDUM

TO: Senator Zharoff, Chairman
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks

SUBJECT: Revised CS for Senate Bill 360, an Act relating to tax credits for employing and training residents

My staff met with Bob Landau of the Department of Labor concerning their suggestions for improving Senate Bill 360. Together, they agreed on the following changes to the 4-14-86 committee substitute.

I would appreciate your having these drafted into a new committee substitute and scheduling the bill for a rehearing.

1. Wherever the words "unemployment area(s)" or "area(s)" appear, replace these with "underemployment zone(s)" or "zone(s)".

2. On page 3, line 24, after the word "two", add the word "fiscal".

3. On page 4, add the following subsection to (c): (d) a substantial number of residents in the zone have experience or training in occupations in which nonresidents are employed.

The above changes will make SB 360 uniform with other local hire bills.

4. On page 3, rewrite or place into another section the language dealing with the tax years in which the credits can be claimed. The current placement after the provision

dealing with required consecutive employment has confused readers.

5. On page 3, in subsection (b) beginning line 10, add the following additional criterion: on the date immediately preceding the date of hire the place of employment was located in the same underemployment zone as the employee's place of residence. This will prevent employers from discriminating against local unemployed residents in favor unemployed residents from other areas of the state.

6. On page 4, please delete sections 6 and 7. These sections are unnecessary because employees will not be eligible for a tax credit until after the Department of Labor designates underemployment areas. According to the Department, the earliest that a designation could be made would be January 31, 1987.

Thank you.

CHAIRMAN'S INFORMATION: SSSB 360

1) BILL TITLE: "An act relating to tax credits for employing and training residents; and providing for an effective date."

a) Introduced: Fiaks, Bennett, Zharoff, Devries, Rodey, and P Fischer

b) Co-sponsors:

2) INTENT: This measure creates an "Alaskan Hire Tax Credit" for an employer who hires an eligible resident. The bill enacts a series of tax credits, including a credit for training costs (maximum of $3,000), and details the eligibility criteria.

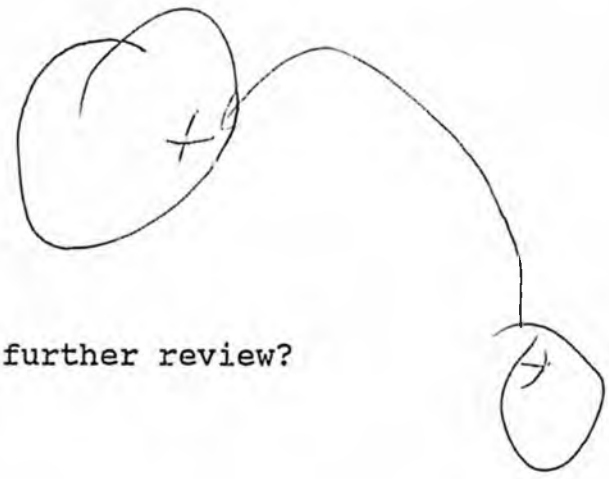
FISCAL NOTE: 2 from the Department of Revenue (- $33.2 million in revenue and $2.0 contractual) and a DOL F/N of $136.2

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:



5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

RECEIVED APR 14 1986

INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH
UNIVERSITY OF ALASKA, ANCHORAGE
707 A Street, Suite 206 • Anchorage, Alaska 99501
Phone (907) 278-4621

10 April 1986

Senator Jan Faiks
Senate Finance Committee
Pouch V
Capitol Building
Juneau, Alaska 99811

Re: Analysis of the Economic Effect of SB 360

Dear Senator Faiks,

In response to a request from Stephen White of your staff, I am enclosing a short analysis of the economic effect of SB 360, a bill providing tax credits for the hiring of resident Alaskans.

The basic equation for calculating the economic effect of displacing a nonresident worker, as measured by the change in income to Alaska residents, is the sum of two parts, as follows:

Change in income of Alaska residents	=	Net increase in income of newly hired Alaska resident	+	Multiplier effect of increased income spent in Alaska

The net increase in income of the newly hired Alaska resident is the salary he receives minus any public benefits foregone, typically unemployment insurance payments.

Net increase in income of newly hired Alaska resident	=	Salary at new job	-	Foregone public benefits

The multiplier effect (the increase in income of other Alaskans) is calculated using the additional income spent locally due to the displacement of the nonresident as the base to which an economic multiplier is applied.

Multiplier effect of increased income spent in Alaska	=	[multiplier]	x	[Net increase in income of newly hired Alaska resident	-	Local spending by nonresident]

For example, if we assume the following:

weekly salary of Alaskan = $557 (average weekly earnings of recipients of unemployment compensation in 1984)

public benefits foregone = $140 (average weekly unemployment compensation in 1984)

local spending of nonresident = 25% of earnings

multiplier = .5

then the impact on Alaskan resident income of displacing a nonresident for one week by one unemployed resident would be about $557--$417 going to the resident worker and $139 to Alaskans in other industries because of the multiplier effect.

$$[\$557 - \$140] + .5\,[\$557 - \$140 - \$139] =$$

$$\$417 \quad + \quad \$139 \quad \approx \quad \$557$$

In this analysis, the income of the nonresident has no value.

In applying this formula to an analysis of SB 360, the critical variable is the percentage of credits which would be used to hire unemployed residents who would not otherwise get a job. In other words, how many credits "hit the target" for which they are designed. This depends upon the ability of the Department of Labor to designate as "underemployment areas" regions which do not have significant seasonal fluctuations in employment and high job turnover rates from other causes.

Absent such sharp designations, it seems likely on the basis of limited evidence that a large portion of the credits would be used to hire unemployed Alaskans who would have found jobs in the absence of the credits.

Alaska Department of Labor data show that in 1984, 45,453 persons submitted initial unemployment compensation claims and only 45.6 percent of these people exhausted their benefits. The remaining 24,749 either found employment prior to exhausting their benefits or dropped out of the labor market (79 percent [36,063] of these claims were from within the state, but the percentage of these claimants exhausting their benefits is not reported [ADOL, Unemployment Insurance Actuarial Study and Financial Handbook, December 1985]).

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

4190 SLAB SB 360 - SB 367

1070

Because of the seasonal nature of a number of Alaska industries, it is not surprising that a large portion of people filing for unemployment would find new jobs before their benefits were exhausted. These hirings would in general be eligible for the credit. In addition, there is a normal turnover of people in any industry as employers and employees continually strive to improve their circumstances. This phenomenon also accounts for some of the unemployment and hiring of individuals who have not exhausted benefits.

An estimate (very rough) of the potential for the credits to be used up by this rehiring process, in the absence of targeting, is provided by comparing first payments of unemployment compensation by industry in 1984 (p. 46 of the ADOL, Unemployment Insurance Actuarial Study and Financial Handbook) with the Department of Revenue (DOR) "fiscal note," attached to SB 360, an analysis of the number of resident hirings by industry necessary to eliminate the tax. With a few notable exceptions, the number of credits necessary to reduce the tax liability to zero is small compared to either the number of individuals receiving unemployment compensation or the apparent number rehired before exhaustion of benefits. For example, 11,376 people who said their occupation was construction received unemployment compensation, and apparently about half were rehired before their payments expired. In contrast, DOR estimated that only 1,232 job credits would be necessary to eliminate all tax liability for that industry. The major exceptions to this imbalance are the oil and gas, trade, and finance industries, where the number of claimants is commensurate with the DOR estimates. For example, there were only 1,170 first-time unemployment compensation payments to Alaskans in mining (primarily oil and gas) while DOR estimated 3,156 nonresident jobs displaced would not be enough to eliminate the tax liability in that industry.

Thus, the potential range of impact is great and largely dependent upon targeting. With "perfect targeting," complete use of the credits, and nonresident displacement consistent with the DOR job mix, the direct income displaced from nonresidents to residents would be $171.1 million ($86.3 in oil and gas, $22.2 in construction, and the remainder in other industries). This is the result of hiring 3,156 Alaskans in oil and gas and 8,559 Alaskans in other industries at the same wage as the displaced nonresidents. Assuming a multiplier of .5 and a 25 percent local spending factor for nonresidents, the total impact on Alaska income would be equal to $171 million, or about $5 for each $1 of state tax income foregone.

A more likely result is that "targeting" would be difficult to achieve. Many of those hired to receive a tax credit would be unemployed Alaskans who would have been hired eventually anyway. If one-fourth of the credits are "on target" for oil and gas and

one-fifth for other industries (a rough judgment based solely on a comparison of the DOR analysis of the number of jobs needed to eliminate the tax and the Department of Labor figures for the unemployed by industry) and if the credits were fully utilized, the impact on resident income would be $39 million, about $1.22 of income for each public dollar lost.

I am not in a position to offer any comments on the reduction in public expenditures which would result from the passage of SB 360. Since the unemployment insurance program is not funded out of the state general fund, a reduction in unemployment benefits paid would not directly impact the state treasury. The question of reduced payments for the treatment of social ills arising from unemployment is best addressed by an expert in the field.

I hope this information is useful to you as you consider this and other legislation relating to the issue of local hire.

Sincerely,

Scott Goldsmith

Oliver Scott Goldsmith
Professor of Economics

Faiks seeks local hire tax break

by Bruce Scandling
Associated Press

JUNEAU — Employers would get a tax break for hiring state residents, according to a new proposal introduced less than a week after the Alaska Supreme Court tossed out the state's local hire law.

Companies could deduct up to $6,000 a year from their tax bills for each newly hired Alaskan, under a plan drafted by Sen. Jan Faiks, an Anchorage Republican who co-chairs the Senate Finance Committee.

The deduction would apply only to workers hired after the law was enacted. The tax break would be good for the first two years a worker was on the job.

"I couldn't think of a better way to encourage employers to hire Alaskans," said Faiks, who modeled the law after a federal tax code providing incentives for the hire of minority and disadvantaged workers.

Although the financial ramifications of the bill have not been calculated, the proposal would likely cost the state millions of dollars in lost tax revenue.

According to the state Department of Revenue, 3,000 corporations in Alaska reported taxable income in 1982, the last year for which complete records are available.

"Presumably, there will be some fiscal impact," said Bruce Botelho, deputy commissioner in the Revenue Department. "I'm sure we're going to be asked for the impact on that."

Faiks said employers would determine the residency of workers according to their eligibility for an Alaska Permanent Fund dividend. A person who has lived

See Proposal, page A-8

Proposal

Continued from page A-1

in Alaska for six months and plans to stay is eligible for the dividend.

The new proposal comes less than a week after the Alaska Supreme Court struck down the state's local hire law. In a unanimous opinion, the court said attempts to give Alaskans priority for jobs on state-funded projects is discriminatory, and a violation of the U.S. Constitution.

Ron Zobel, the Anchorage attorney who successfully argued against the local hire law, said Thursday he has questions about tax incentives which would work against non-residents.

"I would not be willing to say that a court would uphold such a scheme, although in this instance the law is a little more complicated," Zobel said.

He said the state supreme court and other courts have continually ruled that efforts to keep jobs away from non-residents are against the law.

"That very purpose of preventing the disposition of jobs (to non-residents) is constitutionally unenforceable," Zobel said.

Faiks said she still supports current attempts in the legislature to rewrite the local hire law with new figures showing the drastic economic impact of non-resident hire in Alaska. But the tax-incentive proposal could be a more well-received approach, she said.

"I think the courts have said that you can't just force people to hire Alaskans," said Faiks.

The measure would also provide incentives for companies to train Alaska workers, she said.

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and encourage the training of state residents so that they are better qualified to compete for job opportunities. If the courts find that a portion of AS 43.20.036(j) or 43.20.041 is unconstitutional, the public interest requires that the remaining portions be implemented as fully as possible.

* Sec. 2. LEGISLATIVE FINDINGS. The legislature finds:

(1) the findings made in AS 36.10.005 continue to accurately describe the social, economic, and employment situation in the state;

(2) nonresident workers displace a substantial number of qualified, available, and unemployed residents, and the displacement is a peculiar source of the high rate of unemployment among state residents;

(3) high and persistent unemployment breeds severe social problems including alcoholism and domestic violence;

(4) the findings of the Department of Labor of the State of Alaska in its report entitled "Nonresidents Working in Alaska; A Special Study to Measure the Economic Impact of Nonresidents on Alaska's Economy

During Calendar Year 1984" support the need for a resident hiring preference;

(5) private sector investment in job training and vocational education programs will help qualify unemployed Alaskans for higher-skilled job opportunities.

* Sec. 3. AS 43.20.036 is amended by adding a new subsection to read:

(j) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability an Alaska hire credit under AS 43.20.041, for employment of state residents who satisfy the eligibility requirements, equal to the sum of

(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year;

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year; and

(3) 50 percent of the verifiable job training costs, as determined by regulations adopted by the commissioner of labor, to a maximum credit of $3,000 for each eligible first-year employee, and 25 percent of the verifiable job training costs to a maximum credit of $3,000 for each eligible second-year employee.

* Sec. 4. AS 43.20 is amended by adding a new section to read:

Sec. 43.20.041. ALASKA HIRE TAX CREDIT. (a) An employer is entitled to claim an Alaska hire credit under AS 43.20.036(j) if the employer employs an eligible state resident for at least six consecutive months for a tax credit on first-year wages and 18 consecutive

months for a tax credit on second-year wages. The credit for first-year wages may only be claimed in the tax year in which the resident completes 12 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first. The credit for second-year wages may only be claimed in the tax year in which the resident completes 24 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first.

(b) An employee is eligible under this section if the employee satisfies the residency requirements of AS 43.23.005(a) on the date immediately preceding the date of hire and on that date the employee was a resident of an underemployment area designated under (c) of this section and

(1) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them; or

(2) was not employed and had registered to find work with a public or private employment agency or a local hiring hall. [;]

[(3)] [(4)]

(c) The Department of Labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report may designate areas as underemployment areas. A designation is valid for two years immediately following a determination by the commissioner of labor. The commissioner of labor shall determine that an economic region of the state or the state as a whole is an underemployment area if the commissioner finds that

(1) the rate of unemployment within the area is

substantially higher than the national rate of unemployment;

(2) the lack of employment opportunities in the area has contributed to serious social or economic problems in the area; and

(3) employment of workers who are not residents is a peculiar source of the unemployment of residents of the area.

(d) An employer may not claim a tax credit under this section if the employer terminated the employment of a resident in the expectation of receiving a greater tax credit under AS 43.20.036(j). If an employer terminates the employment of a resident and then hires a resident to fill the position within three months after the termination and if the employer would be entitled to a greater tax credit under AS 43.20.036(j) for the subsequent employment, there is a presumption that the employer acted in expectation of a greater tax credit. The employer may overcome the presumption by showing by clear and convincing evidence that the employer terminated the employee for cause or that the employee left the employment voluntarily.

* Sec. 5. If a provision of AS 43.20.036(j) or 43.20.041, or the application of a provision to a person or circumstance, is held invalid, the remainder and the application to other persons or circumstances is not affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

* Sec. 6. This Act applies to employees first hired by an employer on or after January 1, 1986.

* Sec. 7. This Act is retroactive to January 1, 1986.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

CS SSSB 360(L&C): Sectional Analysis

Section 1) Purpose Section

Section 2) Legislative Findings relating to unemployment among state residents, social "costs" associated with unemployment, and the need for private sector investment in job training and voc ed programs to help qualify unemployed Alaskans for higher skilled job opportunities.

Section 3) Adds a new section which provides for an Alaskan hire tax credit for employers who satisfy specific requirements.

Tax credit to be computed as follows:

Tax credit equal to the sum of:

50% of the first year wages, or a maximum of $3,000 for each eligible employee;

25% of second year wages, up to $3,000 for each eligible employee;

50% of the verifiable job training costs, as determined by DOL regs, up to a max of $3,000 for first year employees; 25% of the job training costs for a maximum of $3,000 for each eligible second year employee.

Section 4) Entitlement for the Alaska Hire Tax Credit. An employer is entitled to a "first year" tax credit if he hires an eligible state resident for at least 6 consecutive months, and a "second year" tax credit, on second year wages, after 18 consecutive months of employment.

First year wage credits may only be claimed in the tax year in which the employee completes 12 months of consecutive employment or is terminated, whichever comes first.

Tax credit for second year wages may only be claimed in the tax year in which the employee completes 24 consecutive months of employment with the employer, or the resident employee is terminated, whichever comes first.

An employee is eligible under this section who satisfies the PFD residency requirements, (on the date immediately preceding the date of hire) and is a resident of an area which is defined as "underemployed". Employee must also meet the following additional requirements:

1) is either receiving UI benefits or would be recieving them if the resident had not exhausted them;

2) not employed but has registered for work;

DOL shall make an annual report designating underemployment areas

DOL to examine each economic region of the state to determine if an area is an "underemployment" area. The criteria for underemployment area is as follows:

1) resident unemployment is substantially higher than the national average;

2) lack of employment opportunities in the area has contributed to serious social and economic problems in the area.

3) nonresident hire is a peculiar source of high resident unemployment.

Employer may not claim a tax credit if the employer terminated an employee in expectation of getting a larger tax credit. Defines situations in which it can be "presumed" that the employer terminated an employee in hopes of getting a greater tax credit. Also provides a method of overturning such a "presumption", based on clear and convincing evidence.

Section 5) If a provision of this act is held invalid, the remainder shall be enforced to the greatest extent permissable under the US and Alaskan Constitutions.

Section 6) Application: Applies to employees first hired by an employer on or after January 1, 1986.

Section 7) Retroactive to January 1, 1986

Section 8) Immediate effective date.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smoly
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

365

AS21.27.200 DOCUMENT
CHAPTER = 21.27
SECTION = 21.27.200
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 27.
Agents, Brokers, Solicitors, and Adjusters.
CITATION Sec. 21.27.200.
CATCH LINE
BROKER'S AUTHORITY AND COMMISSIONS.
TEXT (a) A broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract. Nothing in this section is intended to alter the common law of agency as applied to transactions under this title.

(b) An insurer or agent has the right to pay to a broker licensed under this title, or under the laws of another state or a province, and the broker has the right to receive from the insurer or agent, the customary commissions upon insurances placed in the insurer by the broker.

HISTORY (Sec. 1 ch 120 SLA 1966)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : 377-022-86 SB365
Title : Broker is the Agent of Insurer for payment of premium.

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Comm. & Economic Dev
BRU : Insurance

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : John L. George Phone : 465-2515
Division : Insurance Date : 11/27/85

Approved by Commissioner : Loren H. Lounsbury Date : _____
Agency : Commerce and Economic Development

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor

Introduced: 1/27/86
Referred: Labor and Commerce

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 365

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

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

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section, a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract. Nothing in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) Notwithstanding a statute, or a provision in the policy or contract, to the contrary, a payment of premium to a broker is considered to be payment to the insurer.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Ford
3/26/86

Original sponsor: Rules/Governor

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 365 (L & C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

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

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section, a (1) [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract. (2) Nothing in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) Notwithstanding a statute, or a provision in the policy or contract to the contrary, payment of a premium to the broker is considered to be payment to the insurer, if the payment to the broker is supported by competent evidence.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c). Nothing in this subsection is intended to limit the right of the insurer to recover premium from the broker which the insurer has not received.

WORK DRAFT WORK DRAFT WORK DRAFT

Ford
4/2/86

Original sponsor: Rules/Governor

IN THE SENATE BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 365 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

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

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [. NOTHING] in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD
GOVERNOR

SB 365

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the authority of insurance brokers.

This bill will add a new AS 21.27.200(c), to provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. Upon payment, the person who made the payment to the broker is immediately covered by the policy. This will be true even if the broker fails to forward the premium to the insurance company.

This bill will offer insureds greater protection against disreputable brokers who collect premiums and then fail to place the actual insurance coverage.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

TRANSMITTAL LETTER

Department of Commerce & Economic Development / POSITION PAPER

SB 365: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

This is a Governor's bill and the department supports the bill. It would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority.

Alaska insurance law currently recognizes and licenses several types of insurance producer. These are agent, broker, solicitor, general agent, and surplus lines broker. Three of these, the agent, the solicitor of an agent, and the general agent, have a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent, solicitor under an agent, or general agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. It is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, but it would not be a strong argument and not uniformly applicable. This was recognized when the surplus lines model law was drafted by the National Association of Insurance Commissioners in 1983 and adopted in Alaska law in 1984. Alaska Statute 21.34.130 provides that collection of premium by a surplus lines broker is considered collection by the insurance company writing the coverage.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.

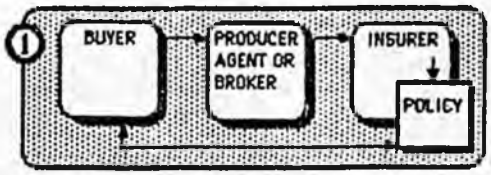
Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/28/86

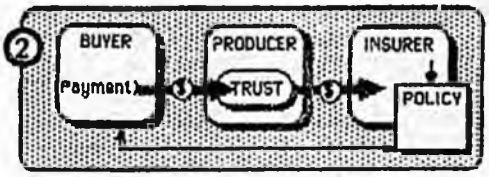
John L. George, Director of Insurance

Date: 2/28/86

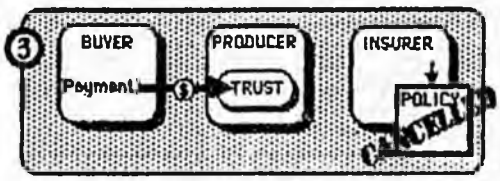
INSURANCE PURCHASE TRANSACTIONS COMMENTS FOR SB 365



In the typical insurance purchase transaction, the buyer (insured) places an order with a producer (agent or broker), who in turn places the order with an insurance company who issues the policy. See Figure 1.

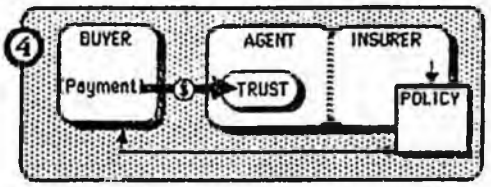


As part of the transaction, the prospective insured and the producer arrive at an agreement concerning the terms of payment for the insurance policy, usually paying in full within 30 days of effecting coverage. These funds, when paid to the producer, are received in a trust account, accounted for and paid to the appropriate party when due. This requirement is found in AS 21.27.360. The producer is responsible for payment of those monies to the insurer by 30 to 45 days following the end of the month in which the transaction was effective. That means that the money is not due to the insurance company from the producer until 31 to 75 days after the effective date of coverage and sometimes more. See Figure 2. Most transactions, except direct bill, occur in this manner.

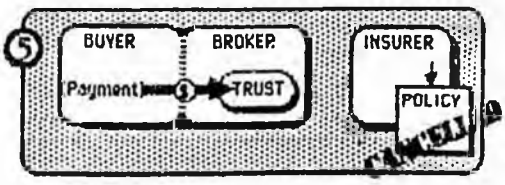


In some cases, the producer violates the law and misappropriates the premium monies to his own use and does not forward them to the insurance company. Normally, the insurance company will send a notice of cancellation for nonpayment of premium when that occurs. See Figure 3.

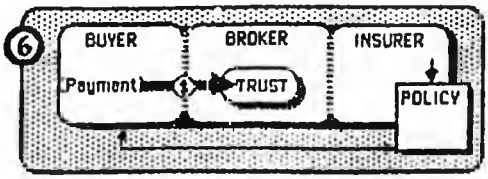
The buyer of insurance will usually not know whether his insurance person has a license as an insurance agent, insurance broker, or both. The buyer will rarely know which license of a producer is being used on a particular transaction. Further, the distinction between the two is unlikely to be understood by most buyers of insurance. Yet, this distinction may be and has been a critical point when a misappropriation occurs, because the public protection is different with the two types of license.



If the buyer conducts his transaction with a producer acting under his agents license, the buyer has protection from the misappropriation of the agent. Since the insurer has appointed the producer to act as its agent, any collection of premium IS collection by the insurer. Any misappropriation by the agent of an insurer will have no impact on the insurance policy. Thus any cancellation by the insurer would be rescinded as soon as the the insured had made payment to the agent. See Figure 4.



When the buyer conducts his transaction with a producer acting under his brokers license, the buyer has no protection from the misappropriation of the broker. The broker is the representative of the buyer, not the insurer. A misappropriation by the broker results in cancellation of any coverage. See Figure 5. During the past two years, there have been several massive misappropriations resulting in loss to buyers in excess of $500,000. Currently, several more similar situations are under investigation.



SB 365 proposes to provide protection to the buyer by establishing a special relationship between the broker and the insurer. The broker would be the agent of the insurer for the purpose of the collection of premium only. When the broker collects premium from the buyer for a policy he has placed, it would be the same as though the buyer had paid the insurer directly. The logic behind this proposal, is that the insurer is in a position to control the monetary actions of the broker or certainly influence them more readily than is possible for the buyer. See Figure 6. We urge passage of this legislation.

PREPARED BY: ALASKA DIVISION OF INSURANCE
March 24, 1986

* Need to move the "2nd" L&C CS.

THIS MEASURE WILL OFFER CONSUMERS (INSUREDS) GREATER PROTECTION AGAINST BROKERS WHO COLLECT MONEY FOR PREMIUMS AND THEN FAIL TO PLACE INSURANCE COVERAGE. RECENT BROKER INSOLVENCIES HAVE RESULTED IN SITUATIONS WHERE THE INSURED HAS PAID MONEY TO THE BROKER, AND THE BROKER HAS FAILED TO PAY THE PREMIUM TO THE INSURANCE COMPANY. THIS IN TURN HAS RESULTED IN THE CANCELLATION OF POLICIES, (FOR NONPAYMENT OF PREMIUM), AND THE CONSUMER HAS LOST BOTH THE INSURANCE COVERAGE AND HIS MONEY.

IF THERE ARE TECHNICAL QUESTIONS ABOUT THE L&C CS:

THE L&C CS MADE TECHNICAL CHANGES IN SECTION 1 TO CLARIFY THE EXEMPTION WHICH OCCURS IN SECTION 2 OF THE MEASURE. SECTION 2 OF THE MEASURE HAS BEEN REPHRASED TO CLARIFY THE RELATIONSHIP BETWEEN THE BROKER AND INSURER, I.E. COMPETENT EVIDENCE OF PAYMENT FOR SPECIFIC COVERAGE FROM A SPECIFICALLY NAMED INSURER.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 365: Summary

This bill will offer consumers (insureds) greater protection against brokers who collect money for premiums and then fail to place insurance coverage. Recent broker insolvencies have resulted in situations where the insured has paid money to the broker, and the broker has failed to pay the premium to the insurance company. This in turn has resulted in the cancellation of policies (for nonpayment of premium) and the insured has lost both the insurance coverage and his money.

The L&C CS separated the sentences in section 1 to clarify that the exemption referenced in (c) pertains to both (1) and (2).

Section 2) of the CS was also rephrased to make clear the relationship between the broker and the insurer. i.e. competent evidence of payment for specific coverage from a specifically named insurer.

CHAIRMAN'S INFORMATION: CSSB 365 (L&C)

1) BILL TITLE: "An act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective adte"

a) Introduced: Governor

b) Co-sponsors:

2) INTENT: This measure will offer consumers (insureds) greater protection against brokers who collect money for premiums and then fail to place insurance coverage.

The L&C CS separated the sentences in section 1 to clarify that the exemption referenced in (c) pertained to both (1) and (2).

Section 2) of the CS was also rephrased to make clear the relationship between the broker and the insurer. i.e. competent evidence of payment for specific coverage from a specifically named insurer.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Sen Rules

4) PUBLIC HEARINGS: Both L&C and Rules

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C CS

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

367

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

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

March 11, 1986

Mr. Michael Thill
Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Michael:

This is in response to your request for information on Senate Bill No. 367 and its companion bill, House Bill No. 466.

Senate Bill 367 would establish three new types of resident employment preferences on public construction projects to replace the current resident employment preference in AS 36.10.010 which has been found to be unconstitutional by the Alaska Supreme Court.

As the State agency charged with the administration and enforcement of resident hire preferences, the Department of Labor strongly supports the creation of these new employment preferences. The Department believes that because the new preference categories are much more narrowly focused than existing law, they stand a much better chance of being factually and legally supported in the event of a challenge. The preferences are specifically tailored to benefit only those unemployed and disadvantaged Alaskans who are most in need of employment.

Under this bill, the Department of Labor will have substantial research and enforcement responsibilities. In order to provide the necessary factual foundation to support each of the new employment preferences, the Department will have a continuing obligation to research and compile economic and statistical data on various aspects of employment and unemployment in Alaska. Because many of the criteria which would trigger application of the preferences cannot be substantiated with currently available information, the department's research staff will be required to go well beyond the bounds of its recent study on nonresidents working in Alaska.

Enclosed is a listing of the amendments which would be required to Senate Bill No. 367 to align it with the amendments that have so far been made or offered to House Bill No. 466. Of course, not all of these amendments were initiated by the Department of Labor. Nonetheless, we do support them and would recommend that they be incorporated into Senate Bill No. 367.

House Bill No. 466 is continuing to be refined so other amendments to it will no doubt follow.

Thank you for your interest.

Sincerely,

Eileen Plate
Special Assistant

EP:kmc
07001

Enclosure

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

CSSB 367: Sectional Analysis

Section 1) Purpose Section

Section 2) Legislative finding that the ratio of employees on a payroll who were refused or did not apply for a PFD to those who received a PFD is a reasonable indicator of the nonresidents/residents employed on a public works project.

When determining the nonresident/resident ratios on a public works project, the commsiioner may consider on site surveys, interviews, questionaires, examination of employees vehicle registrations, and payroll information.

The following are reasonable indicators of resident/nonresident ratios:

1) the ratio of applicants for UI benefits who list out of state residences/in state residences;

2) the ratio of UI covered employees who did not apply for or were denied PFD's/eligible employees for PFD's;

Further Legislative Findings:

1) the number of residents unable to find work is considerably higher than unemployment rates based on nationally accepted measures;

2) rural residents work search efforts do not meet the federal definitions of unemployment because of a continuing lack of opportunities in the rural areas of the state.

Section 3) An employer subject to the hiring requirements of this chapter may request assistance from DOL in locating qualified employees. After a request for assistance, DOL shall refer qualified applicants to the employer. Employer shall cooperate with the Department.

If DOL is unable to refer a sufficient number of qualified residents, the commissioner may approve the hiring of residents ineligible for the hiring preference and non residents to fill the work force needs.

Section 4) Commissioner of DOL shall adopt regs to encourage and require the hiring of residents to the maximum extent permitted by law.

Section 5) Adds new sections to 36.10

36.10.130: The AG and the Commissioner of DOL shall report every 2 years to the Legislature and the Governor on the status of employment in the state, the effect of nonresident employment on employment of residents, and methods to increase resident hire. Report to be submitted by Jan 31 of the first session of a legislature.

36.10.140: Eligibility for Preference:

A resident is eligible if he registers with DOL, and:

1) is receiving UI benefits or has exhausted them;

2) is not working and has registered to find work;

3) underemployed or marginally employed;

4) has completed an OJT program, approved by DOL; and is unemployed or marginally employed in relation to the skills acquired;

Requires employer, subject to this chapter, to certify with DOL that resident employees are eligible for the preference.

36.10.150: Determination of Underemployed Areas:

After the Commissioner of DOL determines that an economic region of the state, or the whole state, is an "underemployed area", for the next 2 years qualified local residents shall be granted work preference on projects within the local area.

Commissioner determines that an economic region is an underemployed area if:

1) Rate of unemployment exceeds the national rate of unemployment;

2) substantial number of residents desire work that would be done on a public works project;

3) lack of work has contributed to social and economic problems in the area;

4) employment of nonresidents results in unemployment of residents;

36.10.160: Economically Distressed Area Preference

After a determination by the Commissioner of DOL that an area is economically distressed, for the next 2 years qualified residents shall be given preference for at least 50% of work on a project which is located within the area. This preference applies to worker hours on a craft by craft basis.

Commissioner to determine economically distressed area:

1) unemployment in the area exceeds the national average by 5% points;

2) lack of employment results in social and economic problems;

3) nonresident employment results in unemployment for residents;

36.10.170 Economically Disadvantaged Minority Preference

After commissioner determines that minority residents of an economic region are economically disadvantaged, for the next 2 years they shall be given a preference for at least 25% of the work on each project within the area. Preference applies to worker hours on a craft by craft basis.

Commissioner to determine whether minority residents of an area are economically disadvantaged as follows:

1) civilian minority population of the area exceeds the average civilian minority population of the state;

2) either the % of unemployment of civilian minority residents of the area is 2 times the % of unemployment of nonminority residents, or the civilian minority population has suffered past economic discrimination;

3) economic disadvantage of minority residents has contributed to social and economic problems in the area.

4) employment of nonresidents results in the unemployment of civilian minority residents of the area;

Defines minority as a Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaska Native, as those terms are defined by the EEO Commission.

36.10.180: Projects Subject to Preference

1) contracts let by a municipality

2) construction project funded wholly or partly with state money

3) public works project under a grant to a municipality;

4) public works project under a grant to a named recipient;

5) public works project under a grant to an unincorporated community;

If the Governor declares an economic disaster then the preference under that chapter supercedes the preference for contracts awarded by the state.

Commissioner shall define the boundaries of an economic region or area where the preference applies;

36.10.190: Penalties

Person who makes a false sworn statement for eligibility certification is subject to criminal prosectuion for perjury. (Class B Felony)

Person who makes an unsworn falsification is subject to perjury (Class A misdemeanor);

In addition to criminal penalties, a person who is guilty of falsifying statements of certification, whose conviction is not reversed, shall forfeit future rights for employment preference under this chapter.

36.10.900: Effect of Judicial Decisions

If a provision of this chapter is held invalid, the remainder of this chapter shall not be affected by that holding. The remainder shall be enforced to the greatest extent possible under the Alaska and US Constitutions.

36.10.990: Definition "qualified"

Section 6) Adds definitions of "craft' and "resident"

Section 7) DOL to require compliance with this chapter for a municipal grant for a public works project;

Section 8) DOL to require compliance with this chapter on grants to named recipients;

Section 9) DOL to require compliance with this chapter for public works projects funded by grants to unincorporated communities;

Section 10) Provisions of this act do not apply to a contract entered into before the effective date of this act, unless the contracts require compliance with resident hire provisions that take effect during the term of the contract.

Section 11) repealer

Section 12) repealer

Section 13) Effective date for the repealer in section 12 conditioned upon actions of the court and its consideration of appeal on the Robison vs Francis decision.

Section 14) Sections 1-11 have an immediate effective date;

CHAIRMAN'S INFORMATION: CSSB 367(L&C)

1) BILL TITLE: "An act relating to Alaskan resident employment preference; and providing for an effective date."

a) Introduced: Faiks, Josephson, Sturgulewski, and V Fischer.

b) Co-sponsors:

2) INTENT: This measure establishes a resident hire preference for public works projects and details the eligibility criteria. The CS contains extensive Purpose and Findings sections and creates a series of "preference" situations. These include:

1) Eligibility for preference

2) Determination of "Underemployed Areas".

3) "Preference for Residents of Economically Distressed Areas".

4) "Preference for Economically Disadvantaged Minorities"

The CS details what projects will be subject to preference, and what the penalties shall be for false certification. The bill requires the Department of Labor to assist employers in locating qualified resident workers, and it contains an "escape" mechanism for those employers who are unable to fill their work force needs with residents.

CS incorporates amendments proposed by the Dept of Labor to put the bill in accord with the House version;

FISCAL NOTE: 2 from the Department of Labor $331.9 + $161.3 for a total of $493.2

3) ADDITIONAL REFERRALS: Judiciary, Rules

N.B. NEEDS A FINANCE REFERRAL

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt L&C CS

14-1651
Cramer
3/14/86 ✓

Original sponsors: Faiks, Josephson,
Sturgulewski and V.Fischer

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 367 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to Alaskan resident employment preference; and providing for an effective date."

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

* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and assist economically and socially disadvantaged residents. If the courts find that a portion of AS 36.10 is unconstitutional, the public interest requires that the remaining portions be implemented as fully as possible.

* Sec. 2. AS 36.10.005 is amended by adding new subsections to read:

(c) The legislature further finds that the ratio of employees on a certified payroll who did not apply for or were refused a permanent fund dividend under AS 43.23 to employees who were found eligible to receive a dividend is a reasonable but not exclusive indicator of the ratio of nonresident to resident employees on a public works project.

(d) When determining the ratio of nonresident to resident employees working on a public works project, the commissioner may consider information gathered from on-site surveys of public works projects including individual interviews, questionnaires, examination of the state of registration of vehicles owned or operated by employees, and other information acquired from inspection of certified payrolls.

(e) The legislature finds that the following factors are reasonable but not exclusive indicators of the ratio of nonresident to resident employees in the state:

(1) the ratio of applicants for unemployment insurance who list out-of-state residences to applicants who list residences in the state;

(2) the ratio of employees who are subject to unemployment insurance coverage and who did not apply for or were denied a permanent fund dividend to employees who were found eligible for a dividend.

(f) The legislature finds that

(1) the number of state residents who are unable to find work is considerably higher than is reflected by unemployment rates based on nationally accepted measures;

(2) many rural state residents who wish to work do not seek employment as frequently as necessary to meet federal definitions of unemployment because of continuing lack of employment opportunities in rural areas of the state.

* Sec. 3. AS 36.10.070 is repealed and reenacted to read:

Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An employer subject to hiring requirements under this chapter may request the Department of Labor to assist in locating qualified, eligible employees. After receiving a request for assistance, the department shall refer qualified, eligible, available residents to the employer to fill the employer's hiring needs. The employer shall cooperate with the department.

(b) If the department is unable to refer a sufficient number of qualified, eligible, available residents able to perform the work, the commissioner of labor may approve the hiring of residents who are not

eligible for preference and nonresidents for the balance of the request.

* Sec. 4. AS 36.10.075 is amended by adding a new subsection to read:

(b) The commissioner of labor shall adopt regulations to encourage and require the hiring of residents to the maximum extent permitted by law.

* Sec. 5. AS 36.10 is amended by adding new sections to read:

Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and the commissioner of labor shall report biennially to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report shall be submitted by January 31 of the first session of a legislature.

Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) A person is eligible for an employment preference under this chapter if the person registers as required by the Department of Labor, is a resident, and

(1) is receiving unemployment benefits under AS 23.20 or would be eligible to receive benefits but has exhausted them;

(2) is not working and has registered to find work with a public or private employment agency or a local hiring hall;

(3) is underemployed or marginally employed as defined by the department; or

(4) has completed a job-training program approved by the department and is either not employed or is engaged in employment that does not use the skills acquired in the job-training program.

(b) An employer subject to a resident hiring requirement under this chapter shall certify that persons employed as residents under the preference are eligible for the preference.

Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA. (a)

Immediately following a determination by the commissioner of labor that an economic region of the state is an underemployed area or that the state as a whole is an underemployed area, and for the next two years after the determination, qualified residents of the area who are eligible under AS 36.10.140 shall be given preference for work on each project under AS 36.10.180 that is wholly or partially sited within the area.

(b) The commissioner shall determine that an economic region of the state or the state as a whole is an underemployed area if the commissioner finds that

(1) the rate of unemployment within the area is substantially higher than the national rate of unemployment;

(2) a substantial number of residents in the area desire work in occupations that would be employed on a public works project;

(3) the lack of employment opportunities in the area has contributed to social or economic problems in the area; and

(4) employment of workers who are not residents is a peculiar source of the unemployment of residents of the area.

Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DISTRESSED AREAS. (a) Immediately following a determination by the commissioner that an economic region of the state is an economically distressed area, and for the next two years after the determination, qualified residents of the area who are eligible under AS 36.10.140 shall be given preference for at least 50 percent of employment on each project under AS 36.10.180 that is wholly or partially sited within the economically distressed area. The preference applies to worker hours on a craft-by-craft basis.

(b) The commissioner shall determine that an area is an economically distressed area if the commissioner finds that

(1) the unemployment rate in the area exceeds the national rate of unemployment by at least five percentage points;

(2) the lack of employment opportunities in the area has contributed to social or economic problems in the area; and

(3) employment of workers who are not residents is a peculiar source of unemployment of residents of the area.

Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINORITY RESIDENTS. (a) Immediately following a determination by the commissioner that the minority residents of an economic region are economically disadvantaged, and for the next two years after the determination, qualified minority residents of the area who are eligible under AS 36.10.140 shall be given preference for at least 25 percent of employment on each project under AS 36.10.180 that is wholly or partially sited within the area. The preference applies to worker hours on a craft-by-craft basis.

(b) The commissioner shall determine that minority residents of an area are economically disadvantaged if the commissioner finds that

(1) the civilian minority population of the area exceeds the average civilian minority population for the state;

(2) either the percent of unemployment of civilian minority residents of the area is at least two times the percent of unemployment of nonminority residents of the area or the civilian minority population of the area has suffered past economic discrimination;

(3) the economic disadvantage of civilian minority residents of the area has contributed to social or economic problems in the area;

(4) employment of workers who are not residents is a peculiar source of unemployment of civilian minority residents of the area.

(c) In this section, a person is considered to be a member of a minority if the person is black but not of Hispanic origin, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, as those terms are defined by the Equal Employment Opportunity Commission.

Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The preferences established in AS 36.10.150 - 36.10.170 apply to

(1) the performance of contracts let by a municipality for construction, repair, preliminary surveys, engineering studies, consulting, maintenance work, or any other retention of services necessary to complete a given project;

(2) a construction project that is partly or wholly funded by state money if the state or an agency of the state, a department, office, agency, state board, commission, regional school board with respect to an educational facility under AS 14.11.020, public corporation, or other organizational unit of or created under the executive, legislative or judicial branch of state government, including the University of Alaska and the Alaska Railroad Corporation, is a signatory to the construction contract;

(3) work performed on a public works project under a grant to a municipality under AS 37.05.315;

(4) work performed on a public works project under a grant to a named recipient under AS 37.05.316; and

(5) work performed on a public works project under a grant to an unincorporated community under AS 37.05.317.

(b) If the governor has declared an area to be an area impacted by an economic disaster under AS 44.33.285, then the preference for residents of the area established under AS 44.33.285 - 44.33.310 supercedes the preference under AS 36.10.150 and 36.10.160 for contracts awarded by the state.

(c) The commissioner shall define the boundaries of an economic region or an area within which a preference applies.

Sec. 36.10.190. PENALTIES. (a) A person who makes a false sworn statement in connection with a certification of eligibility for an employment preference under this chapter is subject to criminal prosecution for perjury as provided in AS 11.56.200.

(b) A person who makes an unsworn falsification, with the intent to mislead a public servant in the performance of a duty, in connection with a certification of eligibility for an employment preference under this chapter, is subject to criminal prosecution as provided in AS 11.56.210.

(c) In addition to criminal penalties imposed by state law, if a person is convicted of a crime in connection with a false statement made in a certification required under AS 36.10.140, and the conviction is not reversed, that person shall forfeit all future rights to eligibility for an employment preference under this chapter.

Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of this chapter, or the application of a provision to a person or circumstance, is held invalid, the remainder of this chapter and the application to other persons or circumstances shall not be affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

Sec. 36.10.990. DEFINITION. In this chapter "qualified" means possesses the requisite education, training, skills, or experience to perform the work.

* Sec. 6. AS 36.95.010 is amended by adding new paragraphs to read:

(9) "craft" means a recognized construction trade;

(10) "resident" means a person who establishes residency

under AS 01.10.055.

* Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:

(e) The Department of Labor shall require a municipality awarded a grant for a public works project under (a) of this section to comply with the hiring preferences under AS 36.10.150 - 36.10.170 for employment generated by the grant.

* Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:

(b) The Department of Labor shall require a recipient awarded a grant for a public works project under (a) of this section to comply with the hiring preferences under AS 36.10.150 - 36.10.170 for employment generated by the grant.

* Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:

(b) The Department of Labor shall require the qualified incorporated entity awarded a grant or agents or contractors with whom the Department of Community and Regional Affairs contracts under (a) of this section to comply with the requirements of AS 36.10.150 - 36.10.-170 for employment generated by the grant or contract if the grant or contract is for a public works project.

* Sec. 10. The provisions of this Act do not apply to a contract entered into before the effective date of this Act unless the contract includes a provision requiring compliance with laws regarding the hiring of Alaska residents that take effect during the term of the contract.

* Sec. 11. AS 36.95.010(4) and (5) are repealed.

* Sec. 12. AS 36.10.010 is repealed.

* Sec. 13. Section 12 of this Act takes effect April 17, 1986, or immediately, in accordance with AS 01.10.070(c), whichever is later, if the final decision of the Alaska Supreme Court in Robison v. Francis, File No. S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to the United States Supreme Court. If the decision is submitted for review

but the United States Supreme Court declines to accept review, then sec. 12 of this Act takes effect on the date of the order of the United States Supreme Court declining to accept review. If the United States Supreme Court accepts review, then sec. 12 of this Act takes effect on the date of a final decision of the United States Supreme Court affirming the decision of the Alaska Supreme Court.

* Sec. 14. Sections 1 - 11 of this Act take effect immediately in accordance with AS 01.10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 3/17/86

REQUEST

Bill/Resolution No. : CSSB 367 (L&C)
Title : "An Act relative to Alaskan resident employment preference..."

Sponsor : Faiks, Josephson, et. al.
Requestor : Labor and Commerce
Date of Request : 3/14/86

FISCAL DETAIL

Agency Affected : Labor
Allocation/Appropriation : Administrative Services

Components : Special Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		108.5	108.5	108.5	108.5	108.5
TRAVEL						
CONTRACTUAL		218.2	225.5	246.2	242.5	251.2
SUPPLIES		1.2	1.2	1.3	1.3	1.4
EQUIPMENT		4.0	.8	.9	.9	1.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	331.9	336.0	356.9	353.2	362.1
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		331.0	336.0	356.9	353.2	362.1
FEDERAL FUNDS						
OTHER						
TOTAL	0	331.9	336.0	356.9	353.2	362.1

POSITIONS :

FULL-TIME	0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Judy G. Knight
Judy G. Knight, Director
Division : Administrative Services
Phone : 465-2720
Date : 3/17/86

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 3/17/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 367 (L&C)

This legislation requires a biennial report that designates eligible areas. Determination that "employment of workers who are not residents is a peculiar source of the unemployment of residents of the area" will require this department to collect extensive occupational information by resident status. Two statistical clerks and one Labor Economist II would complete the report. Request for New Position forms are attached which explain position duties and costs.

The contractual services costs are detailed as follows:

Description	FY 87	FY 88	FY 89	FY 90	FY 91
Key Entry	$ 40.0	$ 60.0	$ 62.0	$ 64.0	$ 66.0
DP operations	120.0	135.0	150.0	153.0	156.0
DP applications	30.0	4.5	4.7	4.9	5.1
Printing	4.5	2.0	4.5	2.1	5.0
Phone (Toll service)	12.0	12.5	13.0	6.0	6.2
Equipment lease	8.0	8.3	8.7	9.0	9.4
Equipment maintenance	.8	.8	.9	.9	.9
Training, shipping, & misc.	2.9	2.4	2.4	2.6	2.6
	$218.2	$225.5	$246.2	$242.5	$251.2

The following assumptions were made in preparing this fiscal note:

1. An annual report designating underemployment areas would be completed by January 31 of the first session of each legislature year beginning in 1987.

2. On-going collection of occupational titles would be required from employers, and extensive computer matching would be necessary to determine residency status.

3. Beginning in 1988, occupational displacement information would be highlighted requiring continuation of both the existing occupational information budget levels, and the additional information on occupational titles.

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 367

4. The collection of occupational titles from firms will be phased in over a three year period. Industries identified as having the highest dollar payments to nonresidents in 1984 would be targeted first:

   First Year - construction, oil and gas mining, and food processing;

   Second Year - all first year industries plus business services, local government, miscellaneous services, eating and drinking places, air transportation, and state government; and

   Third Year - all industries.

5. In addition to the occupational information, reporting of the residency status by industry and area would be necessary.

6. All minority demographic and economic information, except that required from contractors on state funded construction projects, will be derived from the decennial census. No costs are included for this in this fiscal note.

7. Work would begin on the first report July 1, 1986.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp
Labor Economist II	1	16A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12.0		Juneau		

Type of Expenditure		Amount
1	2	3
Salary	33,660	
Benefits	10,779	
Premium Pay		
Other		
Total Personal Services		44,439
Travel		0
Contractual		1,000
Commodities		500
Equipment		2,000
Other		
Total Cost		47,939

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	47,939
	I/A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This position will have primary responsibility for the analysis of data and preparation of the annual resident hire report. Specifically the duties would include:

1. Coordinate the collection and monitor the validity of relevant resident hire related statistics from other agencies including the Department of Revenue and the Division of Labor Standards and Safety.
2. Coordinate the updating and crossmatching of resident hire related data files on the mainframe computer with the analyst programmer.
3. Analyze microcomputer resident hire data bases to generate resident hire related tables and reports. The reports will include data relating to occupational displacement of nonresidents by census area and other related economic statistics associated with issue of resident hire.
4. Supervise the Statistical Clerk that will prepare the basic resident hire data tables for the report.
5. Prepare the annual resident hire report.

Contractual services costs include phone, training, and other miscellaneous items.

Request For New Position

Agency Labor
BRU Administrative Services
Component Special Services

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Govt.	Approv.	Disapp
Statistical Clerk	2	8B	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12.0		Juneau		

Type of Expenditure	1	2	Amount 3
Salary		47,160	
Benefits		16,914	
Premium Pay			
Other			
Total Personal Services			64,074
Travel			0
Contractual			2,700
Commodities			700
Equipment			2,000
Other			
Total Cost			69,474

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	69,474
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

Justification

One position will support a labor economist to prepare an annual report on the effect of nonresident employment on Alaskans. Secondarily this position would assist on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:

1. Update tables of economic information by resident status.
2. Load information into spreadsheets to show occupational displacement of residents by nonresidents.
3. Assist in the quality control of the occupational displacement of results by nonresident workers.

The other position will work on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:j

1. Review detailed edit listings.
2. Update edit data files.
3. Call employers for clarification when necessary.
4. Correct occupational titles.
5. Prepare computer summaries of results.

Contractual costs for these positions include phone, training, and other miscellaneous items.

Request For New Position

Agency Labor
BRU Administrative Services
Component Special Services

Revised Date

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 367 (L&C)
Title : "An Act relating to Alaskan resident employment preference.."

Sponsor : Faiks, Josephson, et. al.
Requestor : Labor and Commerce
Date of Request : 3/14/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Wage & Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		114.8	101.7	105.8	110.0	114.4
SUPPLIES						
EQUIPMENT		46.5	Ø	Ø	Ø	Ø
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	Ø	161.3	101.7	105.8	110.0	114.4
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	Ø	161.3	101.7	105.8	110.0	114.4
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	161.3	101.7	105.8	110.0	114.4

POSITIONS :

FULL-TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Bob Bacolas, Director — Phone : 465-4870
Division : Labor Standards & Safety — Date : 3/14/86

Approved by Commissioner : Jim Robison — Date : 3/14/86
Agency : Labor

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS for SB 367 (L&C)

Currently the Division of Labor Standards and Safety (LS&S) receives weekly certified payroll documents for all public construction projects as required in AS 36. Under this bill the department will use the public construction certified payroll forms as source documents to determine the legal domicile of persons employed on public construction projects. In certain cases the department will also be scrutinizing the ethnic makeup of the employees to determine the utilization of minorities.

These certified payroll documents are now collected and summarized manually by the Division of Labor Standards and Safety. This fiscal note will fund the automation of the certified payroll documents. This will allow a more timely determination of residency status of persons employed on public construction projects. This automation will also assist in providing a list of employees with incomplete or questionable data. The existing investigative staff will then resolve the questionable items through personal contact with employees and employers.

Reports will be developed for the Research and Analysis Section to allow them to do crossmatch reviews with other data sources (e.g. Permanent Fund Dividend).

Specific costs are as follows:

Contractual Services

Professional fees for data entry	80.0
DP Applications/programming development (one time only $17.0)	20.0
DP Support (misc. chargeback)	3.0
DP Telecommunications	.8
Communications (phone and postage)	5.0
Equipment repair and maintenance	5.0
Other miscellaneous	1.0
	114.8

Equipment (one time only)

4 workstations	21.6
3 printers	5.4
3 modems	15.0
75 Mega byte disk pack	1.5
Telecommunication software	3.0
	46.5
Total	161.3

A contract for data entry services will be required for entry of all payroll records into the new automated system.

Equipment upgrades and improved telecommunication links between Juneau, Fairbanks and Anchorage will allow online review and audit of certified payroll data in each location. The equipment will be a one time purchase. Other cost are projected to future years at 4% inflation.

AS11.56.200 DOCUMENT
CHAPTER = 11.56
SECTION = 11.56.200
TITLE = 11
HEADINGS TITLE 11.
Criminal Law.
CHAPTER 56.
Offenses Against Public Administration.
ARTICLE 2.
Perjury and Related Offenses.
CITATION Sec. 11.56.200.
CATCH LINE
PERJURY.
TEXT (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
(b) In a prosecution under this section, it is not a defense that
(1) the statement was inadmissible under the rules of evidence; or
(2) the oath or affirmation was taken or administered in an irregular manner.
(c) Perjury is a class B felony.
HISTORY (Sec. 6 ch 166 SLA 1978)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS11.56.210 DOCUMENT
CHAPTER = 11.56
SECTION = 11.56.210
TITLE = 11
HEADINGS TITLE 11.
Criminal Law.
CHAPTER 56.
Offenses Against Public Administration.
ARTICLE 2.
Perjury and Related Offenses.
CITATION Sec. 11.56.210.
CATCH LINE
UNSWORN FALSIFICATION.
TEXT (a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement

which the person does not believe to be true

(1) in an application for a benefit; or

(2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor.

HISTORY (Sec. 6 ch 166 SLA 1978)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS35.10.070 DOCUMENT
CHAPTER = 35.10
SECTION = 35.10.070
TITLE = 35
HEADINGS TITLE 35.
Public Buildings, Works, and Improvements.
CHAPTER 10.
Public Works.
ARTICLE 1.
Public Works Planning and Construction.
CITATION Sec. 35.10.070.
CATCH LINE
RESEARCH ON PUBLIC WORKS.
TEXT The department may gather, investigate and compile information concerning the use, construction and maintenance of public works, the practices and methods of efficient organization, financing and such other information, data and statistics of the state and the extent of natural resources of building materials in the state. The department shall disseminate this information, together with recommendations it considers advisable.
HISTORY (Sec. 6 art III title III ch 152 SLA 1957)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS36.10.005 DOCUMENT
CHAPTER = 36.10
SECTION = 36.10.005
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 10.
Employment Preference.
CITATION Sec. 36.10.005.
CATCH LINE
LEGISLATIVE FINDINGS.
TEXT (a) The legislature finds that

(1) because of its unique climate and its distance from the contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;

(2) the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;

(3) the rate of unemployment among residents of the state is one of the highest in the nation;

(4) the state has one of the highest ratios of nonresident to resident workers in the nation;

(5) the state has a compelling interest in reducing the level of unemployment among its residents;

(6) the construction industry in the state accounts for a substantial percentage of the available employment;

(7) construction workers receive a greater percentage of all unemployment benefits paid by the state than is typical of other states;

(8) historically, the rate of unemployment in the construction industry in the state is higher than the rate of unemployment in other industries in the state;

(9) it is appropriate for the state to consider the welfare of its residents when it funds construction activity;

(10) it is in the public interest for the state to allocate public funds for capital projects in order to reduce unemployment among its resident construction workers;

(11) the influx of nonresident construction workers contributes to or causes the high unemployment rate among resident construction workers because nonresident workers compete with residents for the limited number of available construction jobs;

(12) nonresident workers displace a substantial number of qualified, available, and unemployed Alaska workers on jobs on state funded public works projects;

(13) the state has a special interest in seeing that the benefits of state construction spending accrue to its residents;

(14) the natural resources of land owned by the state belong to the citizens of the state;

(15) Alaskans have chosen to use the majority of the royalties derived from the state's natural resources to fund state government;

(16) the vast majority of the state's revenue is derived from natural resource income rather than from other forms of taxation;

(17) because the state has no personal income tax or sales tax, nonresident workers use services provided by the state but do not contribute fairly to the costs of those services; and

(18) Alaskans, more than the residents of other states, suffer economically when nonresidents displace qualified residents since resident workers contribute local taxes as well as their share of the royalties from natural resources.

(b) The legislature further finds that

(1) the state and its political subdivisions, when acting as a market participant in funding public works projects, should give Alaska residents an employment preference to promote a more stable economy;

(2) the state and its political subdivisions have a duty of loyalty to their citizens and should fulfill this

duty by giving residents preference for employment on public works projects they fund;

(3) there is a legitimate and compelling governmental interest and that the public health and welfare will suffer if state residents are not afforded employment preference in state-funded construction-related work.

HISTORY (Sec. 1 ch 69 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS36.05.010 DOCUMENT
CHAPTER = 36.05
SECTION = 36.05.010
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 05.
Wages and Hours of Labor.
CITATION Sec. 36.05.010.
CATCH LINE
WAGE RATES ON PUBLIC CONSTRUCTION.
TEXT A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages for each pay period is that contained in the latest determination of prevailing rate of wages issued by the Department of Labor before the end of the pay period.
HISTORY (Sec. 14-2-1 ACLA 1949; am sec. 1 ch 142 SLA 1972; am sec. 1 ch 89 SLA 1976)

END OF DOCUMENT

AS36.95.010 DOCUMENT
CHAPTER = 36.95
SECTION = 36.95.010
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 95.
General Provisions.
CITATION Sec. 36.95.010.
CATCH LINE
DEFINITIONS.
TEXT In this title unless the context requires otherwise

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(2) "laborer, mechanic, or field surveyor" means a person who engages in work which is basically physical or unskilled in nature; or who engages in work, requiring the

use of tools or machines, which basically consists of the shaping and working of materials into some type of structure, machine or other object; or who engages in outdoor tasks related to the operation of findings and delineating contour, dimensions, position, topography, as of any part of the earth's surface, by preparation of measured plan or description of any area or other portion of country or of road or line through any area or other portion of country;

(3) "public construction" or "public works" means 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, a political subdivision of the state, or a regional school board;

(4) "qualified" means a person who, except for apprentices, is a journeyman mechanic in that person's particular trade;

(5) "resident" means a person who maintains a domicile in the state; domicile is the true and permanent home of a person from which that person has no present intention of removing and to which that person intends to return whenever away from that home;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision;

(7) "wages" includes fringe benefits;

(8) "retainage" means money withheld from a contractor until completion of a contract or satisfaction of other contingency as evidenced by approval of the applicable pay estimate.

HISTORY (Sec. 16 ch 142 SLA 1972; am sec. 3 ch 89 SLA 1976; am sec. 16 ch 147 SLA 1978; am sec. 2 ch 85 SLA 1982; am sec. 92 ch 6 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS37.05.315 DOCUMENT
CHAPTER = 37.05
SECTION = 37.05.315
TITLE = 37
HEADINGS TITLE 37.
Public Finance.
CHAPTER 05.
Fiscal Procedures Act.
ARTICLE 4.
General Provisions.
CITATION Sec. 37.05.315.
CATCH LINE
GRANTS TO MUNICIPALITIES.
TEXT (a) When an amount is appropriated or allocated as a grant to a municipality, the Department of Administration shall promptly notify the municipality of the availability of the grant. When the Department of Administration receives an

agreement executed by the municipality which provides that the municipality (1) will spend the grant for the purposes specified in the appropriation or allocation; (2) will allow, on request, an audit by the state of the uses made of the grant; and (3) assures that, to the extent consistent with the purpose of the appropriation or allocation, the facilities and services provided with the grant will be available for the use of the general public, the Department of Administration shall pay the grant directly to the municipality. The agreement executed by a municipality under this section shall be on a form furnished by the Department of Administration and shall be executed within 60 days after the effective date of the appropriation or allocation.

(b) An appropriation or allocation for a grant to a municipality for construction of a public facility lapses if substantial, ongoing work on the project has not begun within five years after the effective date of the appropriation or allocation.

(c) In accepting a grant of money for construction of a public facility, a municipality covenants with the state that it will operate and maintain the facility for the practical life of the facility and that the municipality will not look to the state to operate or maintain the facility or pay for its operation or maintenance. This requirement does not apply to a grant of money for repair or improvement of an existing facility operated or

AS37.05.315 DOCUMENT

maintained by the state at the time the grant is accepted if the repair or improvement for which the grant is made will not substantially increase the operating or maintenance costs to the state.

(d) Not less than 20 percent of a grant shall be paid to a municipality within 10 days of the effective date of the agreement under (a) of this section. The remainder of the grant shall be paid either in monthly installments equal to the amount of grant money the municipality expended in the previous month or in a lump sum as determined by the Department of Administration.

HISTORY (Sec. 1 ch 156 SLA 1980; am sec. 1 ch 4 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS37.05.316 DOCUMENT
CHAPTER = 37.05
SECTION = 37.05.316
TITLE = 37
HEADINGS TITLE 37.
Public Finance.
CHAPTER 05.
Fiscal Procedures Act.
ARTICLE 4.
General Provisions.
CITATION Sec. 37.05.316.
CATCH LINE

GRANTS TO NAMED RECIPIENTS.

TEXT When an amount is appropriated or allocated to a department as a grant for a named recipient which is not a municipality, the department to which the appropriation or allocation is made shall promptly notify the named recipient of the availability of the grant and request the named recipient to submit a proposal to provide the goods or services specified in the appropriation act, or both, for which the appropriation or allocation is made. At the same time, the department may issue a request for proposals from other qualified persons to provide the same goods or services, or both, in the same area. The department shall contract with the named recipient unless the Office of the Governor, with due regard for any local expertise or experience among those making proposals, determines that an award of the contract to a different party would better serve the public interest. If the contract is awarded to another party than that named by the legislature, the basis of that action shall be stated in writing at the time the grant is issued and a copy of the written statement shall be sent to the Legislative Budget and Audit Committee. A contract shall be executed within 60 days after the effective date of the appropriation or allocation. The purchase of the goods or services, or both, shall be in accordance with AS 37.05.230(1)(B).

HISTORY (Sec. 2 ch 4 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS37.05.317 DOCUMENT= 1 OF 1 PAGE = 1 OF 2

CHAPTER = 37.05
SECTION = 37.05.317
TITLE = 37

HEADINGS TITLE 37.
Public Finance.
CHAPTER 05.
Fiscal Procedures Act.
ARTICLE 4.
General Provisions.

CITATION Sec. 37.05.317.

CATCH LINE
GRANTS TO UNINCORPORATED COMMUNITIES.

TEXT When an amount is appropriated or allocated as a grant under this section to an unincorporated community, it shall be disbursed as follows:

(1) Within 45 days after the effective date of the appropriation or allocation, the Department of Community and Regional Affairs shall notify the governing body of the unincorporated community, if any, that a grant is available.

(2) The Department of Community and Regional Affairs shall determine if there is a qualified incorporated entity in the community area that will agree to receive the grant and administer it, subject to terms generally applicable to private grantees. If there is more than one such entity, the Department of Community and Regional Affairs shall select the

most qualified and the grant shall be awarded to that incorporated entity for the purposes specified in the appropriation act. However, the Department of Community and Regional Affairs shall give preference to a nonprofit corporation organized by a community for receipt of the grant.

(3) If there is no incorporated entity qualified to receive the grant, the Department of Community and Regional Affairs shall administer the program as specified in the appropriation act directly or through agents or contractors with whom it may contract in the community area.

HISTORY (Sec. 2 ch 4 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS44.33.285 DOCUMENT
CHAPTER = 44.33
SECTION = 44.33.285
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 5.
Areas Impacted by Economic Disaster.
CITATION Sec. 44.33.285.
CATCH LINE
ACTION BY GOVERNOR.
TEXT The governor may, upon recommendation of the commissioner of commerce and economic development, designate by proclamation an area as an area impacted by an economic disaster. When an area is so designated, the legislature may appropriate money for assistance grants and the governor may recommend in the governor's budget submission that capital projects planned for the area be accelerated and that new projects be funded for the area. The proclamation may provide that waivers of capital projects requirements, as authorized in AS 44.33.300, become effective only to the extent set out in the proclamation.
HISTORY (Sec. 1 ch 277 SLA 1976; am sec. 35 ch 113 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

ALASKA LEGISLATURE COMMITTEE FILES 1969-1970

4191 SLAB SB 377

1621

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Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

377

Department of Commerce & Economic Development / POSITION PAPER

SB 377: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; and providing for an effective date."

This bill is focused on a variety of tort reforms. The position of the department on these issues is neutral.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/28/86

John L. George, Director of Insurance

Date: 2/28/86

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSSB 377(L&C): Sectional Analysis

Section 1) Creates a new chapter which provides for limits on amounts and recoveries through civil action.

CAP ON NON ECONOMIC DAMAGES

09.17.010: limits non economic damages to $250,000 for each claim based on a separate incident or injury.

09.17.020: Requires that verdicts be itemized between economic and noneconomic loss. Further provides that economic losses include certain categories of compensation and that a verdict must determine compensation for existing and future losses.

STRUCTURED SETTLEMENTS/PERIODIC PAYMENTS

09.17.030 Requires that an award of future damages, <u>at the request of a judgement creditor</u>, in excess of $50,000 must be paid to the maximum extent feasible by periodic payments rather than lump sum payments. Requires the court to make specific findings regarding periodic payment, and provides the court may require the judgement debtor to post security. A judgement requiring periodic payment must specify the recipient, amount, interval between payments, and number of payments to be made. Judgement may be modified only if the creditor dies, in which case the payments go to persons the judgement creditor owed a duty of support prior to death. Allows the court to penalize a judgement debtor who fails to make required payments. Upon expiration of the obligation, any security given reverts to the judgement debtor. The judgement may be recorded but does not become a lien before payment is due.

Modification in the latest CS <u>removes</u> an interest rate provision for increasing periodic payments at an annual rate of 5% from the date that judgement is entered.

09.17.040 Establishes by statute the rule already established by case law, that contributory fault diminishes recovery, but does not bar a plaintiff from seeking compensation.

SEVERAL LIABILITY

09.17.050 Requires the jury or court to apportion damages between each party to the lawsuit, if there is more than one party to the action. Each party is assigned a percentage of fault, and damages are awarded based on the percentage. Changes the existing rule of joint and several liability to one of several liability only.

SEVERAL LIABILITY

09.17.060 Provides that if a person settles a claim, the settlement does not release anyone else unless the agreement so provides. However the sum of the total claim is reduced by the amount of the released persons share of the damages determined under 09.17.050 (several liability).

09.17.900: Definition of "fault"

MANDATORY ARBITRATION

Section 2) Requires personal injury actions seeking damages less than $100,000, exclusive of costs, interest, and attorney fees, must first be arbitrated under 09.43, before a lawsuit can be commenced.

PREJUDGEMENT INTEREST

Section 3) Provides that if a party defending against a claim makes an offer of settlement that is more favorable than the judgement finally entered, the claim shall bear no interest from the date of offer of settlement, to the date of judgement.

Section 4) MANDATORY ARBITRATION provides that an award made under arbitration may be appealed to the proper court.

60 DAY APPEAL TO THE MANDATED ARBITRATION

Section 5) Provides that an appeal of an arbitration award must be filed within 60 days of an award. Also requires a new trial of the issues, if an appeal is filed.

AMENDMENT TO CIVIL RULE 82

Section 6) Provides that attorney fees c not be awarded unless the court finds malice ad faith, or reckless disregard of the rig s of another in causing the injury. The curre.t CS also defines "reckless disregard of the rights o another".

Section 7) amendment on mandatory arbitration following from section 4)

Section 8) Repeals current 09.16, the existing chapter concerning contribution among joint torfeasors

Section 9) provides for the amendment of Civil Rule 49; requires the jury to answer special questions on the amount of damages, percentages of fault, and to itemize the verdict between economic and noneconomic damage.

Section 10) Provides for the amendment of Civil rule 52; requires court to make findings regarding amount of damages and percentage of fault to be allocated among parties.

Section 11) Provides for the amendment of Civil Rule 58; requires the court to include a specific item in its judgement.

Section 12) Provides for the amendment of Civil Rule 68; on prejudgement interest;

Section 13) Provides for the amendment of Civil Rule 82; would only allow for attorneys fees and costs in an action after findings of bad faith, malice, or reckless disregard for another in causing the injury.

Section 14) Applicability section

Section 15) Review requirements on the effect of tort reform changes. Legislature requests the Governor to direct the Division of Insurance to assess the effects of of this act on premiums being charged for liability insurance. Reports would be due on March 1st, 87, 88, and 89.

Section 16) Immediate effective date.

AMENDMENT 2

Page 2, line 23, through page 3, line 2, delete all material and insert the following:

Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence. Fifty percent of any punitive or exemplary damages that may be adjudged against the party defending the claim shall be awarded to the benefit of the state and when paid deposited in the general fund.

(b) The amount of punitive damages awarded to the state shall be considered a part of the amount recovered by the claiming party for purposes of calculating an award of attorney fees.

(c) Except for purposes of seeking execution on a judgment, the state may not bring or be joined in an action based on punitive damages that may be awarded under this section.

2. Punitive Damages. Throughout the debate in the legislature, the major issue surrounding punitive damages was whether to raise the level of standard of proof from a "preponderance of the evidence" to "clear and convincing evidence" and also whether those damages (since they are like fines) should go to the state or to the individual who is injured. The compromise embodied in this amendment provides that the standard of proof will be raised to "clear and convincing evidence" and that 50 percent of the damages will go to the state, thus providing public benefits while at the same time retaining an incentive for an injured party to sue for the damages.

The Senate Finance version went at the problem from a wholly different direction. It provides that the plaintiff keeps all of the punitive damages, but he can only receive them if he can prove that the conduct complained of was malicious, deliberate or constitutes a felony. This is a major change in present law.

Punitive damages under present law can be awarded when a party's conduct is in "reckless disregard" of the rights of others, in addition to acts done with malice toward another. The Senate Finance bill also requires a pre-hearing on whether punitive damages may even be claimed. This adds an unnecessary and costly step to the process.

The ultimate effect of these two changes from existing law is that no one will ever claim them, even in circumstances where the defendant's behavior is outrageous or reckless.

This amendment does not change the general circumstances under which punitive damages may be awarded but does affect who gets them.

AMENDMENT 3

Page 4, line 2 through page 5, line 7, delete all material.

3. Periodic Payments. To understand the periodic payments section of the bill, you have to understand how damages are computed in tort actions under present law. Under present law, if a 55 year old man is permanently disabled and he is making $10,000 a year, his wage loss is figured at his present salary over his remaining useful work life, i.e. $10,000 for 10 years or $100,000. No account is made under the present system of the fact that due to inflation, the injured party would probably be making $15,000 in the sixth year, $17,500 in the eighth year and more in the tenth year. In addition, no account is taken of the fact that through normal advancement in his job he would receive higher pay over time than he received when he was injured. The theory is that if you give him now all the money he would have earned over time computed on the basis of his present salary, he can invest that sum and stay even with inflation and what he might have earned through advancement.

Other states reduce the lump sum to present value since it is compensation for future losses. But other states compute future wage loss to reflect inflation and advancement. Alaska law does not permit reduction of awards for future wage loss to present value. But it also does not allow awards to reflect inflation or future advancement.

Thus, the results in Alaska are roughly equal to those in other states.

The section of the Senate Finance bill regarding periodic payments really has nothing to do with the fact that payments are spread out over time. Most large settlements today are paid periodically as a voluntary matter. What this section really does is to vastly reduce the amount injured parties receive by paying over time only a fraction of the amounts they would have received in wages if they had not been injured, even with the cost of living adjustment provided for in the bill. For example, information from the firm of Legal Ecomonic Evaluations of Palo Alto indicates that if a jury awards $500,000 to a 20 year old person with a future life expectancy of 59.5 years, the base annual periodic payment would be $8,403 ($500,000 divided by 59.5 years). Assuming 3% annual inflation, the value of the $500,000 judgment is effectively reduced under the mandatory periodic payments provisions of this bill to $129,082, the amount that needs to be invested now to produce $8,403 per year. Similarly, a $500,000 award to a 50 year old with a life expentancy of 31.07 years, would mean a base annual periodic payment of $16,092. Again assuming 3% inflation, the value of the $500,000 judgment in

that case is effectively reduced under this bill to $215,028.

This amendment eliminates the provision on periodic payments since they are already being done voluntarily and the only real reason for treating the subject in the legislation is to reduce the amount that plaintiffs would receive over time. If people are not allowed to show a jury what their future damages really would have been, it makes no sense to reduce the award for future damage to "present value." The system we have is not broken; it does not require fixing in this area.

AMENDMENT 4

Page 7, line 28, delete "several liability" and insert, "joint and several liability, except that a party who is allocated less than 50 percent of the total fault of all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party."

4. Apportionment of Damages. Under present law, if three defendants are held liable for an injury to a plaintiff, they each bear full responsibility for the total amount of the damage. This is "joint and several" liability. If one of the defendants pays the full amount of the judgment he has rights under law to contribution from the other defendants. If one of those defendants has no money, the courts uniformly conclude that the problem of insolvency is one that the remaining defendants who contributed to the accident will have to bear, rather than reducing the award of an injured plaintiff who is not at fault. That is, the defendants will get less contribution from one another, but the plaintiff's award will not be reduced.

Some persons are concerned that juries are holding some defendants, like states and cities with "deep pockets," only minimally liable, but the result under joint and several liability is that they end up getting stuck for the whole judgment. Accordingly, this amendment seeks a compromise which would insure that defendants only minimally liable would not be held responsible for all the damage, while still providing a cushion for innocent parties who were seriously injured by multiple defendants, some of whom might be insolvent. The amendment continues the rule of joint and

several liability but changes it to provide that a defendant is never more responsible in damages than for twice his percentage of fault for the injury. If in fact then a defendant is only liable for five percent of an injury, he cannot be held responsible for more than ten percent of the total damages. Only if a defendant is responsible for at least 50 percent of the injury can he be held liable for the entire amount of the damages. Even then, he would still have the right to seek contribution from the other defendants who were also liable for the injury.

The proposed Senate Finance version would limit responsibility on the basis of "several" liability by saying that you are responsible in damages only for your percentage of fault as decreed by a jury. Even if the allocation of fault were an exact science, which it is not, this proposal would entirely shift the risk of insolvent defendants from the remaining defendants who are at fault to a plaintiff who is blameless and injured. The issue here is not whether a party should be responsible in damages for more than their percent of fault; the issue is when a party who is at fault has no money, who should bear the risk -- the plaintiff or other parties at fault. This amendment attempts to compromise that issue; the Senate Finance version, which to

our knowledge has been adopted no where in the U.S., does not.

AMENDMENT 7

Page 10, line 24, through page 11, line 2, delete all material and renumber remaining sections accordingly.

Page 11, line 29 through page 12, line 3, delete all material and renumber remaining sections accordingly.

7. Award of Attorney Fees - Rule 82. This amendment would delete the provision concerning the award of attorney fees, and thus leaves in place Rule 82 of the Supreme Court which permits the court to award at least a token fee to the victorious party in a lawsuit. Rule 82 is the major weapon against persons who file frivolous lawsuits. Coverage for Rule 82 - attorney fees is generally exempted in most insurance policies already so its existence or nonexistence will have no impact on insurance rates. The Senate Finance version eliminates Rule 82 for negligence and product liability actions. This means if some one sues you without cause for negligence and you win, you will not be able to receive even minimal help in paying your attorney fees. The Senate Judiciary version is clearly better.

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FORMERLY
alaska state hospital association

May 1, 1986

Honorable Fred Zharoff
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Zharoff:

Senate Bill 377 is before you on the Senate Floor for consideration. The Health Association of Alaska respectfully requests your favorable consideration of this legislation.

We support the Finance Committee substitute which has been reported to the floor. We request that you vote for it in its present form and vote against any amendments. It is a bill which is not everything we would like to see, but it is in a form that we believe will assist markedly in relieving the crisis in liability insurance availability while being sensitive to the rights of individuals.

We believe that the fiscal note that was prepared for the Finance Committee demonstrates the potential savings from the reforms included in SB 377. Additionally, it should be noted that in California where many of these reforms have been applied to medical cases there has been a measurable difference in both price and availability of insurance.

Thank you for your consideration in this matter.

Sincerely,

Dennis L. DeWitt
Executive Director

P1 lines 18&19
P2 lines 6&7
P6 lines 24-27

Original sponsors: Kelly, Abood,
Bennett, et al

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE SENATE

CS FOR SENATE BILL NO. 377 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58, 68, and 82; and providing for an effective date."

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

* Section 1. AS 09 is amended by adding a new chapter to read:

CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover damages for personal injury based on negligence, damages for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life and other nonpecuniary damage.

(b) The amount of damages awarded by a court or jury under (a) of this section may not exceed $250,000 for each claim based on a separate incident or injury.

Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, and economic loss shall be further itemized by category. Itemization of economic loss by category includes: (1) amounts intended to compensate for reasonable expenses that have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or other health or rehabilitative services, drugs, and therapy; (2) amounts intended to compensate for lost wages or loss of earning capacity; and (3) all other economic losses claimed by the plaintiff or granted by

the jury. A verdict shall further determine the amounts intended to compensate for injury or losses incurred before the verdict and amounts intended to compensate for losses that will be incurred in the future.

Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover damages for personal injury, the court shall, at the request of a judgment creditor, enter judgment ordering that amounts awarded for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. The court may require a judgment debtor to post security adequate to assure full payment of future damages awarded by judgment.

(b) A judgment ordering payment of future damages by periodic payments shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. The court that rendered the original judgment, may, upon petition of a party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(c) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments under (b) of this section, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

(d) Following expiration of all obligations specified in the periodic payment judgment, the obligation of the judgment debtor to make further payments shall cease and security given under (a) of this section shall revert to the judgment debtor.

(e) A certified copy of a judgment or order of the court issued under this section may be recorded under AS 09.30.010, but may not become a lien upon real property before the date that payment becomes due.

Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.-060, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.060; for this purpose the court may determine that two or more persons are to be treated as a single party.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault

and the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.060, and enter judgment against each party liable on the basis of rules of several liability. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.050.

Sec. 09.17.900. DEFINITIONS. In this chapter

(1) "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability; the term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages; legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault;

(2) "future damages" includes damages for future medical

treatment, care or custody; loss of future earning capacity; or any future noneconomic loss.

* Sec. 2. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED. A person may not bring an action for damages based on personal injury when the amount in controversy is less than $100,000, exclusive of costs, interest and attorney fees, unless the controversy is first arbitrated under AS 09.43.

* Sec. 3. AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a claim may serve upon the party making the claim [ADVERSE PARTY] an offer to allow judgment to be entered in complete satisfaction of the claim against that defending party for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the claiming [ADVERSE] party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the claiming party [OFFEREE] than the offer, the claim may not bear interest from the date of the offer to the date of judgment [THE INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

(1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

(2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

* Sec. 4. AS 09.43.110 is amended to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless

(1) within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130; or

(2) an appeal is taken under AS 09.43.160(c).

* Sec. 5. AS 09.43.160 is amended by adding a new subsection to read:

(c) An award made as a result of arbitration required by AS 09.-10.075 may be appealed to the proper court. The appeal shall be filed within 60 days after notice of an award is made under AS 09.43.080. The court shall grant a trial de novo if an appeal is filed under this subsection.

* Sec. 6. AS 09.60.010 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the court may not award attorney fees to a prevailing party in an action for damages to the person or to property in the absence of a specific finding that the party at fault acted with malice, in bad faith, or with reckless disregard of the rights of another in causing the injury. In this subsection, "reckless disregard of the rights of another" means a lack of consideration of the rights of another in a manner that is reasonably likely to cause damage to the person or property of another.

* Sec. 7. AS 22.10.020(d) is amended to read:

(d) The superior court has jurisdiction in all matters appealed

to it (1) from a subordinate court; (2) by a party to an arbitration award under AS 09.43.160(c); [,] or (3) an administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and 09.16.060 are repealed.

* Sec. 9. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatories listed in AS 09.17.050 regarding the amount of damages and the percentages of fault to be allocated among the parties and to itemize the verdict regarding economic and noneconomic loss as specified in AS 09.17.020.

* Sec. 10. AS 09.17.050 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

* Sec. 11. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

* Sec. 12. AS 09.30.065 as amended by sec. 3 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest stops accruing from the date of an offer by a defending party that a claiming party fails to increase at judgment.

* Sec. 13. AS 09.60.010 as amended by sec. 6 of this Act has the effect of amending Alaska Rule of Civil Procedure 82 by allowing costs and attorney fees in an action for personal injury or property damage only after a specific finding of malice, bad faith, or reckless disregard of the rights

of another in causing the injury.

* Sec. 14. APPLICABILITY. Sections 1 - 7 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 15. LEGISLATIVE INTENT. The legislature intends that the changes made in this Act to the code of civil procedure should be reviewed three years after the effective date of the Act, to determine if additional modifications or changes are necessary. To achieve effective review, the legislature requests that the governor direct the division of insurance to monitor the effect of this Act on premiums being charged for liability insurance and to report the effect to the legislature no later than March 1, in 1987, 1988, and 1989.

* Sec. 16. This Act takes effect immediately in accordance with AS 01.-10.070(c).

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P2 IN 11-12
P8 IN 3-10

Victim rights
Frivolous lawsuits
Punitive damages
Regulation of C
2) - cancellation
6) disclosure

Forde
3/14/86

Original sponsors: Kel , Abood, Bennett, et al

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 377 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58, 68, and 82; and providing for an effective date."

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

* Section 1. AS 09 is amended by adding a new chapter to read:

CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover damages for personal injury based on negligence, damages for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life and other nonpecuniary damage.

(b) The amount of damages awarded by a court or jury under (a) of this section may not exceed $250,000. per incident / per suit

Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, and economic loss shall be further itemized by category. Itemization of economic loss by category includes: (1) amounts intended to compensate for reasonable expenses that have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or other health or rehabilitative services, drugs, and therapy; (2) amounts intended to compensate for lost wages or loss of earning capacity; and (3) all other economic losses claimed by the plaintiff or granted by the jury. A verdict shall further determine the amounts intended to

Re-phrased plus substantive change on interest payments;

compensate for injury or losses incurred before the verdict and amounts intended to compensate for losses that will be incurred in the future.

Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover damages for personal injury, the court shall, at the request of a party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. A judgment ordering the payment of future damages by periodic payments must also require that each periodic payment be increased at the annual rate of five percent from the date that judgment is entered. The court may require a judgment debtor to post security adequate to assure full payment of future damages awarded by judgment.

(b) A judgment ordering payment of future damages by periodic payments shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. The court that rendered the original judgment, may, upon petition of a party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(c) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments under (b) of this section, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the

judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

(d) Following expiration of all obligations specified in the periodic payment judgment, the obligation of the judgment debtor to make further payments shall cease and security given under (a) of this section shall revert to the judgment debtor.

(e) A certified copy of a judgment or order of the court issued under this section may be recorded under AS 09.30.010, but may not become a lien upon real property before the date that payment becomes due.

Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.060, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.060; for this purpose the court may determine that two or more persons are to be treated as a single party.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.060, and enter judgment against each party liable on the basis of rules of several liability. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.050.

Sec. 09.17.900. DEFINITIONS. In this chapter

(1) "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability; the term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages; legal requirements of causal relation apply both to fault as the basis for

liability and to contributory fault;

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4

* Sec. 3. AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a claim may serve upon the party making the claim [ADVERSE PARTY] an offer to allow judgment to be entered in complete satisfaction of the claim against that defending party for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the claiming [ADVERSE] party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the claiming party [OFFEREE] than the offer, the claim may not bear interest from the date of the offer to the date of judgment [THE

INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

(1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

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* Sec. 4. AS 09.43.110 is amended to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless

(1) within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130; or

(2) an appeal is taken under AS 09.43.160(c).

* Sec. 5. AS 09.43.160 is amended by adding a new subsection to read:

(c) An award made as a result of arbitration required by AS 09.-10.075 may be appealed to the proper court. The appeal shall be filed within 60 days after notice of an award is made under AS 09.43.080. The court shall grant a trial de novo if an appeal is filed under this subsection.

* Sec. 6. AS 09.60.010 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the court may not award attorney fees to a prevailing party in an action for damages to the person or to property in the absence of a specific finding that the party at fault acted with malice, in bad faith, or with reckless disregard of the rights of another in causing the injury.

* Sec. 7. AS 22.10.020(d) is amended to read:

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award under AS 09.43.160(c); [,] or (3) an administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

13

* Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and 09.16.060 are repealed.

14

* Sec. 9. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatories listed in AS 09.17.050 regarding the amount of damages and the percentages of fault to be allocated among the parties and to itemize the verdict regarding economic and noneconomic loss as specified in AS 09.17.020.

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* Sec. 10. AS 09.17.050 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

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* Sec. 11. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

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* Sec. 12. AS 09.30.065 as amended by sec. 3 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest stops accruing from the date of an offer by a defending party that a claiming party fails to increase at judgment.

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* Sec. 13. AS 09.60.010 as amended by sec. 6 of this Act has the effect of amending Alaska Rule of Civil Procedure 82 by allowing costs and attorney fees in an action for personal injury or property damage only after a specific finding of malice, bad faith, or reckless disregard of the rights

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* Sec. 14. APPLICABILITY. Sections 1 - 7 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 15. LEGISLATIVE INTENT. The legislature intends that the changes made in this Act to the code of civil procedure should be reviewed three years after the effective date of the Act, to determine if additional modifications or changes are necessary. To achieve effective review, the legislature requests that the governor direct the division of insurance to monitor the effect of this Act on premiums being charged for liability insurance and to report the effect to the legislature no later than March 1, in 1987, 1988, and 1989.

* Sec. 16. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Av. Gross

Ford
3/7/86 ✓

Original sponsors: Kelly, Abood,
Bennett, et al

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 377 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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(b) The amount of damages awarded by a court or jury under (a) of this section may not exceed $250,000.

Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, and economic loss shall be further itemized by category. Itemization of economic loss by category includes: (1) amounts intended to compensate for reasonable expenses that have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or other health or rehabilitative services, drugs, and therapy; (2) amounts intended to compensate for lost wages or loss of earning capacity; and (3) all other economic losses claimed by the plaintiff or granted by the jury. A verdict shall further determine the amounts intended to

compensate for injury or losses incurred before the verdict and amounts intended to compensate for losses that will be incurred in the future.

Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover damages for personal injury, the court shall, at the request of a party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. In entering judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for future damages. The court may require a judgment debtor to post security adequate to assure full payment of future damages awarded by judgment.

(b) A judgment ordering payment of future damages by periodic payments shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. The court that rendered the original judgment, may, upon petition of a party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(c) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments under (b) of this section, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the

judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

(d) Following expiration of all obligations specified in the periodic payment judgment, the obligation of the judgment debtor to make further payments shall cease and security given under (a) of this section shall revert to the judgment debtor.

(e) A certified copy of a judgment or order of the court issued under this section may be recorded under AS 09.30.010, but may not become a lien upon real property before the date that payment becomes due.

Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.060, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.060; for this purpose the court may determine that two or more persons are to be treated as a single party.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.060, and enter judgment against each party liable on the basis of rules of several liability. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.050.

Sec. 09.17.900. DEFINITIONS. In this chapter

(1) "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability; the term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages; legal requirements of causal relation apply both to fault as the basis for

liability and to contributory fault;

(2) "future damages" includes damages for future medical treatment, care or custody; loss of future earning capacity; or any future noneconomic loss.

* Sec. 2. AS 09.16 is amended by adding new sections to read:

Sec. 09.16.011. RIGHT TO CONTRIBUTION. (a) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than that tortfeasor's pro rata share of the common liability, and the total recovery of that tortfeasor is limited to the amount paid in excess of the pro rata share. A tortfeasor is not compelled to make contribution beyond the tortfeasor's pro rata share of the entire liability.

(c) There is no right of contribution in favor of a tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to an amount paid in a settlement that is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in

excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair a right of subrogation arising from any other relationship.

(f) This chapter does not impair the right of indemnity under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(g) This chapter does not apply to breaches of trust or of other fiduciary obligation.

Sec. 09.16.021. PRO RATA SHARES. In determining the pro rata shares of tortfeasors in the entire liability

(1) their relative degrees of fault may not be considered;

(2) if equity requires, the collective liability of some as a group constitutes a single share; and

(3) principles of equity applicable to contribution generally shall apply.

Sec. 09.16.031. ENFORCEMENT. (a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, a separate action by that tortfeasor to enforce contribution must be commenced within one year

after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless that tortfeasor has either

(1) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced the action for contribution within one year after payment; or

(2) agreed while action is pending against the tortfeasor to discharge the common liability and has within one year after the agreement paid the liability and commenced the action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right to contribution.

Sec. 09.16.041. RELEASE OR COVENANT NOT TO SUE. When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any

amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Sec. 09.16.051. UNIFORMITY OF INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate as far as practical the general purpose of making uniform the law of those states that enact it.

Sec. 09.16.061. SHORT TITLE. This chapter may be cited as the Alaska Uniform Contribution among Tortfeasors Act.

* Sec. 3. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED. A person may not bring an action for damages based on personal injury when the amount in controversy is less than $100,000, exclusive of costs, interest and attorney fees, unless the controversy is first arbitrated under AS 09.43.

* Sec. 4. AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a claim may serve upon the <u>party making the claim</u> [ADVERSE PARTY] an offer to allow judgment to be entered in complete satisfaction of the claim <u>against that defending party</u> for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the <u>claiming</u> [ADVERSE] party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted

within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the claiming party [OFFEREE] than the offer, the claim may not bear interest from the date of the offer to the date of judgment [THE INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

(1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

(2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

* Sec. 5. AS 09.30.065 is repealed and reenacted to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the offeree than the offer, the interest awarded under AS 45.45.010(a) and

accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate shall be reduced by two percent a year;

(2) if the offeree is the party defending against the claim, the interest rate shall be increased by two percent a year.

* Sec. 6. AS 09.43.110 is amended to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless

(1) within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130; or

(2) an appeal is taken under AS 09.43.160(c).

* Sec. 7. AS 09.43.110 is repealed and reenacted to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130.

* Sec. 8. AS 09.43.160 is amended by adding a new subsection to read:

(c) An award made as a result of arbitration required by AS 09.-10.075 may be appealed to the proper court. The appeal shall be filed within 60 days after notice of an award is made under AS 09.43.080. The court shall grant a trial de novo if an appeal is filed under this subsection.

* Sec. 9. AS 09.60.010 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the court may not award attorney fees to a prevailing party in an action for damages to the

person or to property in the absence of a specific finding that the party at fault acted with malice, in bad faith, or with reckless disregard of the rights of another in causing the injury.

* Sec. 10. AS 22.10.020(d) is amended to read:

(d) The superior court has jurisdiction in all matters appealed to it (1) from a subordinate court; (2) by a party to an arbitration award under AS 09.43.160(c); [,] or (3) an administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 11. AS 22.10.020(d) is repealed and reenacted to read:

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 12. The following laws are repealed: AS 09.10.075; AS 09.17.-010, 09.17.020, 09.17.030, 09.17.040, 09.17.050, 09.17.060, 09.17.900; AS 09.43.160(c); and AS 09.60.010(b).

* Sec. 13. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and 09.16.060 are repealed.

* Sec. 14. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatories listed in AS 09.17.050 regarding the amount of damages and the percentages of fault to be allocated among the parties and to itemize the verdict regarding economic and

noneconomic loss as specified in AS 09.17.020.

* Sec. 15. AS 09.17.050 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

* Sec. 16. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

* Sec. 17. AS 09.30.065 as amended by sec. 4 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest stops accruing from the date of an offer by a defending party that a claiming party fails to increase at judgment.

* Sec. 18. AS 09.60.010 as amended by sec. 9 of this Act has the effect of amending Alaska Rule of Civil Procedure 82 by allowing costs and attorney fees in an action for personal injury or property damage only after a specific finding of malice, bad faith, or reckless disregard of the rights of another in causing the injury.

* Sec. 19. APPLICABILITY. Sections 1, 3, 4, 6, 8, 9, and 10 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 20. APPLICABILITY. Sections 2, 5, 7, and 12 of this Act apply to all causes of action accruing on or after July 1, 1989.

* Sec. 21. Sections 2, 5, 7, 11, and 12 of this Act take effect July 1, 1989.

* Sec. 22. Sections 1, 3, 4, 6, 8, 9, 10, and 13 - 19 of this Act take effect immediately in accordance with AS 01.10.070(c).

CHAPTER = 09.30
SECTION = 09.30.065
TITLE = [illegible]
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 30.
Judgments.
ARTICLE 1.
Judgments.
CITATION Sec. 09.30.065.
CATCH LINE
OFFERS OF JUDGMENT.
TEXT On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the offeree than the offer, the interest awarded under AS 45.45.010(a) and accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate shall be reduced by two percent a year;

(2) if the offeree is the party defending against the claim, the interest rate shall be increased by two percent a year.

HISTORY (Sec. 3 ch 107 SLA 1980; am sec. 1 ch 48 SLA 1981)

CHAPTER = 09.43
SECTION = 09.43.010
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.010.
CATCH LINE
ARBITRATION AGREEMENTS VALID; APPLICATION OF ARTICLE.
TEXT A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 - 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute.
HISTORY (Sec. 1 ch 232 SLA 1968; am sec. 3 ch 113 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.020
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.020.
CATCH LINE

PROCEEDINGS TO COMPEL OR STAY ARBITRATION.

TEXT (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.030
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.030.
CATCH LINE
APPOINTMENT OF ARBITRATORS BY COURT.
TEXT If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.040
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.040.
CATCH LINE
MAJORITY ACTION BY ARBITRATORS.
TEXT The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 - 09.43.180.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.050
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.050.
CATCH LINE
HEARING.
TEXT Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.060
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.060.
CATCH LINE
REPRESENTATION BY ATTORNEY.
TEXT A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.070
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.070.
CATCH LINE
WITNESSES, SUBPOENAS, DEPOSITIONS.
TEXT (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.080
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.080.
CATCH LINE
AWARD.
TEXT (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.090
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.090.
CATCH LINE
MODIFICATION OF AWARD BY ARBITRATORS.
TEXT On application to the arbitrators by a party or, if an application to the court by a party is pending under AS 09.43.110 - 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 - 09.43.130.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.100
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.100.
CATCH LINE
FEES AND EXPENSES OF ARBITRATION.
TEXT Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.110
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.110.
CATCH LINE
CONFIRMATION OF AN AWARD.
TEXT Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.120
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.120.
CATCH LINE
VACATING AN AWARD.
TEXT (a) On application of a party, the court shall vacate an award if

(1) the award was procured by fraud or other undue means;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;

(3) the arbitrators exceeded their powers;

(4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.130
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.130.
CATCH LINE

MODIFICATION OR CORRECTION OF AWARD BY COURT.

TEXT (a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.140
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.140.
CATCH LINE
JUDGMENT OR DECREE ON AWARD.
TEXT Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.150
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.150.
CATCH LINE
APPLICATIONS TO COURT.
TEXT An application to the court under AS 09.43.010 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.
HISTORY (Sec. 1 ch 232 SLA 1968)
END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.160
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.160.
CATCH LINE
APPEALS.
TEXT (a) An appeal may be taken from
(1) an order denying an application to compel arbitration made under AS 09.43.020;
(2) an order granting an application to stay arbitration made under AS 09.43.020(b);
(3) an order conforming or denying confirmation of an award;
(4) an order modifying or correcting an award;
(5) an order vacating an award without directing a rehearing; or
(6) a judgment or decree entered under the provisions of AS 09.43.010 - 09.43.180.
(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.170
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.170.
CATCH LINE
COURT, JURISDICTION.
TEXT In AS 09.43.010 - 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 - 09.43.180 and to enter judgment on an award under the agreement.
HISTORY (Sec. 1 ch 232 SLA 1968)
END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.180
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.180.
CATCH LINE
SHORT TITLE.
TEXT AS 09.43.010 - 09.43.180 may be cited as the Uniform Arbitration Act.
HISTORY (Sec. 1 ch 232 SLA 1968; am sec. 1 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.190
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.190.
CATCH LINE
ARBITRATION UNDER COURT RULES.
TEXT The supreme court may provide by rule for compulsory arbitration of a cause of action filed in a superior or district court, demanding only a money judgment, when it appears that the demand on the cause of action is for $3,000 or less, exclusive of costs, or when it appears to the trial court as a result of a pretrial conference that the amount which will be recovered on the cause is not likely to exceed $3,000.
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.200
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.200.
CATCH LINE
APPOINTMENT AND COMPENSATION OF ARBITRATOR.
TEXT Arbitration of actions shall be by either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court as provided by its rules.
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.210
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.210.
CATCH LINE
PRACTICE AND PROCEDURE.
TEXT The practice and procedure for conducting arbitration, the powers of the arbitrators and the assessment of costs shall be prescribed by the court rules.
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.220
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.220.
CATCH LINE
JUDGMENTS AND APPEALS.
TEXT Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules.
HISTORY (Sec. 2 ch 94 SLA 1972)
R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 09.60
SECTION = 09.60.010
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 60.
Costs.
CITATION Sec. 09.60.010.
CATCH LINE
COSTS ALLOWED PREVAILING PARTY.
TEXT Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case.
HISTORY (Sec. 5.14 ch 101 SLA 1962)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 09.16
SECTION = 09.16.010
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Pr-edure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.010.
CATCH LINE
RIGHT TO CONTRIBUTION.
TEXT (a) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than that tortfeasor's pro rata share of the common liability, and the total recovery of that tortfeasor is limited to the amount paid in excess of the pro rata share. No tortfeasor is compelled to make contribution beyond the tortfeasor's pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This chapter does not impair any right of indemnity under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(g) This chapter does not apply to breaches of trust or of other fiduciary obligation.

HISTORY (Sec. 1 ch 80 SLA 1970; am sec. 13 ch 59 SLA 1982)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.020
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.020.
CATCH LINE
PRO RATA SHARES.
TEXT In determining the pro rata shares of tortfeasors in the entire liability

(1) their relative degrees of fault shall not be considered;

(2) if equity requires, the collective liability of some as a group constitutes a single share; and

(3) principles of equity applicable to contribution generally shall apply.

HISTORY (Sec. 1 ch 80 SLA 1970)
END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.030
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.030.
CATCH LINE
ENFORCEMENT.
TEXT (a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by that tortfeasor to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless that tortfeasor has either

(1) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced the action for contribution within one year after payment; or

(2) agreed while action is pending against the tortfeasor to discharge the common liability and has within one year after the agreement paid the liability and commenced the action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right to contribution.

HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.040
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.040.
CATCH LINE
RELEASE OR COVENANT NOT TO SUE.
TEXT When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.050
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.050.
CATCH LINE
UNIFORMITY OF INTERPRETATION.
TEXT This chapter shall be so interpreted and construed as to effectuate as far as practical the general purpose of making uniform the law of those states that enact it.
HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.060
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.060.
CATCH LINE
SHORT TITLE.
TEXT This chapter may be cited as the Alaska Uniform Contribution among Tortfeasors Act.
HISTORY (Sec. 1 ch 80 SLA 1970)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 22.10
SECTION = 22.10.020
TITLE = 22
HEADINGS TITLE 22.
Judiciary.
CHAPTER 10.
The Superior Court.
CITATION Sec. 22.10.020.
CATCH LINE
JURISDICTION OF THE SUPERIOR COURT.
TEXT (a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including probate and guardianship of minors and incompetents. Except for a petition for injunctive relief under AS 25.35.010 or 25.35.020, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court.

(b) The jurisdiction of the superior court extends over the whole of the state.

(c) The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court.

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

(e) An appeal to the superior court is a matter of right, but an appeal from a subordinate court may not be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive. The state has no right to appeal in criminal cases, except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient.

(f) An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to reduce the sentence. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(g) In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

(h) The superior court, in an action for divorce, separation, or child support, affecting inalienable stock in a corporation organized under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act), may order the stock transferred to the spouse, a child, or a guardian or custodian for a child, but may not order it sold on the open market or transferred to other persons.

(i) The superior court is the court of original jurisdiction over all causes of action arising under the provisions of AS 18.80. A person who is injured or aggrieved by an act, practice or policy which is prohibited under AS 18.80 may apply to the superior court for relief. The person aggrieved or injured may maintain an action on behalf of that person or on behalf of a class consisting of all persons who are aggrieved or injured by the act, practice or policy giving rise to the action. In an action brought under this subsection, the court may grant relief as to any act, practice or policy of the defendant which is prohibited by AS 18.80, regardless of whether each act, practice or policy, with respect to which relief is granted, directly affects the plaintiff, so long as a class or members of a class of which the plaintiff is a member are or may be aggrieved or injured by the act, practice or policy. The court may enjoin any act, practice or policy which is illegal under AS 18.80 and may order any other relief, including the payment of money, that is appropriate.

HISTORY (Sec. 17(1) (2) ch 50 SLA 1959; am sec. 2 ch 117 SLA 1969; am sec. 1 ch 240 SLA 1970; am sec. 3 ch 70 SLA 1972; am sec. 8 ch 12 SLA 1980; am sec. 78 ch 6 SLA 1984; am sec. 2 ch 17 SLA 1985)

END OF DOCUMENT

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4192 SLAB SB 379 - SB 384

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

379

CHAIRMAN'S INFORMATION: SB 379

1) BILL TITLE: "An act relating to the premium tax for domestic insurers"

a) Introduced: By Governor

b) Co-sponsors:

2) INTENT: Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while non domestic are required to pay 3%. A recent US Supreme Court case raised consitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

FISCAL NOTE: 0 operating; FY87 1,142.3 generated in revenue

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

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85 US 76, 81
87 S Ct 271]
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S Ct 1004] (1965);
F2d 340, 345–346
5 [56 L Ed 2d 84,
359, 372, n 4, 74
73 (Marshall, J.,

METROPOLITAN LIFE INSURANCE COMPANY, et al., Appellants

v

W. G. WARD, Jr., et al.

470 US —, 84 L Ed 2d 751, 106 S Ct —

[No. 83-1274]

Argued October 31, 1984. Decided March 26, 1985.

Decision: State statute taxing out-of-state insurance companies at a higher rate than domestic insurance companies held not to have legitimate state purpose for purposes of equal protection clause.

SUMMARY

A group of foreign insurance companies filed claims with Alabama state insurance authorities contending that an Alabama statute imposing a substantially higher gross premiums tax on out-of-state insurance companies than on domestic companies, and allowing the out-of-state companies to reduce their tax rate by investing certain percentages of their total assets in specified state assets and securities, violated the equal protection clause as applied to them. The Circuit Court for Montgomery County, Alabama, upheld the denial of these claims, ruling that the statute was rationally related to the legitimate state purposes of encouraging the formation of new domestic insurance companies and encouraging capital investment in the state by foreign insurance companies. The Court of Civil Appeals of Alabama affirmed as to the legitimacy of these purposes but remanded for an evidentiary hearing on the issue of rational relationship. The insurance companies waived their right to such a hearing and appealed as to the legitimacy of the stated legislative purposes. The Supreme Court of Alabama denied certiorari, and judgment was subsequently entered in favor of the state and the intervenor domestic companies.

On appeal, the United States Supreme Court reversed and remanded. In an opinion by POWELL, J., joined by BURGER, Ch. J., and WHITE, BLACKMUN, and STEVENS, JJ., the court held that the Alabama statute could not be sustained under the equal protection clause ruling that the promotion of domestic business within a state by discriminating against foreign corpora-

tions that wish to compete by doing business there is not a legitimate state purpose, and that the encouragement of capital investment in state assets and securities also is not a legitimate state purpose when furthered by discrimination.

O'CONNOR, J., joined by BRENNAN, MARSHALL, and REHNQUIST, JJ., dissented, expressing the view that the majority opinion was unsupported by precedent and distorted the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

36 Am Jur 2d, Foreign Corporations §§ 227, 228; 43 Am Jur 2d, Insurance § 38

Am Jur Proof of Facts

Am Jur Trials

USCS, Constitution, 14th Amendment

US L Ed Digest, Constitutional Law § 369; Insurance § 6

L Ed Index to Annos, Equal Protection of the Laws; Insurance; Taxation

ALR Quick Index, Equal Protection of Law; Insurance; Taxes

Federal Quick Index, Equal Protection of the Laws; Insurance; State Taxes

Auto-Cite®: Any case citation herein can be checked for form, parallel references, later history and annotation references through the Auto-Cite computer research system.

ANNOTATION REFERENCES

Supreme Court's application of Fourteenth Amendment's equal protection clause to foreign corporations. 49 L Ed 2d 1296.

Validity, construction, and application of McCarran-Ferguson Act (15 USCS §§ 1011–1015) dealing with regulation of insurance business by state or federal law. 21 L Ed 2d 936.

Construction, application, and operation of state "retaliatory" statutes imposing special taxes or fees on foreign insurers doing business within the state. 30 ALR4th 873.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 369; Insurance § 6 — equal protection — foreign corporations — insurance companies — illegitimacy of purposes of discriminatory tax law

1a–1f. A state law imposing a higher premiums tax on foreign insurance companies than on domestic insurance companies, and allowing foreign companies to reduce but not eliminate the disparity in tax rates by investing certain proportions of their assets in state assets and securities, cannot be justified under the equal protection clause by its asserted purpose of promoting domestic business within the state, which is not a legitimate state purpose for purposes of the equal protection clause where it is accomplished by discriminating against foreign corporations that wish to compete by doing business in the state, or by its asserted purpose of encouraging investment in state assets, which is also not a legitimate state purpose when furthered by discrimination. (O'Connor, J., and Brennan, Marshall, and Rehnquist, JJ., dissented from this holding.)

Constitutional Law § 349 — equal protection — state discrimination against nonresidents

2. The equal protection clause forbids a state to discriminate in favor of its own residents solely by burdening the residents of other state members of the federation.

Constitutional Law § 369; Insurance § 6 — equal protection — insurance companies — McCarran-Ferguson Act

3. Although the McCarran-Ferguson Act, 15 USCS §§ 1011–1015, exempts the insurance industry from commerce clause restrictions, it does not purport to limit in any way the applicability of the equal protection clause.

Commerce § 144; Constitutional Law § 313 — commerce clause and equal protection clause — comparison of tests governing validity of state laws

4. Under commerce clause analysis, the state's interest served by a state law, if legitimate, is weighed against the burden the state law would impose on interstate commerce; in the equal protection context, however, if the state's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose.

SYLLABUS BY REPORTER OF DECISIONS

An Alabama statute imposes a substantially lower gross premiums tax rate on domestic insurance companies than on out-of-state (foreign) insurance companies. The statute permits foreign companies to reduce but not to eliminate the differential by investing in Alabama assets and securities. Appellant foreign insurance companies filed claims for refunds of taxes paid, contending that the statute, as applied to them, violated the Equal Protection Clause. The State Commissioner of Insurance denied the claims. On consolidated appeals to a county Circuit Court, in which several domestic

companies intervened, the statute was upheld on summary judgment. The court ruled that the statute did not violate the Equal Protection Clause because, in addition to raising revenue, it served the legitimate state purposes of encouraging the formation of new insurance companies in Alabama and capital investment by foreign insurance companies in Alabama assets and securities, and that the distinction between foreign and domestic companies was rationally related to those purposes. The Alabama Court of Civil Appeals affirmed the finding as to legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship. On certiorari to the Alabama Supreme Court, appellants waived their rights to such an evidentiary hearing, and the court entered judgment for the State and the intervenors on appellants' equal protection challenge to the statute.

Held: The Alabama domestic preference tax statute violates the Equal Protection Clause as applied to appellants.

(a) Under the circumstances of this case, promotion of domestic business by discriminating against nonresidents is not a legitimate state purpose. Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070, distinguished. Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. A State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit the applicability of the Equal Protection Clause. Equal protection restraints are applicable even though the *effect* of the discrimination is similar to the type of burden with which the Commerce Clause also would be concerned. Pp 6–12.

(b) Nor is the encouragement of the investment in Alabama assets and securities a legitimate state purpose. Domestic insurers remain entitled to the more favorable tax rate regardless of whether they invest in Alabama assets. Moreover, since the investment incentive provision does not enable foreign insurers to eliminate the statute's discriminatory effect, it does not cure but reaffirms the impermissible classification based solely on residence.

—— So 2d ——, reversed and remanded.

Powell, J., delivered the opinion of the Court, in which Burger, C. J., and White, Blackmun, and Stevens, JJ., joined. O'Connor, J., filed a dissenting opinion, in which Brennan, Marshall, and Rehnquist, JJ., joined.

APPEARANCES OF COUNSEL

Matthew J. Zinn argued the cause for appellants.

Warren B. Lightfoot argued the cause for appellees.

Justice Powell delivered the opinion of the Court.

[1a] This case presents the question whether Alabama's domestic preference tax statute, Ala Code §§ 27-4-4 and 27-4-5 (1975), that taxes out-of-state insurance companies at a higher rate than domestic insurance companies, violates the Equal Protection Clause.

I

Since 1955,[1] the State of Alabama has granted a preference to its domestic insurance companies by imposing a substantially lower gross premiums tax rate on them than on out-of-state (foreign) companies.[2] Under the current statutory provisions, foreign life insurance companies pay a tax on their gross premiums received from business conducted in Alabama at a rate of 3 percent, and foreign companies selling other types of insurance pay at a rate of 4 percent. Ala Code § 27-4-4(a) (1975). All domestic insurance companies, in contrast, pay at a rate of only 1 percent on all types of insurance premiums. § 27-4-5(a).[3] As a result, a foreign insurance company doing the same type and volume of business in Alabama as a domestic company generally will pay three to four times as much in gross premiums taxes as its domestic competitor.

Alabama's domestic preference tax statute does provide that foreign companies may reduce the differential in gross premiums taxes by investing prescribed percentages of their worldwide assets in specified Alabama assets and securities. § 27-4-4(b). By investing 10 percent or more of its total assets in Alabama investments, for example, a foreign life insurer may reduce its gross premiums tax rate from 3 to 2 percent. Similarly, a foreign property and casualty insurer may reduce its tax rate from 4 to 3 percent. Smaller tax reductions are available based on investment of smaller percentages of a company's assets. Ibid. Regardless of how much of its total assets a foreign company places in Alabama investments, it can never reduce its gross premiums tax rate to the same level paid by comparable domestic companies. These are entitled to the 1 percent tax rate even if they have no investments in the State. Thus, the investment pro-

1. The origins of Alabama's domestic preference tax statute date back to 1849, when the first tax on premiums earned by insurance companies doing business in the State was limited to companies not chartered by the State. Act No. 1, 1849 Ala Acts 5. A domestic preference tax was imposed on and off throughout the years until 1945, when the State restored equality in taxation of insurance companies in response to this Court's decision in United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944). Act No. 156, 1945 Ala Acts 196–197. In 1955, the tax was reinstated, Act No. 77, 1955 Ala Acts 193 (2d Sp Sess), and with minor amendments, has remained in effect until the present.

2. For domestic preference tax purposes, Alabama defines a domestic insurer as a company that both is incorporated in Alabama and has its principal office and chief place of business within the State. Ala Code § 27-4-1(3) (1975). A corporation that does not meet both of these criteria is characterized as a foreign insurer. § 27-4-1(2).

3. There are two exceptions to these general rules concerning the rates of taxation of insurance companies. For annuities, the tax rate is one percent for both foreign and domestic insurers, Ala Code § 27-4-4(a) (1975), and for wet marine and transportation insurance, the rate is three-quarters of one percent for both foreign and domestic insurance companies, § 27-4-6(a).

vision permits foreign insurance companies to reduce, but never to eliminate, the discrimination inherent in the domestic preference tax statute.

II

Appellants, a group of insurance companies incorporated outside of the State of Alabama, filed claims with the Alabama Department of Insurance in 1981, contending that the domestic preference tax statute, as applied to them, violated the Equal Protection Clause. They sought refunds of taxes paid for the tax years 1977 through 1980. The Commissioner of Insurance denied all of their claims on July 8, 1981.

Appellants appealed to the Circuit Court for Montgomery County, seeking a judgment declaring the statute to be unconstitutional and requiring the Commissioner to make the appropriate refunds. Several domestic companies intervened, and the court consolidated all of the appeals, selecting two claims as lead cases[4] to be tried and binding on all claimants. On cross-motions for summary judgment, the court ruled on May 17, 1982, that the statute was constitutional. Relying on this Court's opinion in Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070 (1981), the court ruled that the Alabama statute did not violate the Equal Protection Clause because it served "at least two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a. The court also found that the distinction the statute created between foreign and domestic companies was rationally related to those two purposes and that the Alabama Legislature reasonably could have believed that the classification would have promoted those purposes. Id., at 21a.

After their motion for a new trial was denied, appellants appealed to the Court of Civil Appeals. It affirmed the Circuit Court's rulings as to the existence of the two legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship, concluding that summary judgment was inappropriate on that question because the evidence was in conflict. 437 So 2d 535 (1983). Appellants petitioned the Supreme Court of Alabama for certiorari on the affirmance of the legitimate state purpose issue, and the State and the intervenors petitioned for review of the remand order. Appellants then waived their right to an evidentiary hearing on the issue whether the statute's classification bore a rational relationship to the two purposes found by the Circuit Court to be legitimate, and they requested a final determination of the legal issues with respect to their equal protection challenge to the statute. The Supreme Court denied certiorari on all claims. Appellants again waived their rights to an evidentiary hearing on the rational relationship issue and filed a joint motion with the

4. Metropolitan Life Insurance Co., a New York corporation, was chosen to represent the life insurance claimants, and Prudential Property and Casualty Co., a New Jersey corporation, was chosen as representative of the nonlife claimants. See App 314-315.

other parties seeking rehearing and entry of a final judgment. The motion was granted, and judgment was entered for the State and the intervenors. This appeal followed, and we noted probable jurisdiction. 466 US ——, 80 L Ed 2d 455, 104 S Ct 1905 (1984). We now reverse.

III

Prior to our decision in Western & Southern Life Ins. Co. v State Board of Equalization of California, supra, the jurisprudence of the applicability of the Equal Protection Clause to discriminatory tax statutes had a somewhat checkered history. Lincoln National Life Ins. Co. v Read, 325 US 673, 89 L Ed 1861, 65 S Ct 1220 (1945), held that so-called "privilege" taxes, required to be paid by a foreign corporation before it would be permitted to do business within a State, were immune from equal protection challenge. That case stood in stark contrast, however, to the Court's prior decisions in Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910), and Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), as well as to later decisions, in which the Court had recognized that the Equal Protection Clause placed limits on other forms of discriminatory taxation imposed on out-of-state corporations solely because of their residence. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949).

In Western & Southern, supra, we reviewed all of these cases for the purpose of deciding whether to permit an equal protection challenge to a California statute imposing a retaliatory tax on foreign insurance companies doing business within the State, when the home States of those companies imposed a similar tax on California insurers entering their borders. We concluded that Lincoln was no more than "a surprising throwback" to the days before enactment of the Fourteenth Amendment and in which incorporation of a domestic corporation or entry of a foreign one had been granted only as a matter of privilege by the State in its unfettered discretion. 451 US, at 665, 68 L Ed 2d 514, 101 S Ct 2070. We therefore rejected the longstanding but "anachronistic" rule of Lincoln and explicitly held that the Equal Protection Clause imposes limits upon a State's power to condition the right of a foreign corporation to do business within its borders. Id., at 667, 68 L Ed 2d 514, 101 S Ct 2070. We held that "[w]e consider it now established that, whatever the extent of a State's authority to exclude foreign corporations from doing business within its boundaries, that authority does not justify imposition of more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations, unless the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose." Id., at 667–668, 68 L Ed 2d 514, 101 S Ct 2070.

[1b] Because appellants waived their right to an evidentiary hearing on the issue whether the classification in the Alabama domestic preference tax statute bears a rational relation to the two purposes upheld

by the Circuit Court, the only question before us is whether those purposes are legitimate.[5]

A

(1)

The first of the purposes found by the trial court to be a 'egitimate reason for the statute's classification between foreign and domestic corporations is that it encourages the formation of new domestic insurance companies in Alabama. The State, agreeing with the Court of Civil Appeals, contends that this Court has long held that the promotion of domestic industry, in and of itself, is a legitimate state purpose that will survive equal protection scrutiny. In so contending, it relies on a series of cases, including Western & Southern, that are said to have upheld discriminatory taxes. See Bacchus Imports, Ltd. v Dias, 468 US ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Pike v Bruce Church, Inc., 397 US 137, 25 L Ed 2d 174, 90 S Ct 844 (1970); Allied Stores of Ohio, Inc. v Bowers, supra; Parker v Brown, 317 US 341, 87 L Ed 315, 63 S Ct 307 (1943); Carmichael v Southern Coal & Coke Co. 301 US 495, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937); Board of Education v Illinois, 203 US 553, 51 L Ed 314, 27 S Ct 171 (1906).

The cases cited lend little or no support to the State's contention. In Western & Southern, the case principally relied upon, we did not hold as a general rule that promotion of domestic industry is a legitimate state purpose under equal protection analysis.[6] Rather, we held that Cali-

5. The State and the intervenors advanced some 15 additional purposes in support of the Alabama statute. As neither the Circuit Court nor the Court of Civil Appeals ruled on the legitimacy of those purposes, that question is not before us, and we express no view as to it. On remand, the State will be free to advance again its arguments relating to the legitimacy of those purposes.

As the dissent finds our failure to resolve whether Alabama may continue to collect its tax "baffling," post, at 4, we reemphasize the procedural posture of the case: it arose on a motion for summary judgment. The Court of Civil Appeals upheld the Circuit Court's ruling that the two purposes identified by it were legitimate, but the appellate court remanded on the issue of rational relationship as to those purposes because it found the evidence in conflict. In order to obtain an expedited ruling, appellants waived their right to an evidentiary hearing only as to the purposes "which the lower courts have determined to be legitimate." App to Juris St, at 2a. Thus, for this Court to resolve whether Alabama may continue to collect the tax, it would have to decide de novo whether any of the other purposes was legitimate, and also whether the statute's classification bore a rational relationship to any of these purposes—all this, on a record that the Court of Civil Appeals deemed inadequate.

6. We find the other cases on which the State relies also to be inapposite to this inquiry. Bacchus Imports, Pike, and Parker discussed whether promotion of local industry is a valid state purpose under the Commerce Clause. The Commerce Clause, unlike the Equal Protection Clause, is integrally concerned with whether a state purpose implicates local or national interests. The Equal Protection Clause, in contrast, is concerned with whether a state purpose is impermissibly discriminatory; whether the discrimination involves local or other interests is not central to the inquiry to be made. Thus, the fact that promotion of local industry is a legitimate state interest in the Commerce Clause context says nothing about its validity under equal protection analysis. See infra, at ——-——, 84 L Ed 2d 760–761.

Moreover, neither Bacchus nor Pike ruled that a State's ability to promote domestic industry was unlimited, even under the Commerce Clause. Thus, in Bacchus, although we observed as a general matter that "a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry," 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984), we held

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fornia's purpose in enacting the retaliatory tax—to promote the *interstate* business of domestic insurers by deterring other States from enacting discriminatory or excessive taxes—was a legitimate one. 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070. In contrast, Alabama asks us to approve its purpose of promoting the business of its domestic insurers in Alabama by penalizing foreign insurers who also want to do business in the State. Alabama has made no attempt, as California did, to influence the policies of other States in order to enhance its domestic companies' ability to operate interstate; rather, it has erected barriers to foreign companies who wish to do interstate business in order to improve its domestic insurers' ability to compete at home.

[2] The crucial distinction between the two cases lies in the fact that Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose, contrary to California's, constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. As Justice Brennan, joined by Justice Harlan, observed in his concurrence in Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), this Court always has held that the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening "the residents of other state members of our federation." Id., at 533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Unlike the retaliatory tax involved in Western & Southern, which only burdens residents of a State that imposes its own discriminatory tax on outsiders, the domestic preference tax gives the "home team" an advantage by burdening *all* foreign corporations seeking to do business within the State, no matter what they or their States do.

The validity of the view that a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence is confirmed by a long line of this Court's cases so holding. WHYY, Inc v Glassboro, 393 US, at 119–120, 21 L Ed 2d 242, 89 S Ct 286; Wheeling Steel Corp. v Glander, 337 US, at 571, 93 L Ed 1544, 69 S Ct 1291, 40

that in so doing, a State may not constitutionally impose a discriminatory burden upon the business of other States, merely to protect and promote local business, id., at ——, 82 L Ed 2d 200, 104 S Ct 3049. Accord Armco Inc. v Hardesty, 467 US ——, ——, 81 L Ed 2d 540, 104 S Ct 2620 (1984). Likewise, in Pike, the Court held that the state statute promoting a legitimate local interest must "regulat[e] evenhandedly." 397 US, at 142, 25 L Ed 2d 174, 90 S Ct 844.

Other cases cited by the State are simply irrelevant to the legitimacy of promoting local business at all. Carmichael relates primarily to the validity of a state unemployment compensation scheme, and Board of Education deals with the State's ability to regulate matters relating to probate. Bowers is the only one of the State's cases that involves the validity under the Equal Protection Clause of a tax that discriminates on the basis of residence of domestic *versus* foreign corporations. That case does little, however, to support the State's contention that promotion of domestic business is a legitimate state purpose. It was concerned with encouraging nonresidents—who are not competitors of residents—to build warehouses within the State. See infra, at ——-——, 84 L Ed 2d 760.

Ohio Ops 101, 55 Ohio L Abs 305; Hanover Fire Ins. Co. v Harding, 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713; Southern R. Co. v Greene, 216 US, at 417, 54 L Ed 536, 30 S Ct 287. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965) (per curiam). As the Court stated in Hanover Fire Ins. Co., with respect to general tax burdens on business, "the foreign corporation stands equal, and is to be classified with domestic corporations of the same kind." 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713. In all of these cases, the discriminatory tax was imposed by the State on foreign corporations doing business within the State solely because of their residence, presumably to promote domestic industry within the State.[7] In relying on these cases and rejecting Lincoln in Western & Southern, we reaffirmed the continuing viability of the Equal Protection Clause as a means of challenging a statute that seeks to benefit domestic industry within the State only by grossly discriminating against foreign competitors.

The State contends that Allied Stores of Ohio, Inc. v Bowers, supra, shows that this principle has not always held true. In that case, a domestic merchandiser challenged on equal protection grounds an Ohio statute that exempted foreign corporations from a tax on the value of merchandise held for storage within the State. The Court upheld the tax, finding that the purpose of encouraging foreign companies to build warehouses within Ohio was a legitimate state purpose. The State contends that this case shows that promotion of domestic business is a legitimate state purpose under equal protection analysis.

[1c] We disagree with the State's interpretation of Allied Stores and find that the case is not inconsistent with the other cases on which we rely. We agree with the holding of Allied Stores that a State's goal of bringing in new business is legitimate and often admirable. Allied Stores does not, however, hold that promotion of domestic business by *discriminating* against foreign corporations is legitimate. The case involves instead a statute that *encourages nonresidents*—who are not competitors of residents—to build warehouses within the State. The discriminatory tax involved did not favor residents by burdening outsiders; rather, it granted the nonresident businesses an exemption that residents did not share. Since the foreign and domestic companies involved were not competing to provide warehousing services, granting the former an exemption did not even directly affect adversely the domestic companies subject to the tax. On its facts, then, Allied Stores is not inconsistent with our holding here that promotion of domestic business within a State, by discriminating against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose. See 358 US, at 532–533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (Brennan, J., concurring).

(2)

[3] The State argues nonetheless

7. Although the promotion of domestic business was not a purpose advanced by the States in support of their taxes in these cases, such promotion is logically the primary reason for enacting discriminatory taxes such as those at issue there.

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that it is impermissible to view a discriminatory tax such as the one at issue here as violative of the Equal Protection Clause. This approach, it contends, amounts to no more than "Commerce Clause rhetoric in equal protection clothing." Brief for Appellee Ward 22. The State maintains that because Congress, in enacting the McCarran-Ferguson Act, 15 USC §§ 1011–1015 [15 USCS §§ 1011–1015], intended to authorize States to impose taxes that burden interstate commerce in the insurance field, the tax at issue here must stand. Our concerns are much more fundamental than as characterized by the State. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit in any way the applicability of the Equal Protection Clause. As noted above, our opinion in Western & Southern expressly reaffirmed the viability of equal protection restraints on discriminatory taxes in the insurance context.[8]

[4] Moreover, the State's view ignores the differences between Commerce Clause and equal protection analysis and the consequent different purposes those two constitutional provisions serve. Under Commerce Clause analysis, the State's interest, if legitimate, is weighed against the burden the state law would impose on interstate commerce. In the equal protection context, however, if the State's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose, a relationship that is not difficult to establish. See Western & Southern, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070 (if purpose is legitimate, equal protection challenge may not prevail so long as the question of rational relationship is "'at least debatable'" (quoting United States v Carolene Products Co. 304 US 144, 154, 82 L Ed 1234, 58 S Ct 778 (1938)).

The two constitutional provisions perform different functions in the analysis of the permissible scope of a State's power—one protects interstate commerce, and the other protects persons[9] from unconstitutional discrimination by the States. See Bethlehem Motors Corp. v Flynt, 256 US 421, 423–424, 65 L Ed 1029, 41 S Ct 571 (1921). The effect of the statute at issue here is to place a discriminatory tax burden on foreign insurers who desire to do business within the State, thereby also incidentally placing a burden on interstate commerce. Equal protection restraints are applicable even though the *effect* of the discrimination in this case is similar to the type of burden with which the Commerce Clause also would be concerned. We reaffirmed the importance of the Equal Protection Clause in the in-

8. In fact, as we noted in Western & Southern, the legislative history of the McCarran-Ferguson Act reveals that the Act was Congress's response only to United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944), and that Congress did not intend thereby to give the States any power to tax or regulate the insurance industry other than what they had previously possessed. Thus Congress expressly left undisturbed this Court's decisions holding that the Equal Protection Clause places limits on a State's ability to tax out-of-state corporations. See 451 US, at 655, n 6, 68 L Ed 2d 514, 101 S Ct 2070.

9. It is well established that a corporation is a "person" within the meaning of the Fourteenth Amendment. E.g., Western & Southern, supra, at 660, n 12, 68 L Ed 2d 514, 101 S Ct 2070.

surance context in Western & Southern and see no reason now for reassessing that view.

[1d] In whatever light the State's position is cast, acceptance of its contention that promotion of domestic industry is always a legitimate state purpose under equal protection analysis would eviscerate the Equal Protection Clause in this context. A State's natural inclination frequently would be to prefer domestic business over foreign. If we accept the State's view here, then any discriminatory tax would be valid if the State could show it reasonably was intended to benefit domestic business.[10] A discriminatory tax would stand or fall depending primarily on how a State framed its purpose—as benefiting one group or as harming another. This is a distinction without a difference, and one that we rejected last term in an analogous context arising under the Commerce Clause. Bacchus Imports, Ltd. v Dias, 468 US, at ——, 82 L Ed 2d 200, 104 S Ct 3049. See n 6, supra. We hold that under the circumstances of this case, promotion of domestic business by discriminating against nonresident competitors is not a legitimate state purpose.

B

[1e] The second purpose found by the courts below to be legitimate was the encouragement of capital investment in the Alabama assets and governmental securities specified in the statute. We do not agree that this is a legitimate state purpose when furthered by discrimination. Domestic insurers remain entitled to the more favorable rate of tax regardless of whether they invest in Alabama assets. Moreover, the investment incentive provision of the Alabama statute does not enable foreign insurance companies to eliminate the discriminatory effect of the statute. No matter how much of their assets they invest in Alabama, foreign insurance companies are still required to pay a higher gross premiums tax than domestic companies. The State's investment incentive provision therefore does not cure, but reaffirms, the statute's impermissible classification based solely on residence. We hold that encouraging investment in Alabama assets and securities in this plainly discriminatory manner serves no legitimate state purpose.

IV

[1f] We conclude that neither of the two purposes furthered by the Alabama domestic preference tax statute and addressed by the Circuit Court for Montgomery County, see supra, at 3, is legitimate under the Equal Protection Clause to justify the imposition of the discriminatory tax at issue here. The judgment of the Alabama Supreme Court accordingly is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

10. Indeed, under the State's analysis, *any* discrimination subject to the rational relation level of scrutiny could be justified simply on the ground that it favored one group at the expense of another. This case does not involve or question, as the dissent suggests, post, at ——, 84 L Ed 2d 774, the broad authority of a State to promote and regulate its own economy. We hold only that such regulation may not be accomplished by imposing discriminatorily higher taxes on nonresident corporations solely because they are nonresidents.

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Justice **O'Connor,** with whom Justice Brennan, Justice Marshall and Justice **Rehnquist** join, dissenting.

This case presents a simple question: Is it legitimate for a state to use its taxing power to promote a domestic insurance industry and to encourage capital investment within its borders? In a holding that can only be characterized as astonishing, the Court determines that these purposes are illegitimate. This holding is unsupported by precedent and subtly distorts the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation. Because I disagree with both the Court's method of analysis and its conclusion, I respectfully dissent.

I

Alabama's legislature has chosen to impose a higher tax on out-of-state insurance companies and insurance companies incorporated in Alabama that do not maintain their principal place of business or invest assets within the State. Ala Code § 27-4-4 et seq. (1975). This tax seeks to promote both a domestic insurance industry and capital investment in Alabama. App to Juris Statement 20a-21a. Metropolitan Life Insurance Company, joined by many other out-of-state insurers, alleges that this discrimination violates its rights under the Equal Protection Clause of the Fourteenth Amendment, which provides that a State shall not "deny to any person within its jurisdiction the equal protection of the laws." Appellants rely on the Equal Protection Clause because, as corporations, they are not "citizens" protected by the privileges and immunities clauses of the Constitution. Hemphill v Orloff, 277 US 537, 548–550, 72 L Ed 978, 48 S Ct 577 (1928). Similarly, they cannot claim Commerce Clause protection because Congress in the McCarran-Ferguson Act, 59 Stat 33, 15 USC § 1011 et seq. [15 USCS §§ 1011 et seq.], explicitly suspended Commerce Clause restraints on state taxation of insurance and placed insurance regulation firmly within the purview of the several States. Western & Southern Life Ins. Co. v State Board of Equalization, 451 US 648, 655, 68 L Ed 2d 514, 101 S Ct 2070 (1981).

Our precedents impose a heavy burden on those who challenge local economic regulation solely on Equal Protection Clause grounds. In this context, our long-established jurisprudence requires us to defer to a legislature's judgment if the classification is rationally related to a legitimate state purpose. Yet the Court evades this careful framework for analysis, melding the proper two-step inquiry regarding the State's purpose and the classification's relationship to that purpose into a single unarticulated judgment. This tactic enables the Court to characterize State goals that have been legitimated by Congress itself as improper solely because it disagrees with the concededly rational means of differential taxation selected by the legislature. This unorthodox approach leads to further error. The Court gives only the most cursory attention to the factual and legal bases supporting the State's purposes and ignores both precedent and significant evidence in the record establishing their legitimacy. Most trou-

bling, the Court discovers in the Equal Protection Clause an implied prohibition against classifications whose purpose is to give the "home team" an advantage over interstate competitors even where Congress has authorized such advantages. Ante, at ——, 84 L Ed 2d 759.

The Court overlooks the unequivocal language of our prior decisions. "Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest." New Orleans v Dukes, 427 US 297, 303, 49 L Ed 2d 511, 96 S Ct 2513 (1976). See, e.g., Lehnhausen v Lake Shore Auto Parts Co. 410 US 356, 35 L Ed 2d 351, 93 S Ct 1001 (1973). Judicial deference is strongest where a tax classification is alleged to infringe the right to equal protection. "[I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification." Madden v Kentucky, 309 US 83, 88, 84 L Ed 590, 60 S Ct 406, 125 ALR 1383 (1940). "Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one or to restrict or suppress the other." Carmichael v Southern Coal & Coke Co. 301 US 495, 512, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937) (citations omitted). As the Court emphatically noted in Allied Stores of Ohio, Inc. v Bowers:

> "[I]t has repeatedly been held and appears to be entirely settled that a statute which encourages the location within the State of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment. Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary or violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it." 358 US 522, 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959) (citations omitted).

See also Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 674, 68 L Ed 2d 514, 101 S Ct 2070; Minnesota v Clover Leaf Creamery Co. 449 US 456, 464, 66 L Ed 2d 659, 101 S Ct 715 (1981).

Appellants waived their right to an evidentiary hearing and conceded that Alabama's classification was rationally related to its purposes of encouraging the formation of domestic insurance companies and bringing needed services and capital to the State. Thus the only issue in dispute is the legitimacy of these purposes. Yet it is obviously legitimate for a State to seek to promote local business and attract capital investment, and surely those purposes animate a wide range of legislation in all 50 States.

The majority evades the obvious by refusing to acknowledge the factual background bearing on the legitimacy of the State's purpose or to address the many collateral public benefits advanced by Alabama. Instead, the Court dismisses the

State's arguments by merely stating that they were not ruled on by the courts below. Ante, at ——, n 5, 84 L Ed 2d 758. In point of fact, the full range of purposes documented before this Court was also argued and documented before the Alabama Circuit Court. See Record, Vols VI, VII, VIII. That court found *"at least* two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a (emphasis added). As appellants concede, these purposes are simply a step in achieving the "larger set of purposes [whose] premise . . . is that domestic insurance companies, on the whole, benefit the state in ways which foreign companies do not." Brief for Appellants 31.

In any event, it is settled law that the appellee may assert any argument in support of the judgment in his favor, regardless of whether it was relied upon by the court below. Dandridge v Williams, 397 US 471, 475, n 6, 25 L Ed 2d 491, 90 S Ct 1153 (1970). The Court's failure actually to resolve whether Alabama may continue to collect its tax, see ante, at ——, n 10, 84 L Ed 2d 762, is all the more baffling, since appellants took the exceptional step of conceding the factual issues to assure a speedy resolution of numerous pending lawsuits disruptive of industry stability. See Brief for State of Alaska et al. as Amici Curiae 1–2. Our precedents do not condone such a miserly approach to review of statutes adjusting economic burdens. See, e.g. Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312; McGowan v Maryland, 366 US 420, 425, 6 L Ed 2d 393, 81 S Ct 1101, 17 Ohio Ops 2d 151 (1961); United States v Carolene Products Co. 304 US 144, 152–153, 82 L Ed 1234, 58 S Ct 778 (1938); Borden's Farm Products Co. v Baldwin, 293 US 194, 209, 79 L Ed 281, 55 S Ct 187 (1934). The Court had consistently reviewed the validity of such statutes based on whatever "may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso." Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. It is to that inquiry that I now turn.

Alabama claims that its insurance tax, in addition to raising revenue and promoting investment, promotes the formation of new domestic insurance companies and enables them to compete with the many large multistate insurers that currently occupy some 75% to 85% of the Alabama insurance market. App 80. Economic studies submitted by the State document differences between the two classes of insurers that are directly relevant to the well-being of Alabama's citizens. See id., at 46–129. Foreign insurers typically concentrate on affluent, high volume, urban markets and offer standardized national policies. In contrast, domestic insurers such as intervenors American Educators Life Insurance Company and Booker T. Washington Life Insurance Company are more likely to serve Alabama's rural areas, and to write low-cost industrial and burial policies not offered by the larger

national companies.[1] Additionally, Alabama argues persuasively that it can more readily regulate domestic insurers and more effectively safeguard their solvency than that of insurers domiciled and having their principal places of business in other states.

Ignoring these policy considerations, the Court insists that Alabama seeks only to benefit local business, a purpose the Court labels invidious. Yet if the classification chosen by the State can be shown *actually* to promote the public welfare, this is strong evidence of a legitimate State purpose. See Note, Taxing Out-of-State Corporations After Western & Southern: An Equal Protection Analysis, 34 Stan L Rev 877, 896 (1982). In this regard, Justice Frankfurter wisely observed that:

> "[T]he great divide in the [equal protection] decisions lies in the difference between emphasizing the actualities or the abstractions of legislation.
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> "To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." Morey v Doud, 354 US 457, 472, 1 L Ed 2d 1485, 77 S Ct 1344 (1957) (Frankfurter, J., dissenting).

A thoughtful look at the "actualities of [this] legislation" compels the conclusion that the State's goals are legitimate by any test.

II

The policy of favoring local concerns in State regulation and taxation of insurance, which the majority condemns as illegitimate, is not merely a recent invention of the States. The States initiated regulation of the business of insurance as early as 1851. See Report of the Comptroller General, Issues and Needed Improvements in State Regulation of the Insurance Business, GAO Report B-192813, p 5 (Oct. 9, 1979) (GAO Report). In 1944, however, this Court overruled a long line of cases holding that the business of insurance was an intrastate activity beyond the scope of the Commerce Clause. United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162. "The decision provoked widespread concern that the States would no longer be able to engage in taxation and effective regulation of the insurance industry. Congress moved quickly, enacting the McCarran-Ferguson Act within a year of the decision in South-Eastern Underwriters." St. Paul Fire & Marine Insurance Co. v Barry, 438 US 531, 539, 57 L Ed 2d 932, 98 S Ct 2923 (1978). See H R Rep No 143, 79th Cong, 1st Sess, 2 (1945); 91 Cong Rec 479–480 (1945) (remarks of Sen. Ferguson); id., at 487 (remarks of Sen. Ellender).

The drafters of the Act were sensitive to the same concerns Alabama now vainly seeks to bring to this Court's attention: the greater responsiveness of local insurance com-

1. "Industrial insurance" is the trade term for a low face-value policy typically sold door-to-door and maintained through home collection of monthly or weekly premiums. Alabama currently has more industrial insurance in force than any other State. Burial insurance is another form of insurance popular in rural Alabama that is offered exclusively by local insurers. By contrast, Metropolitan Life, like many multistate insurers, has discontinued writing even whole-life policies with face values below $15,000. App 173–176.

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panies to local conditions, the different insurance needs of rural and industrial states, the special advantages and constraints of state-by-state regulation, and the importance of insurance license fees and taxes as a major source of State revenues. See, e.g., Hearings on S 1362 before the Senate Subcommittee on the Judiciary, 78th Cong, 1st Sess, 3, 10, 16–17 (1943) (letter of Gov. Sharpe of South Dakota stressing role of domestic insurers that provide "poor man" and rural policies adapted to farming concerns); 90 Cong Rec 6564 (1944) (remarks of Rep Vorhis). "As this Court observed shortly afterward, '[o]bviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance.' Prudential Insurance Co. v Benjamin, 328 US 408, 429 [90 L Ed 1342, 66 S Ct 1142, 164 ALR 476] (1946)." St. Paul Fire & Marine Insurance Co. v Barry, supra, at 539, 57 L Ed 2d 932, 98 S Ct 2923.

The majority opinion correctly notes that Congress did not intend the McCarran-Ferguson Act to give the States any power to tax or regulate the insurance industry other than they already possessed. But the legislative history cited by the majority, ante, at ——, n 7, 84 L Ed 2d 760, relates not to differential taxation but to decisions of this Court that had invalidated State taxes on contracts of insurance entered into outside the State's jurisdiction. See H R Rep No. 143, 79th Cong, 1st Sess, 3 (1945). The Court fails to mention that at the time the Act was under consideration the taxing schemes of Alabama, Arizona, Arkansas, Illinois, Kansas, Kentucky, Maine, Michigan, Mississippi, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, and Wisconsin all incorporated tax differentials favoring domestic insurers. See App 377–379.

Any doubt that Congress' intent encompassed taxes that discriminate in favor of local insurers was dispelled in Prudential Insurance Co. v Benjamin. Cf. Note, Congressional Consent to Discriminatory State Legislation, 45 Colum L Rev 927 (1945) (discussing the issues of constitutional power posed by the Act). There a foreign insurer challenged a tax on annual gross premiums imposed on foreign but not domestic insurers as a condition for renewal of its license to do business. Congress, the foreign insurer argued, was powerless to sanction the tax at issue because "the commerce clause 'by its own force' forbids discriminatory state taxation." Prudential Insurance Co. v Benjamin, 328 US 408, 426, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (1946). A unanimous Court rejected the argument that exacting a 3% gross premium tax from foreign insurers was invalid as "somehow technically of an inherently discriminatory character." Id., at 432, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. The Court concluded that the McCarran-Ferguson Act's effect was "clearly to sustain the exaction and that this can be done without violating *any* constitutional provision." Id., at 427, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (emphasis added).

Benjamin expressly noted that nothing in the Equal Protection Clause forbade the State to enact a law such as the tax at issue. Id., at 438, and n 50, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. In this regard the Court relied in part on Hanover Fire Ins. Co. v Harding, 272 US 494,

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71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), a decision that explicitly recognized that differential taxation of revenues of foreign corporations may not be arbitrary or without reasonable basis. See Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 664, n 17, 68 L Ed 2d 514, 101 S Ct 2070. The Commerce Clause, Benjamin emphasized, is not a "one way street" but encompasses congressional power "to discriminate against interstate commerce and in favor of local trade," "subject only to the restrictions placed upon its authority by other constitutional provisions." 328 US, at 434, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. Where the States and Congress have acted in concert to effect a policy favoring local concerns, their action must be upheld unless it unequivocally exceeds "some explicit and compelling limitation imposed by a constitutional provision or provisions designed and intended to outlaw the action taken entirely from our constitutional framework." Id., at 435–436, 90 L Ed 2d 1342, 66 S Ct 1142, 164 ALR 476.

Our more recent decision in Western & Southern in no way undermines the force of the analysis in Benjamin. Western & Southern confirms that differential premium taxes are not immune from review as "privilege" taxes, but it also teaches that the Constitution requires only that discrimination between domestic and foreign corporations bear a rational relationship to a legitimate state purpose. Benjamin clearly recognized that differentially taxing foreign insurers to promote a local insurance industry was a legitimate State purpose completely consonant with Congress' purpose in the McCarran-Ferguson Act.

The contemporary realities of insurance regulation and taxation continue to justify a uniquely local perspective. Insurance regulation and taxation must serve local social policies including assuring the solvency and reliability of companies doing business in the State and providing special protection for those who might be denied insurance in a free market, such as the urban poor, small businesses and family farms. GAO Report 10–13; State Insurance Regulation, Hearing before the Subcommittee on Antitrust, Monopoly and Business Rights of the Senate Committee on the Judiciary, 96th Cong, 1st Sess, 19–21 (1979) (hereinafter Insurance Regulation). Currently at least 28 of the 50 States employ a combination of investment incentives and differential premium taxes favoring domestic insurers to encourage local investment of policyholders' premiums and to partially shelter smaller domestic insurers from competition with the large multistate companies. App 66.

State insurance commissions vary widely in manpower and expertise. GAO Report 14. In practice, the State of incorporation exercises primary oversight of the solvency of its insurers. Id., at 36–38. See generally Dunne, Risk, Reality, and Reason in Financial Services Deregulation: A State Legislative Perspective, 2 J Ins Reg 342 (1984) (prepared by the Conference of Insurance Legislators). See, e.g. Ala Code § 27-2-21 (Supp 1984); Ill Rev Stat, ch 73, ¶ 745 (1983); (power to examine books of domestic insurers); Ala Code § 27-32-1 et seq. (1975); Ill Rev Stat, ch 73, ¶¶ 799, 800 (1983) (commissioner's authority to assume control to prevent insolvency); see generally Wis Stat Ann, ch 620, Prefatory Commit-

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tee Comment—1971, pp 536, 546 (1980) (noting lesser control over nondomestic's financial operations). Even the State-of-incorporation's efforts to regulate a multistate insurer may be seriously hampered by the difficulty of gaining access to records and assets in forty-nine other States. Dunne, supra, at 356. Thus the security of Alabama's citizens who purchase insurance from out-of-state companies may depend in part on the diligence of another State's insurance commissioner, over whom Alabama has no authority and limited influence. In the event of financial failure of a foreign insurer the State may have difficulty levying on out-of-state assets. See, e.g., South Carolina ex rel Phoenix Life Ins. Co. v McMaster, 237 US 63, 73, 59 L Ed 839, 35 S Ct 504 (1915). Since each State maintains its own insurance guarantee fund, the domestic insurers of the States where a multistate insurer is admitted to do business may ultimately be forced to absorb local policyholders' losses. Dunne, supra, at 372–373.

Many have sharply criticized this piecemeal system, see, e.g., GAO Report i-iii; Schmalz, The Insurance Exemption: Can it be Modified Successfully?, 48 ABA Antitrust L J 579 (1979), but Congress has resisted suggestions that it modify the McCarran-Ferguson Act to permit greater federal intervention. See GAO Report 1; Insurance Regulation, supra. This Court cannot ignore the exigencies of contemporary insurance regulation outlined above simply because it might prefer uniform federal regulation. Given the distinctions in ease of regulation and services rendered by foreign and domestic insurers, we cannot dismiss as illegitimate the State's goal of promoting a healthy local insurance industry sensitive to regional differences and composed of companies that agree to subordinate themselves to the Alabama Commissioner's control and to maintain a principal place of business within Alabama's borders. Though economists might dispute the efficacy of Alabama's tax, "[p]arties challenging legislation under the Equal Protection Clause cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable.'" Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070, quoting United States v Carolene Products Co. 304 US, at 154, 82 L Ed 1234, 58 S Ct 778. Moreover, appellants waived their right to challenge the tax measure's effectiveness.

III

Despite abundant evidence of a legitimate state purpose, the majority condemns Alabama's tax as "purely and completely discriminatory" and "the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent." Ante, at ——, 84 L Ed 2d 759. Apparently, the majority views any favoritism of domestic commercial entities as inherently suspect. The majority ignores a long line of our decisions. In the past this Court has not hesitated to apply the rational basis test to regulatory classifications that distinguish between domestic and out-of-state corporations or burden foreign interests to protect local concerns. The Court has always recognized that there are certain legitimate restrictions or policies in which, "[b]y definition, dis-

crimination against nonresidents would inhere." Arlington County Board v Richards, 434 US 5, 7, 54 L Ed 2d 4, 98 S Ct 24 (1977) (per curiam). For example, where state of incorporation or principal place of business affect the State's ability to regulate or exercise its jurisdiction, a State may validly discriminate between foreign and domestic entities. See G. D. Searle & Co. v Cohn, 455 US 404, 71 L Ed 2d 250, 102 S Ct 1137 (1982) (difficulty of obtaining jurisdiction over nonresident corporation provides a rational basis for excepting such corporations from statute of limitations); Metropolitan Casualty Ins. Co. v Brownell, 294 US 580, 79 L Ed 1070, 55 S Ct 538 (1935) (domicile of insurer relevant to statute of limitations as foreign insurers offices and funds generally located outside state); Board of Education v Illinois, 203 US 553, 562, 51 L Ed 314, 27 S Ct 171 (1906) (State's greater control over domestic than foreign nonprofit corporations justifies discriminatory tax).

A State may use its taxing power to entice useful foreign industry, see Allied Stores of Ohio, Inc. v Bowers, 358 US, at 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312, or to make residence within its boundaries more attractive, see Zobel v Williams, 457 US 55, 67-68, 72 L Ed 2d 672, 102 S Ct 2309 (1982) (Brennan, J., concurring). Though such measures might run afoul of the Commerce Clause, "[n]o one disputes that a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry." Bacchus Imports, Ltd. v Dias, 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 668, 68 L Ed 2d 514, 101 S Ct 2070. Cf. Edgar v MITE Corp. 457 US 624, 646, 73 L Ed 2d 269, 102 S Ct 2629 (1982) (Powell, J. concurring in part) (noting State's interest in protecting regionally based corporations from acquisition by foreign corporations).

Moreover, the Court has held in the dormant commerce clause context that a State may provide subsidies or rebates to domestic but not to foreign enterprises if it rationally believes that the former contribute to the State's welfare in ways that the latter do not. Hughes v Alexandria Scrap Corp. 426 US 794, 49 L Ed 2d 220, 96 S Ct 2488 (1976). Although the Court has divided on the circumstances in which the dormant Commerce Clause allows such measures, see id., at 817, 49 L Ed 2d 220, 96 S Ct 2488 (Brennan, J., dissenting), surely there can be no dispute that they are constitutionally permitted where Congress itself has affirmatively authorized the States to promote local business concerns free of Commerce Clause constraints. Neither the Commerce Clause nor the Equal Protection Clause bars Congress from enacting or authorizing the States to enact legislation to protect industry in one State "from disadvantageous competition" with less stringently regulated businesses in other States. Hodel v Indiana, 452 US 314, 329, 69 L Ed 2d 40, 101 S Ct 2376 (1981). See also Western & Southern, supra, at 669, 68 L Ed 2d 514, 101 S Ct 2070 (with congressional approval, States may promote domestic insurers by seeking to deter other States from enacting discriminatory or excessive taxes).

The majority's attempts to distinguish these precedents are unconvincing. First the majority suggests

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that a State purpose might be legitimate for purposes of the Commerce Clause but somehow illegitimate for purposes of the Equal Protection Clause. No basis is advanced for this theory because no basis exists. The test of a legitimate State purpose must be whether it addresses valid State concerns. To suggest that the purpose's legitimacy, chameleon-like, changes according to the constitutional clause cited in the complaint is merely another pretext to escape the clear message of this Court's precedents.

Next the majority asserts that "a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence," citing cases that rejected discriminatory ad valorem property taxes, defended as taxes on the "privilege" of doing business. Ante, at ——, 84 L Ed 2d 759–760. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949); Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926); Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910). These decisions were addressed in Western & Southern, and the classifications were characterized as impermissibly discriminatory because they did not "'rest on differences pertinent to the subject in respect of which the classification is made.'" 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070, quoting Power Manufacturing Co. v Saunders, 274 US 490, 494, 71 L Ed 1165, 47 S Ct 678 (1927). As the majority concedes, none of these decisions intimates that the tax statutes at issue in the decisions rested on relevant differences between domestic and foreign corporations or had purposes other than the raising of revenue at the out-of-state corporations' expense.

In fact, the Court noted in several of these opinions that foreign corporations *may* validly be taxed at a higher rate if the classification is based on some relevant distinction. No such distinction, however, had been demonstrated or even alleged. See WHYY, Inc. v Glassboro, supra, at 120, 21 L Ed 2d 242, 89 S Ct 286 ("This is not a case in which the exemption was withheld by reason of the foreign corporation's failure or inability to benefit the State in the same measure as do domestic nonprofit corporations"); Wheeling Steel Corp. v Glander, 337 US, at 572, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 ("the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction"); Southern R. Co. v Greene, 216 US, at 416–417, 54 L Ed 536, 30 S Ct 287 (parties conceded that the business of the foreign and domestic corporations was precisely the same).[2] Lack-

2. The only cited authority that arguably addressed the issue raised in the instant case is a per curiam reversal and remand without opinion of a decision upholding a discriminatory ad valorem tax on a foreign insurer's fixtures and other tangible property. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965). A reversal and remand is more enigmatic even than a summary affirmance, which has precedential value only as to "the precise issues necessarily presented and necessarily decided." Mandel v Bradley, 432 US 173, 176, 53 L Ed 2d 199, 97 S Ct 2238 (1977). Decisions without opinion may not be equated with "an opinion by this Court treating the question on the merits." See Edelman v Jordan, 415 US 651, 670–671, 39 L Ed 2d 662, 94 S Ct 1347 (1974).

ing the threshhold requirement of an articulated distinction relevant to an asserted purpose, the classifications at issue in these decisions could never have survived rational basis scrutiny and no such analysis was even attempted. These precedents do not answer the question posed by this case: whether a legislature may adopt differential tax treatment of domestic and foreign insurers not simply to raise additional revenue but with the purpose of affecting the market as an "instrument of economic and social engineering"? P. Hartman, Federal Limitations on State and Local Taxation § 3:2 (1981). The majority's suggestion that these cases necessarily decided the issue before us, as promotion of domestic business is "logically the primary reason for enacting discriminatory taxes such as those at issue [in the cited cases]," is mere speculation. See ante, at ——, n 6, 84 L Ed 2d ——.

In treating these cases as apposite authority, the majority again closes its eyes to the facts. Alabama does *not* tax at a higher rate solely on the basis of residence; it taxes insurers, domestic as well as foreign, who do not maintain a principal place of business or substantial assets in Alabama, based on conceded distinctions in the contributions of these insurers *as a class* to the State's insurance objectives. The majority obscures the issue by observing that a given "foreign insurance company doing the same type and volume of business in Alabama as a domestic company" will pay a higher tax. Ante, at ——, 84 L Ed 2d 755. Under our precedents, tax classifications need merely "res[t] upon some reasonable consideration of difference or policy." Allied Stores of Ohio, Inc. v Bowers, supra, at 527, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Rational basis scrutiny does not require that the classification be mathematically precise or that *every* foreign insurer or *every* domestic company fit to perfection the general profile on which the classification is based. "[T]he Equal Protection Clause does not demand a surveyor's precision" in fashioning classifications. Hughes v Alexandria Scrap Corp, 426 US at 814, 49 L Ed 2d 220, 96 S Ct 2488.

IV

Because Alabama's classification bears a rational relationship to a legitimate purpose, our precedents demand that it be sustained. The Court avoids this clear directive by a remarkable evasive tactic. It simply declares that the ends of promoting a domestic insurance industry and attracting investments to the State *when accomplished through the means of discriminatory taxation* are not legitimate state purposes. This bold assertion marks a drastic and unfortunate departure from established equal protection doctrine. By collapsing the two prongs of the rational basis test into one, the Court arrives at the ultimate issue—whether the *means* are constitution—without ever engaging in the deferential inquiry we have adopted as a brake on judicial impeachment of legislative policy choices. In addition to unleashing an undisciplined form

"Indeed, upon fuller consideration of an issue under plenary review, the Court has not hesitated to discard a rule which a line of summary affirmances may appear to have established." Fusari v Steinberg, 419 US 379, 392, 42 L Ed 2d 521, 95 S Ct 533 (Burger, C. J., concurring) (1975).

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of Equal Protection Clause scrutiny, the Court's approach today has serious implications for the authority of Congress under the Commerce Clause. Groping for some basis for this radical departure from equal protection analysis, the Court draws heavily on Justice Brennan's concurring opinion in Allied Stores v Bowers, 358 US 522, 530, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), as support for its argument that 'the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening 'the residents of other states' members of our federation.'" Ante, at ——, 84 L Ed 2d 759, quoting 358 US, at 533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312.

As noted in Western & Southern, Justice Brennan's interpretation has not been adopted by the Court, "which has subsequently required no more than a rational basis for discrimination by States against out-of-state interests in the context of equal protection litigation." 451 US, at 667, n 21, 68 L Ed 2d 514, 101 S Ct 2070. More importantly, to the extent the Court today purports to find in the Equal Protection Clause an instrument of federalism, it entirely misses the point of Justice Brennan's analysis. Justice Brennan reasoned that "[t]he Constitution furnishes the structure for the operation of the States with respect to the National Government and with respect to each other" and that "the Equal Protection Clause, among its other roles, operates to maintain this principle of federalism." 358 US, at 532, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Favoring local business as an end in itself might be "rational" but would be antithetical to federalism. Accepting arguendo this interpretation, we have shown that the measure at issue here does not benefit local business as an end in itself but serves important ulterior goals. Moreover, any federalism component of equal protection is fully vindicated where Congress has explicitly validated a parochial focus. Surely the Equal Protection Clause was not intended to supplant the Commerce Clause, foiling Congress' decision under its commerce powers to "affirmatively permit [some measure of] parochial favoritism" when necessary to a healthy federation. White v Massachusetts Council of Construction Employers, 460 US 204, ——, 75 L Ed 2d 1, 103 S Ct 1042, (1983). Such a view of the Equal Protection Clause cannot be reconciled with the McCarran-Ferguson Act and our decisions in Western & Southern and Benjamin.

Western & Southern established that a state may validly tax out-of-state corporations at a higher rate if its goal is to promote the ability of its domestic businesses to compete in *interstate* markets. Nevertheless, the Court today concludes that the converse policy is forbidden, striking down legislation whose purpose is to encourage the *intrastate* activities of local business concerns by permitting them to compete effectively on their home turf. In essence, the Court declares "We will excuse an unequal burden on foreign insurers if the State's purpose is to foster its domestic insurers activities in *other* States, but the same unequal burden will be unconstitutional when employed to further a policy that places a higher social value on the domestic insurer's *homestate* than interstate activities." This conclusion is

not drawn from the Commerce Clause, the textual source of constitutional restrictions on State interference with interstate competition. Reliance on the Commerce Clause would, of course, be unavailing here in view of the McCarran-Ferguson Act. Instead the Court engrafts its own economic values on the Equal Protection Clause. Beyond guarding against arbitrary or irrational discrimination, as interpreted by the Court today this Clause now prohibits the effectuation of economic policies, even where sanctioned by Congress, that elevate local concerns over interstate competition. Ante, at ——, 84 L Ed 2d ——. "But a constitution is not intended to embody a particular economic theory . . . . It is made for people of fundamentally differing views." Lochner v New York, 198 US 45, 75–76, 49 L Ed 937, 25 S Ct 539 (1905) (Holmes, J., dissenting). In the heyday of economic due process, Justice Holmes warned:

> "Courts should be careful not to extend [the express] prohibitions [of the Constitution] beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain." Tyson & Brother v Banton, 273 US 418, 445–446, 71 L Ed 718, 47 S Ct 426, 58 ALR 1236 (1927) (Holmes, J., dissenting, joined by Brandeis, J.) (emphasis added).

Ignoring the wisdom of this observation, the Court fashions its own brand of economic equal protection. In so doing, it supplants a legislative policy endorsed by both Congress and the individual States that explicitly sanctioned the very parochialism in regulation and taxation of insurance that the Court's decision holds illegitimate. This newly unveiled power of the Equal Protection Clause would come as a surprise to the Congress that passed the McCarran-Ferguson Act and the Court that sustained the Act against constitutional attack. In the McCarran-Ferguson Act, Congress expressly sanctioned such economic parochialism in the context of state regulation and taxation of insurance.

The doctrine adopted by the majority threatens the freedom not only of the States but also of the Federal Government to formulate economic policy. The dangers in discerning in the Equal Protection Clause a prohibition against barriers to interstate business irrespective of the Commerce Clause should be self-evident. The Commerce Clause is a flexible tool of economic policy that Congress may use as it sees fit, letting it lie dormant or invoking it to limit as well as promote the free flow of commerce. Doctrines of equal protection are constitutional limits that constrain the acts of federal and state legislatures alike. See, e.g., Califano v Webster, 430 US 313, 51 L Ed 2d 360, 97 S Ct 1192 (1977); Cohen, Congressional Power to Validate Unconstitutional State Laws: A Forgotten Solution to an Old Enigma, 35 Stan L Rev 387, 400–413 (1983). The Court's analysis casts a shadow over numerous congressional enactments that adopted as federal policy "the type of parochial favoritism" the Court today finds unconstitutional. White v Massachusetts Council of Construction Employers, 460 US, at ——, 75 L Ed 2d 1, 103 S Ct 1042. Contrary to the reasoning in Benjamin, the Court today indicates the Equal Protection Clause stands as an independent barrier if

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dependent barrier if

courts should determine that either Congress or a State has ventured the "wrong" direction down what has become, by judicial fiat, the one-way street of the Commerce Clause. Nothing in the Constitution or our past decisions supports forcing such an economic straight-jacket on the federal system.

V

Today's opinion charts an ominous course. I can only hope this unfortunate adventure away from the safety of our precedents will be an isolated episode. I had thought the Court had finally accepted that

> "the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines; in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment. New Orleans v Dukes, 427 US, at 303–304, 49 L Ed 2d 511, 96 S Ct 2513 (citations omitted).

Because I believe that the Alabama law at issue here serves legitimate State purposes through concededly rational means, and thus is neither invidious nor arbitrary, I would affirm the court below. I respectfully dissent.

Introduced: 1/31/86
Referred: Labor and Commerce
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE SENATE

SENATE BILL NO. 379

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the premium tax for domestic insurers."

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

* Section 1. AS 21.09.210(b) is amended to read:

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay a tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policy holders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are [SHALL] not [BE] included in the direct premium income and are [SHALL] not [BE] subject to tax. The tax must [SHALL] be paid to the director annually before April 1, and, except as provided in AS 21.69.390(c), is computed at the rate of

(1) [FOR DOMESTIC COMPANIES, 1 PER CENT;]

(2) for hospital and medical service corporations, 6 percent of their gross premiums, less claims paid;

(3) for companies other than [DOMESTIC AND] hospital and

medical service corporations, 3 percent.

* Sec. 2. This Act applies to the tax due by April 1, 1987 for the tax year beginning January 1, 1986 and to the tax due for subsequent tax years.

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SB 379: Summary

Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while nondomestic companies are required to pay 3%. A recent US Supreme Court case raised constitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

BILL SUMMARY

Department of Commerce & Economic Development / POSITION PAPER

SB 379: "An Act relating to premium tax for domestic insurers."

This legislation eliminates the the tax preference currently granted to domestic insurance companies by standardizing the rate for domestic and nondomestic insurance companies.

AS 21.09.210(b) provides that domestic insurance companies pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, U.S., 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning constitutionality of the differential rate structure. This bill is proposed to correct the problem and not jeopardize our premium tax law. The bill has the further benefit of raising the total amount of premium tax collected. We are in favor of the legislation.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/21/86

John L. George, Director of Insurance

Date:

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST SB 375

Bill/Resolution No. : 377-069-86
Title : Premium tax for domestic insurers.

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev.
BRU : Insurance

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	1,142.3	1,200.4	1,260.0	1,323.4	1,389.6

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : John L. George
Division : Insurance
Phone : 465-2515
Date : 11/27/85

Approved by Commissioner : _____
Date : _____
Agency : Commerce and Economic Development

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

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS
ESTIMATED REFUNDS
1974 - 1984

	FOREIGN LIFE 3%	REFUND 1 - 1/2	P & C 3% Paid	REFUND 1 - 1/2	COMBINED TOTAL REFUND
1984					
1983	4,438,315	2,219,158	8,818,990	4,409,495	6,628,653
1982	3,707,727	1,853,864	7,729,096	3,864,548	5,718,412
1981	3,360,555	1,680,278	6,018,707	3,009,353	4,689,631
1980	3,178,322	1,589,161	4,843,581	2,421,790	4,010,951
1979	2,921,795	1,460,898	4,999,852	2,499,926	3,960,824
1978	2,912,980	1,456,490	5,050,350	2,525,175	3,981,665
1977	2,897,452	1,448,726	4,736,774	2,368,387	3,817,113
1976	2,329,917	1,164,958	3,910,087	1,955,043	3,120,001
1975	2,049,788	1,024,879	2,818,755	1,409,378	2,434,257
1974	1,586,349	793,175	2,235,308	1,117,604	1,910,779
	29,383,200	14,691,585	51,161,400	25,580,699	40,272,284
PLUS					
1984 Revised 2/24/86	4,861,829	2,430,914	9,644,148	4,822,074	7,252,988
	GRAND TOTAL				47,525,272

1RefundLGJOBS2/25/86a

REQUEST FOR REFUNDS RECEIVED TO DATE
FEBRUARY 1986

	YEAR(S)	TOTAL REQUEST
Horace Mann Insurance Company	1981	20,611
Horace Mann Life Insurance Company	1981	2,913
Union Mutual Stock Life	1984	8,500
	1983	5,006
States West Life Insurance Company	1982, 1983, 1984	13,380
Northern Life Insurance Company	1980 - 1985	27,198
Dairyland Insurance Company	1982 - 1984	8,294
Mutual Protective Insurance Company	1980 - 1984	1,138
Physicians Mutual Insurance Company	1980 - 1984	45,857
Medico Life Insurance Company	1979 - 1984	347
Motors Insurance Company	1979 - 1984	80,395
MIC Life Insurance Company	1983 - 1984	1,684
CIM Insurance Corporation	1979 - 1984	3,774
Philadelphia Life	1983 - 1984	809
Philadelphia American Life	1983 - 1984	386
American Bankers Insurance Company	1982	1,383
American Bankers Life Insurance Company	1982	13,201
Cudis Insurance	1982, 1983, 1984	28,692
CUNA Mutual Insurance Society	1982, 1983, 1984	40,463
Union Mutual Life Insurance Company	1983, 1984	1,118
Mutual Life Insurance Company of New York*	1984	84,170
Combined Insurance Company of America	1974 - 1984	112,380
Ranger Insurance	1982 and 1984	9,201
Industrial Indemnity	1981	70,472
Atlantic International Insurance Company	1984	3,249
Provident Mutual Life Insurance Company	1981 - 1984	2,547
Phoenix Mutual Life	1981	1,153
26 Companies - TOTAL		588,321

* Also Party to Suit

Total 3%

Foreign Premium Tax Paid for 1984 Premium Tax	14,505,977
1 - 1/2% Refund	7,252,988

2RefundLGJOBS2/25/86a

TAX CASE 1JV-81 CIV
1JV-83 616 CIV

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	COMPANY TOTAL
Equitable Life Assurance	53,257	69,938	77,232	111,053	126,228	167,917	180,448	140,897	151,959	175,413	145,314	1,399,656
John Hancock Mutual Life	19,741	21,945	26,172	30,303	30,698	42,025	45,757	55,155	60,886	58,426	55,144	446,252
Metropolitan Life	91,777	119,376	139,195	206,468	215,247	207,039	228,356	152,843	73,428	54,020	52,191	1,539,940
Mutual Life Insurance Co. of NY	75,274	88,935	95,935	102,149	117,873	115,665	116,697	126,447	131,829	154,141	168,340	1,293,285
New York Life Insurance Company	170,823	177,683	218,659	241,937	272,951	290,766	310,683	362,120	418,880	533,434	619,912	3,617,848
Prudential Insurance Company	83,940	59,309	64,797	75,964	136,627	139,440	124,976	174,767	190,130	188,765	185,030	1,423,745
Travelers Insurance Co. - Life	60,575	79,380	126,850	169,402	190,928	164,736	167,953	190,193	178,529	209,098	261,946	1,799,590
Accident Department	14,954	37,110	28,450	60,601	62,617	32,973	17,430	98,462	38,566	140,358	105,352	636,873
Travelers Indemnity	14,994	29,460	26,958	16,872	41,890	21,622	52,619	25,328	55,335	122,366	129,339	536,789
Aetna Life & Annuity Corp.	-	-	281	153	32	32	24	559	1,885	4,685	22,509	30,160
Aetna Casualty & Surety	10,253	25,930	46,798	90,325	79,928	29,921	43,816	79,686	92,797	102,665	76,768	678,887
Aetna Life Insurance Company	188,875	231,309	259,582	354,978	343,980	393,051	460,910	523,186	564,299	904,663	773,698	4,998,531
Standard Fire Insurance Co.	7,209	5,565	5,260	15,628	20,743	5,323	6,683	6,040	21,876	108,512	78,362	281,201
Automobile Ins. Co. of Hartford	-	-	29	17	-	-	-	-	-	11	968	1,025
Accidential Life Ins. Co. (Transamerica)	55,590	51,432	53,948	60,968	66,284	82,365	98,332	97,674	104,026	124,586	90,071	885,276
Massachusetts Mutual Life Insurance Company	9,399	13,108	15,421	16,345	18,887	22,489	23,004	24,720	25,063	19,948	22,372	210,756
Connecticut Mutual Life Insurance Company	5,291	6,528	7,860	9,631	11,567	13,426	16,270	19,063	17,753	17,201	16,656	141,246
3% TAX PAID	846,958	987,548	1,166,469	1,545,922	1,694,600	1,707,168	1,841,339	2,051,812	2,071,906	2,795,926	2,674,633	19,384,281
GRAND TOTAL	861,952	1,017,008	1,193,427	1,562,794	1,736,496	1,728,790	1,893,958	2,077,140	2,127,241	2,918,292	2,803,972	19,921,070
REFUND @ 1 1/2% (domestic rate)	430,796	508,504	596,713	781,397	868,248	864,395	946,979	1,038,570	1,063,620	1,459,146	1,401,986	9,960,534

3RefundLGJ0852/25/86a

BILL SHEFFIELD
GOVERNOR

d379

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the premium tax paid by domestic insurers.

Under present law, AS 21.09.210(b) provides that domestic insurers pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, ___ U.S. ___, 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning the constitutionality of the differential rate structure. In order to correct this problem and not jeopardize our premium tax laws, this bill will eliminate the preference for domestic insurers by standardizing the rate at three percent for both categories of insurance companies. The bill has the further benefit of raising the total amount of premium taxes collected. I urge your support of this bill.

Sincerely,

Bill Sheffield
Governor

TRANSMITTAL LETTER

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 7, 1986

The Honorable Fred Zharoff
Chair, Senate Labor and Commerce
Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 379 (Premium tax for domestic insurers)

Dear Chairman Zharoff:

As indicated in the governor's transmittal letter dated January 31, 1986, this bill is necessary due to a recent United States Supreme Court case, Metropolitan Life Insurance Co., v. Ward, 105 S.Ct. 1676 (1985), which calls into serious doubt the constitutionally of the present Alaska premium tax law.

Enclosed is a chart prepared from data compiled by the division of insurance, Department of Commerce and Economic Development, showing the amount of premium taxes collected by the state from foreign insurance companies between 1974 and 1984. As you can see, the state collected approximately $14.5 million in 1985, for the 1984 tax year.

We can assume this figure is a good indication of the premium amount the state will collect in future years. Foreign insurance companies, claiming the entire tax is unconstitutional, are now making their entire tax payments under protest. Thus, the state is currently exposed to possible liability in excess of $14.5 million per year until the statute is corrected. 1/

1/ A good argument can be made that if a refund is required, it should be only one-half of all taxes paid, or approximately $7.25 million annually. This represents the difference between the amount paid by the companies (three percent) and the amount they would have paid, were they domestic companies (one and one-half percent).

Given the state's declining revenues, it is very important that this bill be passed this year, to prevent possible future state losses of $7 - 14 million per year.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Jeffrey W. Bush
Assistant Attorney General

HMB:JWB:cck

Enclosure

cc w/ enc.:

Jim Ayres, Director
Legislative Relations
Office of the Governor

Art Peterson
Legislation/Regulations Attorney
Department of Law

John George, Director
Division of Insurance
Department of Commerce
and Economic Development

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS

1974 - 1984

TAX YEAR	FOREIGN LIFE (3%)	PROP & CAS (3%)	TOTAL TAX PAID	AMT. WOULD HAVE PAID AT DOM. RATE
1984	4,861,829	9,644,148	14,505,977	7,252,989
1983	4,438,315	8,818,990	13,257,305	6,628,653
1982	3,707,727	7,729,096	11,436,823	5,718,412
1981	3,360,555	6,018,707	9,379,262	4,689,631
1980	3,178,322	4,843,581	8,021,903	4,010,952
1979	2,921,795	4,999,852	7,921,647	3,960,824
1978	2,912,980	5,050,350	7,963,330	3,981,665
1977	2,897,452	4,736,774	7,634,226	3,817,113
1976	2,329,917	3,910,087	6,240,004	3,120,002
1975	2,049,788	2,818,755	4,868,543	2,434,272
1974	1,586,349	2,235,308	3,821,657	1,910,829
	34,245,029	60,805,548	95,[illegible]0,577	47,525,288

RECORDS
CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

382

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 382
Title: Civil Actions

Sponsor: Kerttula
Requester: John L. George
Date of Request: 2/28/86

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance

Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: 2/28/86

Approved by Commissioner: Loren H. Lounsbury
Agency: Department of Commerce & Economic Development
Date: 2/28/86

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

10/25/85

Department of Commerce & Economic Development / POSITION PAPER

SB 382: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 54, 58, and 82; and providing for an effective date."

This bill is focused on a variety of tort reforms. The position of the department on these issues is neutral.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/28/86

John L. George, Director of Insurance

Date: 2/28/86

lt0241K

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
384

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

February 21, 1986

MEMORANDUM

TO: Fred Zharoff, Chairman
Senate Labor and Commerce Committee

FROM: Jan Faiks, Senator

SUBJECT: Senate Bill 384 - Board of Electrical Examiners

As you know, the Division of Legislative Audit's performance report on the Board of Electrical Examiners recommends the board be sunset.

To this end, I want to share with you and the committee members comments I received on the audit from Kent Lee Woodman of the Alaska Independent Electrical Contractors Association. I think you will find the information helpful in your review.

OUT OF SESSION
1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

Alaska Bussell Electric Company

"AN ALASKAN CORPORATION"
ELECTRICAL CONTRACTORS AND ENGINEERS

ALASKA BUSSELL
ELECTRIC COMPANY
P.O. Box 4-1325
Anchorage, Alaska 99509
(907) 248-1515

BUSSELL ELECTRIC
P.O. Box 2363
Kailua, Kona, Hawaii 96740
(808)329-1192

BUSSELL ELECTRIC
P.O. Box 298
Nome, Alaska 99762
(907) 443-2380

February 20, 1986.

Alaska State Legislature
Box "V"
Juneau, Alaska. 99811

FEB 25 1986

Attn: Representive H.A. "Red" Boucher.

Subject: SB 384

Dear Representive Boucher:

SB 384 was recently introduced in the Senate. If adopted this bill will extend the term or life of the board of electrical examiners. The board is due to "sun set" if some form of legislative action is not taken to extend its life, this year.

It is my hope the bill will not make it out of the Senate Labor and Commerce committee. The History of activity concerning the board of electrical examiners has been highlighted by service to special interests, obstruction to right and lawful pursuit of a better life by a large number of Alaskans, an unconscionable amount of State money totally wasted and improperly spent on acts of obstruction and destruction of Alaskan's attempting to follow the American dream of personal advancement in their lives, use of the board and department employee's by the administration to punish those not currently in its favor, outright deceit and untruthfullness by department personnel have become common practice when dealing with the Alaskan public, the board and Department are formed and pledged to serve.

Other states with boards such as ours produced simular results and in most cases their Legislatures considered the problems caused by these boards, added up the wasted cost and arrived at the conclusion to eliminate them. As you know, there are now only a hand ful of states left with our type of counter-productive license system.

As a key Alaskan Legislator and a leading member of the House Labor and Commerce committee I urge you to oppose passage of SB 384 or any other measure which would extend the life of the board of Electrical Examiners and its Department staff.

Sincerely

Charlie Bussell
CEO ABEC

Copy to Mitch

From the desk of:
Senator Mitch Abood
Alaska State Legislature

2/25/86

FEB 25 1986

Senator Zharoff

After having a great deal of trouble & problems with the Board of Electrical Examiners, & agree with Mr Bussell. I would be most happy to discuss these problems if you would care to listen.

Thanks for your consideration

Sen Mitch Abood

3980 Coventry Drive
Anchorage,Alaska 99507
February 28,1986

Mr. Kevin Henderson
Div.of Occupational Lic.
P.O.Box D-LIC Juneau,Alaska 99811

MAR 2 1 1986

Dear Mr. Henderson,

I wish to express a complaint concerning the examination for Electrical Administrator, Inside Wiring. I realize that many persons hold this license,both by test and by a grandfather grant. However, very few have passed the last two tests given in Anchorage.

On the test of June 85, I did not have my application on file in time because I had been told by the Anchorage office-Frontier building that August 85 would be the first upcoming test. I felt something was unusual about this 'short notice' test, so wrote to Linda Janidlo at the Ombudsmans office asking to find out how many took the test and how many passed it. I wanted no names, just numbers. Received a reply dated July 9 '85 from Mr. Treager, director-division of occupational licensing stating "thirty six applicants took the examination.Because of priority work load,we cannot tell you how many passed the exam."

I have applied for and taken the last two exams of August 85 and January 86. My scores were 63% and 65.42%. This is absolutely ridiculous!! At this point I wish to state that 'in my opinion' the board of Electrical Examiners are not properly doing their job. First- evidently they are not screening all applicants properly or there would not be such a high percentage of failing test grades. Possibly they are allowing persons to take the test who have no electrical knowledge.
Secondly- if a person has the experience required to take the test, the test itself should be a mere formality. If my semi-official information is correct, on the test of January 86 there were 67 qualified applicants who took the test. 59 of these persons failed the test. Approximately 88% of the applicants failed to reach a minimum 70% score!

The real problem is that the test is unrealistic and is not designed as a measure of competency. It is designed to discourage and fail applicants. I have been informed that two gentlemen(I know them both) were paid $50.00 for each question submitted to be used for the inside wiring test. Naturally they would soon run out of legitimate questions and resort to every page of every electrical book to keep coming up with obscure questions. I am certain that I could do the same, and probably would, at that price. However, failing such a test would not make an examinee 'not qualified to do electrical work in Alaska'. By the same token, passing such trivia would not qualify an unqualified person.

I have been working in the electrical construction field for over 37 years. Began in Sept.1948 as electrical apprentice and have been at it continuosly through the ranks to electrical superintendent and electrical contractor. Still hold a electrical contractors license in California, although have been an Alaskan for the past 15 years. All this time has been as a member of I.B.E.W. and I hold a 35 year pin from same. I mention this only because it is very easy to check my credentials that way.

Also on the inside wiring test were quite a few questions pertaining to telephone and inside communications. The state has a separate license and exam for this specialty and I resent being tested for it on the inside wiring test. The questions missed and the time wasted on this portion may have contributed to my failing the test. 12 AAC 32.100 states that(person holding current license in inside wiring will be granted a license in inside communications**without examination**)

The state employees in the division of occupational licensing are not my complaint. My complaint is the actual test and the poor passing percentage.

The final blow is this. The next test after January 86 is sometime in the fall of 86. This will be after the fiscal year ends June 30 and a new $200.00 fee will be required.

Sincerely,

Paul Z. Mead

Paul Z. Mead

Copy:
Commissioner Lounsbury
Senators- DeVries, Zharoff, Eliason,
Bennett, Sackett, Ray, Faiks
Reps- Nauarre, Marrou, Davis, Cato,
Boucher, Koponen, Hanley,
Collins, Pearce

STATE OF ALASKA

Department of Commerce and Economic Development

Division of Occupational Licensing

In the Matter of:
Amber Electric, Ltd.,
Yellow Electric, Ltd.
Yellow Electric Company, Ltd.,
and Kent Lee Woodman,
Respondents.

RECEIVED
SEP 1 1 1984
BENDELL, BENDELL, SIMON & PLATT

File EE-84-768
AG File 122-742-84

STIPULATION OF SETTLEMENT AND PROPOSED ORDER

It is hereby stipulated by and between the Department of Commerce and Economic Development, Division of Occupational Licensing, by its attorney, the Attorney General of the State of Alaska ("the Department"), and Kent Lee Woodman, Yellow Electric Company, Inc., ("the Company") and each of the Company's corporate divisions ("the Divisions") as follows:

A. On November 28, 1983, the Department issued a Temporary Cease and Desist Order under AS 08.01.087(b)(1) against Respondents. That order was amended by an Amended Temporary Cease and Desist Order dated May 24, 1984. The Amended Temporary Cease and Desist order stated, in summary, that one or more Divisions of the Company were operating under their divisional names, which names were not registered with the Department as required by AS 08.18.011. (The name of one of the corporate divisions, Yellow Electric, Ltd., is registered with the Department under AS 08.18.011.) The order further stated that Kent Lee Woodman was acting as electrical administrator for each of the Divisions of the Company.

B. Counsel for Respondents and for the Department have discussed the issues raised in the Amended Temporary Cease and Desist Order, and it is the purpose of this Stipulation and Order to provide for compromise and settlement of all issues without the necessity of proceeding to a formal hearing at which

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the Respondents would have the opportunity to present a defense with regard to the allegations set forth in the Amended Temporary Cease and Desist Order.

THEREFORE, the following stipulation is agreed to and submitted for the purpose of allowing its terms to become an order of the Department.

IT IS STIPULATED AND AGREED AS FOLLOWS:

1. The Department has jurisdiction over Respondents and the subject matter contained in this Stipulation and Order and in the Amended Temporary Cease and Desist Order.

2. Respondents neither admit nor deny the allegations of wrongdoing stated in the Amended Temporary Cease and Desist Order.

3. Respondents understand that they have a right to a hearing with regard to the facts admitted in paragraph 4 below. Respondents further understand and agree that, by waiving their rights to a hearing and admitting the facts and conduct contained in paragraph 4 below, they are relieving the Department of its burden of proving these facts and conduct, and are voluntarily and knowingly giving up their right to present their defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination of witnesses as they may desire.

4. Respondents admit and agree as follows:

a. Yellow Electric Company, Inc. is an Alaska corporation in good standing;

b. Amber Electric, Ltd., Yellow Electric, Ltd., Yellow Electric Service, Yellow Electric Commercial, Yellow Electric Residential, Yellow Electric Bush, Amber Electric, Ltd., and Northern Electronics are each a corporate division of Yellow Electric Company, Inc.;

c. Each of the Divisions listed above, and the Company itself, engage in activities for which registration is required under AS 08.18.011.

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d. Yellow Electric, Ltd. is registered as a contractor under AS 08.18.011;

e. None of the Company's other Divisions is registered as a contractor under AS 08.18.011;

f. Yellow Electric Company, Inc. is not registered as a contractor under AS 08.18.011, except through the registration of its divisional name, Yellow Electric, Ltd.

5. Respondents do not deny the use of the divisional names referenced above, nor do they seriously dispute the factual allegations which were the subject of the Cease and Desist Order. Respondents disagree, however, with the Department's position that Respondents violated Alaska law by operating under unregistered divisional names. However, Respondents do not desire to contest the Department's position at a formal administrative hearing.

6. Respondents agree that:

a. Not later than five (5) business days from the effective date of this Stipulation and Order, Respondents shall have applied to transfer the registration of Yellow Electric, Ltd. to Yellow Electric Company, Inc., and to change the electrical administrator designation of Kent Lee Woodman from Yellow Electric, Ltd. and Amber Electric, Ltd. to Yellow Electric Company, Inc.;

b. Not later than September 3, 1984, all signs on any and all real and personal property owned by Yellow Electric Company, Inc., which presently display only the name of one or more Divisions, shall have been changed to show the Company name in conjunction with the divisional name: for example, "Amber Electric Ltd., a Division of Yellow Electric Company, Inc.";

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c. Not later than sixty (60) days from the effective date of this Stipulation and Order, the Respondents shall have changed all stationary and advertisements in such a way that no divisional name appears alone without the Company's name, for example, "Amber Electric, Ltd., a Division of Yellow Electric Company, Inc."

Respondents may continue using stationery currently in stock, but it must be altered, by stamp or otherwise, to clearly and conspicuously indicate that the Division is a Division of the Company. All future orders of stationery for each Division shall show the Division name only in conjunction with the Company name;

d. Any advertisements which cannot be changed within the time period specified in (c) above because of infrequency of publication or other matters beyond Respondents' control, shall be changed by Respondents at the earliest possible time;

e. Respondents shall promptly notify all persons with whom they have outstanding and uncompleted contracts under the name of any Division of the fact that the Division is a division of the Company; and

f. Respondents shall abide by the requirements of AS 08.18.011 and .051 and AS 08.40.130, and henceforth shall never use a divisional name except in conjunction with the registered corporate name.

g. Without limiting the Department's general authority to conduct investigations, Respondents and the Department agree that each of Respondents' business premises may be inspected by the Department to verify Respondents' compliance with this Stipulation and Order on three occasions occurring between September 3, 1984 and two years following the effective date of this Stipulation and Order. The Department agrees that these inspections will be con-

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ducted during normal business hours, and the Respondents agree to fully cooperate in and allow the inspections. Respondents further agree to provide the Department with such other or additional assurances of Respondents' compliance with this Stipulation and Order as the Department may reasonably require.

7. The Department agrees that:

a. Respondents may properly operate under the name of a Division, if and only if the Division name is always used in conjunction with the Company's name and if and only if the Company is registered under the Company's own name; and

b. Respondents shall have the periods of time specified in paragraph 5 above to accomplish the changes described in that paragraph.

8. Nothing in this Stipulation and Order, including but not limited to paragraph 6(a) above, prohibits the Company from changing its name or that of any or all of its Divisions as may be allowed by applicable laws. However, the Respondents agree to provide the Department prior written notice of proposed name changes.

9. If, during the next two years, the Department has reasonable grounds to believe that any of the Respondents are in violation of this Stipulation and Order, the Department may initiate an action under AS 08.01.087, AS 08.40.170 and/or AS 08.18.121 against any or all of the Respondents. If, after a hearing in such an action, it is determined that this Stipulation and Order has been violated, the violation shall be grounds for suspending or revoking the registrations of or otherwise disciplining the Respondents, and/or for the issuance of a permanent cease and desist order against Respondents. These rights of the Department are in addition to, and not in lieu of, any

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other rights the Department may have to initiate any proceedings against Respondents under any pertinent Alaska statutes or regulations.

10. This Stipulation and Order shall be binding upon the Respondents and their respective successors and assigns.

11. This Stipulation and Order shall be a public record of the Department.

12. This Stipulation and Order shall be effective on the date it is accepted by the Director of the Division of Occupational Licensing, and shall constitute a full and final resolution of this matter.

13. The Attorney General notes that the Department is charged with the responsibility of protecting the public health, safety, and welfare by prosecuting unlicensed activities in the State of Alaska. In the opinion of the Attorney General, the terms and conditions of this Stipulation and Order will fully protect the public interests at stake in this matter.

DATED this 31st day of July, 1984, at Anchorage Alaska.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Kay E. Maassen Gouwens
Kay E. Maassen Gouwens
Assistant Attorney General

DATED this 30 day of July, 1984, at Anchorage, Alaska.

James Bendell
Counsel for Respondents

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PROPOSED DECISION

As the parties have stipulated to a result in this matter which appears to the hearing officer to be a fair settlement, this Stipulation is adopted as the proposed decision in this matter.

DATED this 7 day of August, 1984, at Anchorage, Alaska.

Jack D. Clark

Jack D. Clark, Hearing Officer

FINAL ORDER

The Division of Occupational Licensing of the Department of Commerce for the State of Alaska, having examined the Stipulation and proposed Order dated August 7, 1984 by hearing officer Jack D. Clark, hereby adopts the Stipulation and proposed Order as its final Order in this matter.

DATED this 24 day of August, 1984, at Juneau, Alaska.

Division of Occupational
Licensing,
Department of Commerce and
Economic Development

By: Harry Treager
Harry Treager, Director

The undersigned hereby certifies that on the 3 of August, 19 84, the attached document were mailed to the attorneys of record.

Jim Reardon

Julie N. Ourbutt Jr.

Subscribed and sworn to before me the date last written.

Karen M Proctor

Notary Public
My Commission Expires 7-21-85

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NOTE: This is an extremely abbreviated attachment. Between this cover Cease & Desist Order and the Stipulation to do, in effect what we had been doing all along, were eleven (11) months, over $10,000 and some ten (10) pounds of documents. All are available for review.

IV 28 Nov 83

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

In the Matter of:)
AMBER ELECTRIC LTD.)
RESPONDENT)

FILE: EE-84-768

TEMPORARY CEASE AND DESIST ORDER
(AS 08.01.087(b)(1)

TO: Kent Lee Woodman
Amber Electric Ltd.
1658 East 59th Avenue
Anchorage, Alaska 99507

1. As a result of an investigation conducted by the Division of Occupational Licensing it has been determined that:

You are operating an Electrical Contracting business known as "Amber Electric Ltd." without registration as a specialty or general contractor. This operation is evidenced by your advertisements as "Amber Electric Ltd" contained on pages 8, 348 and 349 of the 1983 Anchorage telephone book. This is in violation of Alaska Statute 08.18.011. Records of this division indicate that you are the electrical administrator for Yellow Electric Ltd., therefore, you cannot act as electrical administrator for both Yellow and Amber Electric. By doing so, you are also in violation of AS 08.40.130. Division records also show that you were informed by a member of this division on or about 4/1/81 that a separate contractor license and electrical administrator would be required for you to operate as "Amber Electric Ltd". Additionally, inquiry to the Department of Revenue and the Division of Corporations reveals that you have no business license for Amber Electric Ltd. nor is Amber Electric Ltd. registered as a corporation, thus constituting violation of Alaska Statutes 43.70.020 and 09.50.310 respectively.

2. Notification has been made to the members of the Board of Electrical Examiners of the proposed issuance of this Temporary Cease and Desist Order and a majority of the board members do not object to its issuance.

3. Issuance of this Temporary Cease and Desist Order is in the public interest.

IT IS THEREFORE ORDERED pursuant to AS 08.01.087(b)(1) that you immediately CEASE AND DESIST from further practice as an Electrical Administrator for Amber Electric Ltd. and from further operation of Amber Electric Ltd. until such time as you have the requisite license to do so.

4. Upon your written request within 15 days of receipt of this order a hearing will be set and thereafter a further order will be entered; if no such request is received, this order shall stand as entered.

This order is effective on receipt by you.

DATED THIS 28 DAY OF November 1983 at Juneau Alaska.

BY ORDER OF

COMMISSIONER
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT

BY: Harry D. Treager

HARRY D. TREAGER, DIRECTOR
DIVISION OF OCCUPATIONAL LICENSING

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

In the matter of:

Respondent

TEMPORARY CEASE AND DESIST ORDER
(AS 08.01.087)

REQUEST FOR HEARING

Respondent, pursuant to AS 08.01.087(b)(1), hereby gives Notice of Defense in this proceeding.

A hearing on the matters set forth in the Temporary Cease and Desist Order is hereby requested.

DATED this 12th day of December 1983.

Respondent's signature

Address: 1658 East 59th Avenue

Anchorage, Alaska 99507
City State

561-2366
Telephone Zip

NOTICE

This Request for Hearing must be signed by or on behalf of respondent, set forth respondent's mailing address, and must be filed with the Director, Division of Occupational Licensing, Department of Commerce and Economic Development, Pouch D, Juneau, Alaska 99811, within 15 days of receipt. Upon receipt of this or a written request in any form received by the Director within 15 days of your receipt of this order, a hearing will be set and thereafter a further order will be entered. If no such request is received, this order shall stand as entered.

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D, JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-2538

RATIONALE' AND EXPLANATION
Proposed changes: Statutes and Administrative Code

FORWARD:

In the extensive review of the statutes and regulations pertinent to this package, several changes were made simply to clarify or to clear up English errors. Such changes are NOT reviewed in the following text, as they should be obvious. The following text reveals the thinking behind each pertinent change.

* Sec 08.01.110 (2): This change moves a great deal of the Electrical licensing and related matters FROM the Department of Commerce and Economic Development, TO the Department of Labor.

  It has been discussed many times that the lines of authority, communication and enforcement sweep back and forth between these two departments with no logic at all, and often times creating confusion and duplication. This is the first of several areas where we propose that the Board of Electrical Examiners, the testing and licensing of Administrators and the Testing, licensing, inspecting and enforcement procedures for craftsmen, all fall under the same Department. We are aware of NO OTHER STATE in which such an illogical splitting of functions and authorities exists.

* Sec 08.40.130: This change would allow an Administrator with more than one license to administer for a company with each license. As an example, an Outside Communications license could be vested with a communications company, while an Inside Wiring license could be with an electrical contractor.

  We suspect that it was never the intent of the original drafters to prevent this, however, the language does stop it cold currently. Concerns for the continuity of supervision should be reduced considerably with reference to that subject in the materials which follow.

* Sec. 08.40.175: This short addition complies with the intent of HB 328.

* Sec. 08.40.195: This change would enable Administrators to extend their supervision and inspection activities to more jobs, especially concurrently, through the medium of a new technician, the MASTER JOURNEYMAN ELECTRICIAN, described below. We maintain that this section is impossible to comply with currently without several Administrators on staff and constantly traveling.

  Additionally, the law is currently written only to cover the <u>materials</u> and not the <u>installation</u> or labor. This change would fix that.

  Finally, the change would be more specific as to the duties of the Administrator, in an attempt to make it more difficult for them to be "absentee" or "leased" licenses of people who are not actively involved in the practices or final product.

  There has been considerable discussion through the years that licensing of "private" inspectors would go a long way towards resolving the extreme shortage of funds and personnel available to the state in providing standards of inspection of work to afford an acceptable level of public safety. This is especially true in higher growth areas which have no local inspection. We maintain that should such a system become possible under law, that it would be these highly qualified Master Journeymen Electricians and Electrical Administrators which would be best suited and trained. Note that application is required. This text would enable the department to initiate such a plan for the first time, thus reducing costs and concerns for public safety.

* Sec. 18.60.660. This section provides a clarification to prevent difficulties in interpreting the law concerning such items as "zero lot line" and "condominiums" where the units are multi-family, but NOT rented out to the public as with apartments and hotels.

* Sec 18.62.050(c): This change simply deletes improper references to a trade union over compatible competition, and allows both the NEC and AIECA to provide the input. Present language constitutes an illegal advantage to the union, and constitutes an unfair labor practice in law.

  This change would not restrict previous IBEW/NEC activities at all.

* 8 AAC 90.160: This whole section is designed to create a new level of technical supervisor called a MASTER JOURNEYMAN ELECTRICIAN, compatible with other states, and to fit the rationale' above under "supervision". The balance of this section simply repairs some bad language or makes the material more readable and understandable.

  NOTE the change under item (6), which again, deletes reference to the union, and makes it possible for both entities to make input.

  NOTE: new item (C) gives a little more substance to certificates of fitness from other states.

  NOTE: item (7), which was recently deleted by the legislature, is back in, but with a qualifier indicating that the only "grandfather" licenses to be considered are those of folks who have remained in the industry in some capacity, and not those who came out of hibernation after 12 years asleep and out of touch.

* 8 AAC 90.170: This is in concert with Mechanical Inspection's desires not to have to fund for and conduct the testing for the new classification. Such tests are available nationally.....from no less than IEC chapters. It places a little more formality on the important new classification, and prevents cries of "foul" in the testing and certifying to come.

* 8 AAC 90.175, 176, 177 & 178. This section introduces for the first time, the licensed signal and communications technician. Much has been said in the past about this career field. Portions of their work are covered by the NEC, and the Municipality of Anchorage is currently studying inspection of all "low voltage" work. Suffice it to say there are many unqualified and unsupervised people installing alarm, communications, data, signal and control circuits, wiring and equipment upon which the public must rely. The delay for compliance provides notice and opportunity for all to bring their operations into compliance with no undue hardship on any one individual or firm.

* 8 AAC 90.205(c) adds the material contained in Representative Robin Taylor's HB 328.

* 8 AAC 90.900 (2), (4) & (10) include language required to support the concept of licensing low voltage technicians. Item (15) includes Master Journeyman Electrician in another section that requires it, for continuity. (16) modifies the limits of a RESIDENTIAL WIREMAN: He or she would still be limited to residential work with no more than four (4) living units on a foundation....IF HE OR SHE IS IN CHARGE OF THE JOB.

  What it changes, is that if he or she works on, say an 8-plex where a Journeyman is in charge and in place, the wireman may be treated as a Journeyman for purposes of body count and apprentice ratio....i.e. not as an apprentice as it currently is.

  NOTE: This situation has been discussed many times, and there is cautious agreement in the state that wiremen on a larger residential job are journeymen for the purposes of apprentices working there as well, provided that a journeyman is in charge....but it needs put in writing.

* 12 AAC 32.250(a)(5): This section is currently up for change to require the notarized letters, which creates a real problem. Oftentimes the writers of the letters are no longer in business, perhaps even dead. Strict enforcement of such a provision would render many, many hours of work experience invalid for lots of people! This change would give the Mechanical Inspection people some freedom to validate; a practice they have been performing for several years now in unusual cases, on a form they already have.

* 12 AAC 32.320: simply adds IEC and AIECA to the list of approved sponsoring organizations for the bi-annual workshops. There is no reason in the world that they should not be included , and their exclusion at printing time simply shows the ignorance and short-sightedness of the original drafters.

* 12 AAC 32.910(2): This completes the changes required to move everything electrical out of Commerce and into Labor. Sections (4) & (10) incorporate the communications technicians for continuity. (15) Adds the Master Journeyman Electrician into the last place it needs to appear to make the new classification complete.

Respectfully submitted this 09th day of May 1985

KENT LEE WOODMAN
Director of Administration
AIECA

IN THE HOUSE BY TAYLOR

HOUSE BILL NO. ___

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to Electrical Administrators, Electrical craftsmen, and providing for an immediate effective date."

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

* Section 1. AS 08.01.110 is amended to read:

Sec. 08.01.110. DEFFINITIONS. In this chapter

(1) "board: includes the boards and commissions listed in 08.01.010;

(2) "department" means the Department of Commerce and Economic Development, except in the case of the Board of Electrical Examiners, in which case it means the Department of Labor;

(3) "commissioner" means the commissioner of commerce and economic development, except in case of the Board of Electrical Examiners in which case it means the Commissioner of Labor;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in AS 08.01.010;

(5) "licenseee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in AS 08.01.010.

* Section 2. AS 08.40.130 is amended to read:

Sec. 08.40.130. ADMINISTRATOR LIMITED TO ONE LICENSED CONTRACTOR. No person may qualify for or operate as an electrical administrator for more than one registered contractor with each license.

* Section 3. AS 08.40.175 is amended by adding a new subsection to read:

08.40.175(c). A person who makes an inspection for the commissioner under this section must be licensed to perform the kind of work being examined.

* Section 4. AS 08.40.195 is amended to read:

Sec. 08.40.195. (a) [PERSONAL] SUPERVISION. A person licensed under this chapter as an electrical administrator who contracts to install or repair electrical wiring, conduits, devices, fixtures, equipment or other electrical materials for transmitting, using or consuming electrical energy must [personally inspect those materials after installation and repair] establish a formal supervision system for the electrical contractor he or she represents, which develops the on-site supervision by the administrator and/or journeyman master electrician; the communications, coordination, records and system(s) required to adequately manage such construction and assure proffessional standards of electrical construction and complaince with the national Electrical Code and local amendments thereto, unless the installation or repair amounts to simple or highly standardized work performed in less than 24 man-hours by personnel generally under the supervision of the electrical administrator, or consists entirely of major component or exact system replacement.

* Section 5. AS 08.40.195 is amended by adding new subsections to read:

Sec. 08.40.195 (b) An electrical administrator who provides supervision under section (a) of this statute, shall have direct and regular contact with the inspecting and/or supervising journeyman master electrician who regularly inspects each phase of the work performed and the materials supplied. This direct and regular contact shall consist of at least a minimum of periodic review of plans and specifications, methods of construction and installation, procedures and inspection results, to assure complaince with the provisions of the National Electrical Code and all local amendments thereto.

Sec. 08.40.195 (c) An electrical administrator who provides supervision under sections (a) and (b) above, shall make periodic sampling visits to various work sites and shall maintain plans, specifications, as-built drawings and/or contract documents of all projects for at least one (1) year following completion of said project.

* Section 6. AS 18.60.610 DELEGATION OF AUTHORITY is amended by preceeding the previous text with "(a)" and adding a new paragraph.

Sec 18.60.610 (b) Upon application to the department, a person licensed and qualified as a master journeyman electrician in accordance with AS 08.40.195, AS 08.90.160, 8 AAC 90.900 and 8 AAC 32.910, and who is an electrical administrator or employed and supervised by a licensed electrical administrator in accordance with AS 08.40.90, 130, 195, 200 and 12 AAC chapter 32, may be authorized by the commissioner to inspect the electrical wiring for a public or commercial structure or a residential structure as defined in AS 18.60.660 provided, however, that such inspection is not for electrical work performed by his or her own employer. Such inspections will be documented on forms provided by the department. Authorization by the commissioner under this section constitutes a grant of full authority to act within the provisions of AS 18.60.580 - 18.60.660 with the same immunities and privileges accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed, has the right to appeal to the commissioner for a new inspection. The commissioner shall, within fifteen (15) days, furnish a new inspection by a designee not associated with the person, firm or utility who performed the original inspection.

* Section 7. AS 18.60.660 DEFFINITIONS is amended by adding a new paragraph to read:

Sec 18.60.660 (5) "residential structure" means buildings such as single-family and multi-family units used for residence, including condominiums.

* Section 8. AS 18.62.050 ISSUANCE AND CONTENTS OF CERTIFICATE is amended to read:

Sec 18.62.050(c). verification by an Alaska-based [labor union] <u>electrical trade association which has an apprenticeship and training program certified by the U.S. Department of Labor, Bureau of Apprenticeship and Training,</u> of <u>an applicant's</u> [member's] qualifications to meet the requirements for a certificate of fitness may be accepted in lieu of examination or other requirement for issuing a certificate[ion] under this chapter.

* Section 9. This Act takes effect immediately in accordance with AS 01.10 .070(c).

CORRISPONDING CHANGES TO AAC

ARTICLE 3. ELECTRICIAN CERTIFICATE OF FITNESS.

Section

160. Journeyman electrician/master journeyman electrician certificates of fitness

165. Electrician trainee certificate of fitness

170. Electrician Examination

175. Communications journeyman technician certificate of fitness

176. Communications technician trainee certificate of fitness

177. Communications technician examination

8 AAC 90.160. JOURNEYMAN ELECTRICIAN/MASTER JOURNEYMAN ELECTRICIAN CERTIFICATE OF FITNESS.

(a) An electrician certificate of fitness authorizes the holder to perform work which is subject to the standards established in AS 18.60.580.

(b) A[n] master journeyman electrician, journeyman electrician, journeyman power lineman, maintenance electrician or residential wireman certificate of fitness will be issued by the department upon payment of the fee required under AS 18.62.030, if the applicant respectively

(1) for MASTER JOURNEYMAN ELECTRICIAN: submits documented proof that he or she has a minimum of six (6) years' or 10,000 hours' experience in the electrical trade, of which the last two (2) years or 3,000 hours have been as a supervising and/or inspecting journeyman, and passes an examination prescribed by the department and administered at least quarterly by an approved national testing institution; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to six (6) months' or 1,000 hours' work experience in the trade. An additional six (6) months' or an additional 1,000 hours of formal educational training in management of people, principals of project management and/or electrical inspection may be substituted for the requirement of the last two (2) years; or

(2) [(1)] for JOURNEYMAN ELECTRICIAN: submits documented proof that he or she has a minimum of four (4) years' or 8,000 hours' experience in the electrical trade and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to six (6) months' or 1,000 hours' work experience in the trade; or

(3) [(2)] for JOURNEYMAN POWER LINEMAN: submits documented proof that he or she has a minimum of four (4) years' or 8,000 hours' experience as a power lineman and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may ber substituted for up to six (6) months' or 1,000 hours' work experience in the trade; or

(4) for MAINTENANCE ELECTRICIAN: submits documented proof that he or she has a minimum of three (3) years' or 6,000 hours' experience as a maintenance electrician and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to three (3) months' or 500 hours' work experience in the trade; or

(5) [(3)] for RESIDENTIAL WIREMAN: submits documented proof that he or she has a minimum of two (2) years' or 4,000 hours' experience as a residential wireman and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to three (3) months' or 500 hours' work experience in the trade; or

(6) [(5)] presents to the department, on a form provided by the department, a sworn affidavit from an official of an Alaska-based [union] electrical trade association which has an Apprenticeship Training Program certified by the U.S. Department of Labor, Bureau of Apprenticeship and Training, which shows that the applicant meets the experience requirements set forth in paragraphs (1), (2), (3), (4) or (5) of this section, and passes an examination given by the department; the affidavit must specify

(A) the number of qualifying hours experience the applicant claims for the classification for which he or she seeks certification; apprenticeship hours must be noted if this time is being used for qualification; and

(B) the inclusive dates during which the hours claimed in (A) of this paragraph were worked.

(C) Compatible certificates properly issued in other States with experience and testing requirements which are the same or substantially the same as those required in Alaska, may be accepted by the department to substantitate hours and/or experience for the purposes of qualifying to take the applicable examinations.

(7) [(6)] presents documented proof that he or she was actively engaged in the respective work catagory of the electrical trade in the state for one or more years before January 1, 1973, provided, however, that the person has maintained a continuous, licensed presence in the electrical field from that time to the of application.

8 AAC 90.170. ELECTRICIAN EXAMINATION. (a) Examinations for journeyman electrician, journeyman power lineman, maintenance electrician and residential wireman are available by appointment at the offices of the division in Juneau, Anchorage and Fairbanks. Arrangements for examinations in other [places] locations may be made [by writing the Anchorage office or] by contacting any office of the division.

(b) Examinations for master journeyman electrician shall be conducted at least quarterly by a national testing institute, as prescribed by the department. Arrangements for testing shall be made in the same manner as noted above.

(c) [(b)] A person who fails to pass the examination given by the department may be reexamined after thirty (30) days following the date of the most recent examination. A person who fails to pass the examination for master journeyman electrician, may be reexamined at the next quarterly examination if he or she applies in a timely manner.

8 AAC 90.165. ELECTRICIAN TRAINEE CERTIFICATE OF FITNESS.

- no changes to this section -

8 AAC 90.175. COMMUNICATIONS JOURNEYMAN TECHNICIAN CERTIFICATE OF FITNESS. (a) A communications technician certificate of fitness authorizes the holder to perform work which is subject to the standards established in AS 18.69.580.

(b) A journeyman communications technician or communications technician certificate of fitness will be issued by the department upon payment of the fee required by AS 18.62.030, if the applicant respectively

(1) for JOURNEYMAN COMMUNICATIONS TECHNICIAN: submits proof that he or she has a minimum of four (4) years' or 8,000 hours' experience in the electrical/communications trade and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical/communications field may be substituted for up to six (6) months' or 1,000 hours' work experience in the trade; or

(2) for COMMUNICATIONS TECHNICIAN: submits proof that he or she has a minimum of two (2) years' or 4,000 hours' experience in the electrical/communications trade and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical/communications field may be substituted for up to three (3) months' or 500 hours' work experience in the trade; or

(3) presents to the department, on a form provided by the department, a sworn affidavit from an official of an Alaska-based electrical/communications trade association having an apprenticeship training program certified by the U.S. Department of Labor, Bureau of Apprenticeship & Training, which shows that the applicant meets the experience requirements set forth in paragraphs (1) or (2) of this section and passes an examination given by the department; the affidavit must specify

(A) the number of qualifying hours experience the applicant claims for the classification for which he or she seeks certification; apprenticeship hours must be noted if this time is being used for qualification; and

(B) the inclusive dates during which the hours claimed in (A) above were worked;

(4) OR submits documented proof that he or she was actively engaged in the respective work catagory of the electrical/communications trade in the state for one or more years before 15 May 1985.

8 AAC90.176 COMMUNICATIONS TECHNICIAN TRAINEE CERTIFICATE OF FITNESS.

(1) A communications technician trainee certificate of fitness authorizes the holder to perform work which is subject to the standards established in AS 18.60.580 and performed under the conditions set out under this section.

8 AAC 90.177. COMMUNICATIONS TECHNICIAN EXAMINATION.

(1) Examinations for journeyman communications technician and communications technician are available by appointment at the offices of the division in Anchorage, Fairbanks and Juneau. Arrangements for examinations in any location may be made by contacting any office of the division.

(b) A person who fails to pass the examination given by the department may be reexamined after thirty (30) days following the date of the most recent examination.

8 AAC 90.178. COMPLIANCE.

Compliance with the various provisions of communication technician licensing is required by 01 January 1987.

8 AAC 90.180, 185 RENEWAL AND REVOCATION OF CERTIFICATES OF FITNESS.

- no changes to this section -

8 AAC 90.190. APPEALS.

- no changes to this section -

8 AAC 90.205. RIGHT OF INSPECTION. (a) An inspector must be given free access during reasonable hours to any premises where plumbing or electrical work subject to the standards established in AS 18.60.580 and AS 18.60.705 is being performed.

(b) The inspector may request any person performing work for which a certificate of fitness is required, to present [exhibit] the certificate of fitness. (c) The inspector may immediately serve upon a person performing work without a certificate of fitness, a notice to cease any further work for which a certificate is required, until a certificate of fitness appropriate to the job is obtained from the department. The inspector will serve a copy of the notice on the worker's employer.

(d) An inspector performing inspections under this section shall be licensed for the kind of work being examined or inspected.

8 AAC 90.900 DEFINITIONS.

(note: Item (1) remains unchanged)

(2) "apprentice" means a worker at least sixteen (16) years of age who is employed to learn a skilled trade through participation in a systematic form of instruction and on-the-job work experience designed to provide the worker with knowledge of the theoretical and technical subjects related to the communications, electrical or plumbing trade;

(Note: Item (3) remains unchanged)

(4) "communications technician" means a person who performs work necessary to the installation and construction of communicatos control, alarm, data and other low voltage circuits as defined by the National Electrical Code, and equipment within buildings and within property lines, restricted to residential units, or commercial structures of two (2) stories or less, acting in the position of supervising technician for that project. Communications technicians shall be considered as "journeymen" for purposes of apprentice ratios on larger projects where a journeyman communications technician is supervising.

(Note: old numbers (4) through (8) remain unchanged except that their numbering sequence is increased by one for the above.)

(10) "journeyman communications technician" means a person who performs work necessary to the installation and construction of communications, control, alarm, data and other low voltage circuits as defined by the National Electrical Code, and equipment within buildings and within property lines of any given property; the term does not include a person performing electrical or electrical line work in buildings, in underground or overhead construction.

(Note: old numbers (9) through (13) remain unchanged except that their numbering sequence is increased by two for the above)

(15) "master journeyman electrician" means a person who performs all the duties and functions noted for "journeyman electrician" in item (11) above, plus certain supervisory and inspection functions in accordance with AS 08.40.195 and AS 16.60.610. The master journeyman electrician provides project management, personnel supervision and inspection of electrical projects for compliance with the National Electrical Code and local amendments thereto.

(16) [14] "residential wireman" means a person who performs work necessary to the installation, construction, and operation of residential electrical systems, beginning at the point of attachment of the service drop or the service laterial on the load side of the meter, and whose work as a supervising journeyman is limited to residential occupancies providing for no more than four (4) residential units on a common foundation, or as a non-supervisory journeyman on residential units of more than four (4) units on a common foundation;

(Note: Old number 15 remains unchanged except that it is now advanced to number (17) because of the new items above)

* Article 7: APPLICATIONS:

12 AAC 32.250(a) (5) notarized certificate in support of applicant's experience and qualifications, or letters of recommendation that have been substantiated and documented during reference checks, for licensure as an electrical administrator from three (3) persons licensed in any state in the electrical industry.

* Article 8: CONTINUING EDUCATION:

12 AAC 32.320. APPROVED WORKSHOPS. (a) To be approved by the board, the subject material of a continuing education workshop must cover the most recent published edition of the National Electrical Code or the most recent published edition of the National Electrical Safety Code.

(b) Continuing education workshops sponsored by the following are approved by the board if they meet the requirements of (a) of this section:

(1) National Electrical Contractors Association;

(2) International Brotherhood of Electrical Workers;

(3) International Association of Electrical Inspectors; and

(4) Independent Electrical Contractors, Inc; and

(5) Alaska Independent Electrical Contractors Association.

* Article 9: DEFINITIONS. 12 AAC 32.910. DEFINITIONS. In this chapter

(1) "board" means the Board of Electrical Examiners.

(2) "communications technician" means a person who has at least two (2) years' or 4,000 hours' experience in the communications technicial wiring field and holds or is otherwise entitled to hold a certificate of fitness issued by the Department of Labor under AS 18.62.

(3) [(2)] "department" means the Department of Labor [Department of Commerce and Economic Development]

(4) [(3)] "four-plex" means a building containing four (4) dwelling units erected on a common foundation.

(5) "journeyman communications technician" means a person who has at least four (4) years' or 8,000 hours' experience in the communications technicial wiring field and holds or is otherwise entitled to hold a certificate of fitness issued by the Department of Labor under AS 18.62.

(6) [(4)] "journeyman lineman" or "journeyman electrician" means a person who has at least four (4) years' or 8,000 hours' experience in the electrical trade as described in AS 08.40.200(3) and

(A) holds a certificate of fitness as issued by the Department of Labor under AS 18.62; or

(B) meets all of the qualifications for receipt of a certificate of fitness and has applied for but not yer received, the certificate;

(7) "master journeyman electrician" means a person who is qualified and licensed as in item (6) above, and who has an additional two (2) years' or 2,000 hours' field experience in supervision and inspection, together with completion of special examinations provided by the department.

(Note: old numbers (6) through (9) are unchanged except that each receives a higher number to accomodate the changes above)

end end end end

COMMENTS ON PROPOSED LABOR REGULATION CHANGES

VERBAL TESTIMONY 04 NOVEMBER 1985

MY NAME IS KENT LEE WOODMAN. I AM THE DIRECTOR OF ADMINISTRATION FOR THE ALASKA INDEPENDENT ELECTRICAL CONTRACTORS ASSOCIATION, AND ADMINISTRATOR FOR COMMONWEALTH, LTD. OF ANCHORAGE.

THOUGH OUR ASSOCIATION DID NOT RECEIVE THE PROPOSED RULE MAKING, SUFFICIENT LICENSED ADMINISTRATORS AND CRAFTSMEN DID SO THAT WE BECAME AWARE OF THE TEXT OF THE PROPOSED CHANGES ON MONDAY 14 OCTOBER 1985.

PRIOR TO A TECHNICAL DISCUSSION OF EACH OF THE SEVERAL CHANGES, WE HAVE SEVERAL COMMENTS AND A QUESTIONS.

QUESTIONS: WHAT HAS HAPPENED TO THIS ASSOCIATION'S SUGGESTED CHANGES? SOME OF THEM PARALLEL THESE, BUT DIG DEEPER INTO A TOTAL REPAIR. OUR MASTER JOURNEYMAN ELECTRICIAN SUGGESTION WAS CAREFULLY THOUGHT OUT AND PRESENTED. OUR WORK WAS DONE IN TEDIOUS DETAIL AND PRESENTED LOGICALLY, CORRECTLY AND IN A FORMAT WHICH WAS TOTALLY COMPATIBLE WITH THE REGULATIONS AND THE PROCESSES INVOLVED IN SUCH CHANGES.

WHERE DID THESE PROPOSED CHANGES COME FROM? WHO INITIATED THEM? WERE ALL THE SUGGESTIONS INCORPORATED? IS THERE MORE? HOW DO THEY RELATE TO OUR SUGGESTIONS? WHY WAS THE U.S. DEPARTMENT OF LABOR, BUREAU OF APPRENTICESHIP AND TRAINING NOT NOTIFIED OF THE PROPOSED CHANGES?

COMMENTS: AS USUAL, THESE PROPOSED CHANGES APPENDED ABSOLUTELY NO EXPLANATION, RATIONALE' OR DISCUSSION. AS A RESULT, THE PROPOSED CHANGES RAISE AS MANY OR MORE QUESTIONS THAN THEY PROPOSE TO RESOLVE. ADDITIONALLY, AS 18.60.580 IS REFERENCED AS A NEW AREA TO BE IMPLEMENTED. MOST ELECTRICIANS WILL NOT HAVE THIS STATUTE ON FILE, NECESSITATING SEVERAL HUNDRED TRIPS TO THE LAW LIBRARY FOR A COPY. IT IS ONLY ONE PAGE AND COULD HAVE BEEN EASILY INCORPORATED IN THE MAILING, FACILITATING FAR BETTER RESPONSE FROM A TRADE WHICH IS AT ABSOLUTE MAXIMUM WORK SATURATION AT THIS TIME.

FAILURE TO INCLUDE A COPY WITH THE RULE CHANGE, ALONG WITH FAILURE TO PROVIDE ANY DISCUSSION OR JUSTIFICATION FOR THE CHANGES, IS EITHER CALCULATED TO PRODUCE THE MINIMUM INPUT, OR AT BEST, HAS PRECISELY THAT EFFECT. AS A RESULT, THE ONLY PEOPLE WHO HAVE THE WHEREWITHALL TO RESPOND WILL MOST LIKELY BE AIECA AND NECA. NOT VERY REPRESENTATIVE. FAILURE TO NOTICE THE BAT APPARENTLY EXCLUDES ONE OF THE MOST INTERESTED PARTIES, IN VIOLATION OF THE INTENT AND SPIRIT [illegible] OF THE ALASKA ADMINISTRATIVE CODE, IF NOT THE LETTER OF THE CODE.

INDIVIDUAL COMMENTS:

8 AAC 90.115 (A) & (B): WE ASSUME THAT THESE TWO NEW SECTIONS ARE INSERTED HERE FOR SOME HOUSECLEANING PURPOSE, AND SUBJECT TO ACCEPTANCE OF THE ENTIRE CONCEPT,WE HAVE NO SPECIFIC OBJECTION.

8 AAC 90.130 THROUGH .150: THESE SECTIONS RELATE TO THE PLUMBING FIELD, IN WHICH WE HAVE NO EXPERTISE. WE HAVE NO COMMENTS.

8 AAC 90.160(B): THIS CHANGE NOT ONLY ALLOWS INCLUSION OF THE NEW PROPOSED CATAGORIES, BUT ALSO STRAIGHTENS OUT SOME HERETOFOR TEDIOUS AND CONFUSING LANGUAGE. SUBJECT TO COMMENTS ON THE NEW CATAGORIES THEMSELVES, WE APPROVE OF THIS CHANGE.

8 AAC 90.160(C) MINIMUM QUALIFICATIONS: WE HAVE NO SPECIFIC OBJECTION TO FURTHER REFINING THE CONTENT OF THE EXPERIENCE REQUIRED OF NEWLY LICENSED JOURNEYMEN, BUT WE ARE GREATLY CONCERNED WITH HOW YOU PLAN TO HANDLE <u>PRESENTLY LICENSED</u> JOURNEYMEN.

A. WHAT WILL PRESENTLY LICENSED JOURNEYMEN (OR THOSE WHO ARE LICENSED BY THE TIME THESE CHANGES TAKE EFFECT) BE REQUIRED TO DO TO RETAIN OR TO RENEW THEIR LICENSES?

B. WHAT TIME FRAME WILL APPLY TO THE PRESENT JOURNEYMEN'S COMING INTO COMPLIANCE?

C. IF A PRESENTLY LICENSED JOURNEYMAN HAS SAY 12,000 HOURS, BUT LACKS 200 IN LOW VOLTAGE APPLICATIONS, WHAT WILL HE OR SHE DO UPON RENEWAL?

D. WILL FULLY QUALIFIED JOURNEYMEN BE ABLE TO PERFORM THE FUNCTIONS OF THE NEWLY PROPOSED TITLES OF LOW VOTAGE SIGN AND ELEVATOR ELECTRICIANS IN A MANNER SIMILAR TO A JOURNEYMAN BEING ABLE TO PERFORM LOW VOLTAGE AND RESIDENTIAL WIREMAN TASKS PRESENTLY?

E. WHAT WILL PRESENT LOW VOLTAGE TECHNICIANS DO THE MOMENT THESE REGULATIONS BECOME EFFECTIVE? WHAT IS THE PHASE-IN TIME PERIOD? HOW WILL IT BE HANDLED?

F. WE WERE GIVEN TO UNDERSTANT THAT THE MAINTENANCE ELECTRICIAN WAS A POSITION WHICH CAUSED SOME DIFFICULTIES WITH FIELD ENFORCEMENT AND THAT THERE WAS INTEREST IN DELETING THE TITLE. IS THIS NOT THE BEST TIME TO DO SO?

G. WHAT IS THE PURPOSE AND CONCEPT BEHIND CREATING THESE NEW POSITIONS? ARE WE NOT, IN FACT, JUST GOING ALONG AND MAKING THE PRESENT SITUATION LEGAL? IF THIS IS SO, IS THAT PROPER JUSTIFICATION? WHAT OTHER STATES HAVE EXPERIENCE WITH THESE MANY CLASSIFICATIONS?

8 AAC 90.165 (A) & (B): WE HAVE NO DIFFICULTY WITH THESE CHANGES, WHICH APPEAR LARGELY HOUSEKEEPING.

8 AAC 90.165 (C): WE HAVE A GREAT DEAL OF DIFFICULTY WITH ANY PROPOSED CHANGE TO THE RATIO OF JOURNEYMEN TO APPRENTICE AS SHOWN! WE HAVE BEEN PRESENTED WITH ABSOLUTELY NO RATIONALE', EXPLANATION, OR EXCUSE FOR THIS RATIO TO BE TIGHTENED. IT APPEARS TO BE A CLEAR AND BLATANT EFFORT TO MAKE ALL PRIVATE TRADE WORK COMPLY WITH THE INFLATED AND GREEDY CONDITIONS OF DAVIS BACON JOBS.

A. A LICENSED, EXPERIENCED JOURNEYMAN CAN EASILY HANDLE AND SUPERVISE TWO (2) OR MORE APPRENTICES IN THE TYPICAL WORK ENVIRONMENT. FOR THOSE SPECIFIC INDIVIDUALS OR JOBS WHERE SUCH A CONDITION IS NOT LOGICAL, SUPERINTENDANTS MAY SIMPLY LIMIT THE PARTICULAR CIRCUMSTANCES; NO REGULATIONS NEED BE PROMULGATED.

B. FORCING THE LOWER RATIO OF APPRENTICE TO JOURNEYMAN WILL RAISE THE COST OF ALL ELECTRICAL WORK DONE IN THE STATE, FOR NO EFFECTIVE PURPOSE WHATSOEVER.

C. MOST INDEPENDENT SHOPS HAVE ON THEIR EMPLOYMENT, A RATIO SIMILAR TO THE PRESENT AUTHORIZATION OF TWO-TO-ONE. IMPOSITION OF SUCH AN UNNATURAL LIMITATION NOW WOULD FORCE THEM TO DISCHARGE "SURPLUS" APPRENTICES, WHO WOULD THEN BE ON THE JOBLESS MARKET TO BE SUPPORTED BY THE STATE.

D. AIECA'S APPROVED APPRENTICESHIP TRAINING PROGRAM CURRENTLY HAS ENROLLED ALMOST 75 APPRENTICES IN VARIOUS LEVELS OF TRAINING. SOME OF THEM ARE NOT YET EMPLOYED, BUT ARE IN THE COURSES SEEKING EMPLOYMENT. (IMPOSITION OF THIS ARTIFICIAL LIMITATION WOULD RENDER THE PROGRAM IN COMPLETE DISARRAY, TO NO ONE'S BENEFIT BUT PERHAPS THE IBEW.)

E. PRESENTLY SHOPS BID WORK BASED UPON THE PRESENT RATIO, ENABLING PORTIONS OF THE WORK TO BE BID AT LOWER RATES THAN JOURNEYMAN. SUCH A NEW LIMITATION WOULD HAVE THE IMMEDIATE IMPACT OF RAISING THE COST TO HOME AND COMMERCIAL BUILDERS, FOR NO APPARENT GAIN OR REASON.

F. AIECA ANTICIPATES THAT THE PROPOSAL HAS EITHER COME FROM THE IBEW, NECA OR SOMEONE WITH SUCH LEANINGS. FOR JUSTIFICATION, WE'D SUSPECT THAT SAFETY AND QUALITY CONTROL ARE URGED. TO THIS WE'D REPLY: "SHOW US SOME ACCIDENT HISTORY; SHOW US SOME QUALITY CONTROL STUDIES THAT DIRECTLY RELATE TO THE RATIOS AND WE CAN ALL SIT DOWN AND GO THRU THEM TOGETHER."

WE FLATLY AND EMPHATICALLY REJECT THIS TRANSPARENT ATTEMPT TO RAISE INDEPENDENT COSTS AND PRICES FOR NO REAL REASON.

HAND OUT A DEMONSTRATES COST INCREASES.
HAND OUT B DEMONSTRATES THE EFFECT ON A SMALL SHOP.

8 AAC 90.170: WE HAVE NO DIFFICULTY WITH THIS REPEAL. IT APPEARS TO BE COUPLED WITH 90.115, COVERED AT THE BEGINNING OF THIS REPORT.

8 AAC 90.180: WE HAVE NO DIFFICULTY WITH THIS IN GENERAL, EXCEPT THAT (B)((3) MAKES REFERENCE TO A STATUTE NOT INCLUDED IN THE PACKAGE, AND NOT INCORPORATED IN EITHER OF THE DEPARTMENT'S PUBLISHED BOOKLETS. AS 18.62.580 ONLY DIRECTS THAT THE STATE'S STANDARDS ARE THE NATIONAL ELECTRICAL CODE AND THE NATIONAL ELECTRICAL SAFETY CODE. THERE IS NO REFERENCE TO WHETHER THE TRAINING SHALL BE RECURRENT TRAINING, UPGRADE TRAINING, BASIC STUDY, NEW CODE FAMILIARIZATION OR SOME MIX OF THE ABOVE. EVEN ARTICLE 8, 12 ACC RELATING TO CONTINUING EDUCATION FOR ADMINISTRTORS, GIVES B SLIGHT ADDITIONAL CLARIFICATION. THIS SECTION NEEDS SPECIFICS. HANDOUT C TO THIS DISCUSSION IS OUR RECOMMENDATION OF SOME SAMPLE WORDING.

THE AREA BRINGS UP SEVERAL QUESTIONS:

A. IF A PRESENT JOURNEYMAN CAN PERFORM THE FUNCTIONS OF EACH OF THE THREE NEW TITLES, MUST HE OR SHE THEN AMASS 24 HOURS OF TRAINING (8 IN EACH AREA) FOR HIS OR HER RENEWAL?

B. MAY A PRESENT JOURNEYMAN RENEW AND PERFORM IN ONE OR TWO OF THE CLASSIFICATIONS?

C. HOW WILL SUCH A JOURNEYMAN BE IDENTIFIED FOR INSPECTION AND JOB PERFORMANCE?

(WE'D NOTE THAT OUR PROPOSED MASTER JOURNEYMAN ELECTRICIAN IS ONE EASY WAY TO MEET THIS DIFFICULTY)

D. ARE THE 8 HOURS OF TRAINING FOR EACH YEAR OF A $40.00 CERTIFICATE, ANNUALLY, OR FOR EVERY 3 YEARS FOR A $75.00 CERTIFICATE, IAW AS 18.62.030?

E. ARE THE 8 HOURS OF TRAINING THE SAME FOR THE PRESENT JOURNEYMAN AND THE 3 NEW CLASSES?

F. ARE THE 8 HOURS APPLICABLE TO RESIDENTIAL ELECTRICIAN?

5-5-5-5-5

8 AAC 90.185 (4): WE HAVE A GREAT DEAL OF TROUBLE WITH THIS NEW LINE, AND WE PROJECT THAT YOU WILL ALSO. IT IS FAR TOO BROAD; GIVES MUCH TOO MUCH POWER TO THE FIELD WITH VIRTUALLY NO RESTRICTIONS. WE PROJECT THAT EVEN WITH THE BEST OF PEOPLE ON BOARD, THERE WILL BE BREAKDOWNS IN COMMUNICATION AND CONTROL AND THERE WILL BE ABUSES OF THIS SECTION.

WE FURTHER PROJECT THAT SHOULD SUCH AN ABUSE BE APPEALED THAT THIS REGULATION WILL BE STRUCK DOWN SUMMARILY AS UNCONSTITUTIONALLY BROAD. NOTE THAT MUCH MORE TIGHTLY WRITTEN REGULATIONS AND STATUTES THAN THIS HAVE BEEN SO STRUCK DOWN.

IT HAS ALL THE APPEARANCES OF A POWER GRAB. IT IS NOT REQUIRED, IT IS OVERLY GRABBY AND IS MOST LIKELY ILLEGAL.

8 AAC 90.900: WE HAVE SEVERAL PROBLEMS WITH THIS SECTION.

(1) "ACCREDITED". WE RESENT THIS DILLUTION OF THE ACCREDITATION PROCESS TO ENABLE COURSES OFFERED BY UNIVERSITIES, COMMUNITY COLLEGES, HIGH SCHOOLS, AND VOCATIONAL REHABILITATION SHOPS TO AUTOMATICALLY ACHIEVE THE SAME HIGH STATUS AS THOSE SCHOOLS ADMITTED UNDER THE U.S. DEPARTMENT OF L[illegible] BUREAU OF APPRENTICESHIP AND TRAINING.

THIS BUREAU HAS CONSIDERABLE AND NATIONAL CREDABILITY. TO TAKE A TIGHTLY CONTROLLED PROGRAM AND OPEN IT UP TO THE WORLD WITHOUT ANY CRITERIA, NO COURSE CONTENT, NO MINIMUM HOURS OF TRAINING, NO PROSPECTUS OR THE LIKE IS SO FOOLHEARDY AS TO MAKE READERS WONDER WHERE THE AUTHOR'S HEAD WAS. WHAT COULD POSSIBLY BE THE JUSTIFICATION FOR SUCH AN EDUCATIONAL CASTRATION?

ADDITIONALLY, THE BUREAU OF APPRENTICESHIP AND TRAINING WAS NOT SERVED OR CONSULTED ON THIS MASSIVE CHANGE; A REGRETTABLE OMISSION OF MAJOR PROPORTION.

(9) "JOURNEYMAN". AGAIN YOU HAVE MADE REFERENCE TO A STATUTE WHICH IS NOT NORMALLY IN THE ELECTRICIAN'S LIBRARY. IT ALSO APPEARS OVERLY BROAD AND OPEN-ENDED - NEEDS SPECIFICS.

(9)(A) CHANGING "THE TRANSFORMER" TO "PAD-MOUNTED TRANSFORMER" IS A CHANGE THAT DEFIES LOGIC AND OUR UNDERSTANDING. IT WOULD HAVE THE EFFECT OF MOVING TRANSFORMER VAULTS AND POLE MOUNTED TRANSFORMERS TO SOME OTHER CLASS OF CRAFTSMAN. WHY IS THIS SOUGHT? WHO PROPOSED IT? WHAT IS IT SUPPOSED TO ACCOMPLISH?

WE OBJECT BECAUSE IT WOULD REMOVE HISTORICALLY ACCOMPLISHED WORK FROM AN EXISTING CRAFTSMAN TO SOME OTHER CRAFTSMAN, WITH NO DEMONSTRATED PURPOSE.

(D) WHY DELETE REFERENCE TO THE NATIONAL ELECTRICAL CODE?

(11) "JOURNEYMAN LINEMAN". THE PROPOSED CHANGE AT THE END OF THIS PARAGRAPH IS IN DIRECT OPPOSITION TO THE CHANGE IN JOURNEYMAN ABOVE. IF A JOURNEYMAN CAN RUN LINE TO THE SECONDARY SIDE OF A TRANFORMER, DOES THIS CHANGE MEAN THAT A JOURNEYMAN LINEMAN MAY ALSO? WHY THE DUPLICTY? IS IT DUPLICITY?

(13) "MAINTENANCE ELECTRICIAN". AGAIN, AS ABOVE, WE'D HEARD THAT THIS WAS A TOUGH CATAGORY TO POLICE. WHY NOT DUMP IT NOW?

(14) "RESIDENTIAL ELECTRICIAN". WE HAVE NO DIFFICULTY WITH CHANGING HIS OR HER NAME FROM "WIREMAN" TO "ELECTRICIAN", BUT WHAT OF OUR SUGGESTION THAT WE END SOME CONFUSION ON HOW TO TREAT SUCH AN EMPLOYEE? WE SUGGESTED THAT WE ONCE AND FOR ALL PUT IN PRINT THAT A RESIDENTIAL ELECTRICIAN IS CONSIDERED A JOURNEYMAN FOR PURPOSES OF APPRENTICE ASSIGNMENT. WE SUGGESTED FURTHER, THAT HE OR SHE BE CONSIDERED A NON-SUPERVISING JOURNEYMAN WHEN HE OR SHE IS EMPLOYED AS PART OF A CREW ON A COMPLEX LARGER THAN A 4-PLEX. THESE SHOULD BE CONSIDERED NOW.

(15) "TRAINEE". DOES THIS PROPOSED CHANGE MEAN THAT A TRAINEE/APPRENTICE MAY NOT BE PLACED WITH A RESIDENTIAL ELECTRICIAN OR ONE OF THE OTHER NEW CLASSES?

(18) "LOW VOLTAGE ELECTRICIAN". WHY DOES THIS NOT INCLUDE INSTALLATION OF TELECOMMUNICATION EQUIPMENT? IF SAFETY IS A CONCERN, WE NOTE THAT AS ONE EXAMPLE ALONE, A TELECOMMUNICATIONS TECHNICIAN INSTALLS THE INTERCOMM SYSTEM ON A LARGE BUILDING WHERE THERE ARE SPECIAL FIRE DEPARTMENT CONNECTIONS FOR SAFETY. WE RECOMMEND THAT TELECOMMUNICATIONS TECHNICIANS BE INCLUDED.

WE HAVE NOT SEEN THIS HEARING NOTICED IN THE PRESS, AND WOULD LIKE A COPY OF YOUR PROOF OF PUBLICATION IN ACCORDANCE WITH THE ALASKA ADMINISTRATIVE CODE.

WE'D SUMMARIZE WITH THE OPENING COMMENTS: WHY WAS NO BACKGROUND STATEMENT INCLUDED, SHOWING WHAT PROBLEMS WERE ATTEMPTING TO BE OVERCOME? WHY WAS NOT A COPY OF THE REFERENCED STATUTES INCLUDED? WHY HAVE WE HEARD NOTHING FROM OUR SUGGESTIONS; SUBMITTED IN ENTIRELY COMPATIBLE FORMAT, INCLUDING COMPLETE JUSTIFICATION BY LINE ITEM?

THANK YOU FOR ALLOWING US TO PARTICIPATE. I AM PREPARED FOR GENERAL QUESTIONS?

HAND OUT B - Impact on small shop

Assume small shop with 3 employees: 1 Journeyman and 2 Apprentices under present statute.

Assume $18.00/hour for Journeyman plus 26% benefits and overhead = $22.68/hour.

Assume $10.00/hour for Apprentices plus 26% benefits and overhead = $12.60/hour each.

Assume 2 to 1 ratio -

1 X 22.68 + 2 X 12.60 = cost/hour = $47.88 for a total shop cost, or an average of $15.96/hour billed.

Now assume modified 3 man shop; 2 Journeymen and 1 Apprentice:

2 X 22.68 + 1 X 12.60 = $57.87 for a total shop cost, or an average of $19.29/hour billed out.

To minimize this impact, the shop then hires a 4th man; another apprentice:

2 X 22.68 + 2 X 12.60 = $70.47 for a total shop cost, or an average of $17.61.

This is an increase in cost of over 10%, and for the 3 man shop, it's over 18%!

Now the shop must go out and attempt to develop additional work to cover the cost increases, in an atmosphere in which other shops are doing the same thing. It will not work. Some will go out of business and the remaining firms will raise their costs to the public for absolutely no good reason.

HAND OUT A - LABOR CALCULATIONS

ASSUME A PROJECT OF $10,000 ELECTRICAL BILLING.

ASSUME LABOR REPRESENTS 42%. THEREFORE LABOR IS $4,200.00.

ASSUME A JOURNEYMAN IS EMPLOYED AT $18.00/HOUR NET AND AN APPRENTICE AT $10.00/HOUR NET. ASSUME 26% OVERHEAD AND BENEFITS AND YOU HAVE: $22.68/HOUR FOR JOURNEYMAN AND $12.60/HOUR FOR APPRENTICE.

ASSUME PRESENT 2 TO 1 RATIO:

1 X 22.68 + 2 X 12.60 = COST/HR = $47.88
$4,200.00 DIVIDED BY 47.88 = 87.71 HOURS.

87.71 X 22.68 =	$1,989.26	(JOURNEYMAN)
87.71 X 2 X 12.60 =	$2,210.29	(APPRENTICE)
CHECK SUBTOTAL	$4,199.55	

ASSUME 1 TO 1 RATIO:

3 X 87.71 HOURS = 263.13 HOURS

263.13 HOURS DIVIDED BY 2 = 131.56 HOURS

131.56 X 22.68 =	$2,983.78	(JOURNEYMAN)
131.58 X 12.60 =	$1,658.79	(APPRENTICE)
TOTAL COST	$4,542.57	[1 TO 1 RATIO]
MINUS ABOVE	$4,200.00	[2 TO 1 RATIO]
ADDITIONAL COST	$ 343.02	OR 8.16% LABOR INCREASE!

HAND OUT C - SAMPLE WORDING FOR TRAINING
8 AAC 90.180 (B)(3)

(3) SUBMITS EVIDENCE THAT THE CERTIFICATE HOLDER HAS SATISFACTORILY COMPLETED EIGHT HOURS OF CONTINUING TECHNICAL EDUCATIONAL TRAINING, APPROVED BY THE DEPARTMENT, MEETING THE MINIMUM STANDARDS OF AS 18.60.580 FOR ELECTRICIANS AND AS 18.60.705 FOR PLUMBERS, AND INCLUDING AT MINIMUM:

A) FOUR (4) HOURS OF REVIEW OF CHANGES IN THE LATEST APPLICABLE CODE; AND

B) TWO (2) HOURS OF BASIC THEORY REVIEWAND SAFETY; AND

C) TWO (2) HOURS OF GENERAL INDUSTRY PROCEDURES, APPLICATIONS AND NEW MATERIALS USE.

AIECA

ALASKA INDEPENDENT ELECTRICAL CONTRACTORS ASSOCIATION

SENATOR JAN FAIKS
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Faiks, 14 February 1986

Thank you very much for sending me a copy of the Audit Report on the Electrical Examination Board, and for soliciting my comments.

I have taken the liberty of reviewing them and presenting my findings to our organization, in order that the response be that of a much wider population. It did not take very much study, for our files are full of difficulties relating to this Board, not the least of which is that it has been managed with severe overtones of politics and union control for many years. We will not, however, dwell on this aspect, but stick to the materials developed by the audit.

Generally: We support the first recommendation of the audit, to allow the Board to sunset as quickly as possible.

We also support the recommendation that much of the functions be taken over by the Department of Labor.

We make these UNANIMOUS recommendations because it is our position that the Board, as it is presently constituted and operated, is: Inefficient, duplicative, non-responsive, non-productive, non-cooperative; and its functions could be performed much more effectively by the Department of Labor.

Appended to this letter are two (2) parts: 1. Specific comments on the audit. 2. Comments on this organization's past attempts to make similar changes, proposed changes to statutes and regulations and the like.

In closing, we'd like to remind you and other legislators and staffers who may have access to this response, that our organization represents the Independent Electrical Contractors in the state. There are more of us than there are of the "others", by business licenses, by employees, by permits, by every measure except that small segment of cross-country high tension line contractors.

Our organization was founded in 1977 and is a non-profit trade association dedicated to safer and more efficient electrical practices and products in Alaska. We do NOT negotiate wages for our members as NECA does. We do NOT develop work rules for our employees as do NECA and the IBEW.

Thank you again for your interest and for contacting me. Please let us know what we can do to assist!

FOR THE PRESIDENT

KENT LEE WOODMAN
Director of Administration

encl: 1. comment's on Audit
2. Comments on AIECA's past input

3605 Arctic Boulevard, Suite 1888, Anchorage, Alaska 99503

Charter Members: ALL PHASE ELECTRIC. B & E ELECTRIC. DINGBAT ELECTRIC. FUCHS ELECTRIC. HUSKY ELECTRIC. INDEPENDENT ELECTRIC. RAINBOW ELECTRIC. RAVEN ELECTRIC. RICHCREEK ELECTRIC. TANNER & SONS ELECTRIC. YELLOW ELECTRIC, LTD.

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1023

APPENDIX I
Comments on Audit 08-1221-86-R
Board of Electrical Examiners

This appendix will relate by page and paragraph number in the original report to facilitate cross reference.

PAGE 3, PARA 1: There appears to be a typo in the 4th and 5th lines: The Board members are appointed by the GOVERNOR, not the BOARD.

PAGE 5, PARA 2: Concur 1000% that continuation of the Board is not necessary to protect the public's health, safety and welfare, PROVIDED, however, that careful work is done to make certain that each proper function is performed by the correct agency, and that proper resources are allocated to allow continuation. (we note that the Sunset of the ATC last year was an absolute shambles, and that the surviving agencies have no expertise and no resources to enforce anything)

PAGE 5, PARA 4: DO NOT CONCUR that anyone needs to adopt more stringent control of an Administrator's "personal" inspection of each job. See same subject in Appendix II of this response for all details. AS 08.40 is WRONG in its approach, and its development and publication was ill-advised and impractical.

PAGE 5, Para 7: The Board needs to improve communications WITH EVERYONE! In all the time since we formed in 1977, the BOARD HAS NEVER RESPONDED TO ANYTHING WE EVER SENT THEM! They have NEVER solicited our input, NEVER commented on input we made, NEVER coordinated proposed regulations, NEVER reported back on regulations which were proposed but not implemented.

They operate 100% in a vacuum, doing "what is best for us", but totallyj ignoring a vast pool of expertise; the very administrators who are in the field night and day.

PAGE 5, PARA 8: Reciprocity sounds good, but has grave difficulties. One of them is detailed very nicely and very acurately by the Commissioner of the Department of Commerce in his comments appended to the back of the Audit; that of cooperation and coordination with other states. It is tedious at best, and not destined to happen in the near future for the mountain of work that is required.

The second aspect relates to a REAL problem discussed elsewhere in the audit: ABSENTEE ADMINISTRATORS. One thing that keeps a "lid" on the problem currently, is that one must get up here and go through the processes during one of the windows of opportunity four (4) times a year. If one could simply forward a copy of a certificate from say New Jersey, and obtain an Alaskan Administrator's license, we'd be awash with outsiders who either never return, and sign off on work from a retirement city, or who simply do not have the qualifications.

Alaska's rules and test are pretty high level. Many other states do not have the same classifications, let alone the high standards. LET THIS PROGRAM CONTINUE AT ITS OWN PACE, but don't knock the Board or the Departments of Labor or Commerce for not implementing an almost impossible, perhaps undesirable program.

PAGE 7, PARA 1: AGREE 1000% that the Administrator's must be retained. Loss of all that has been gained in regulation and control to date, would create total anarchy. The little authority and the minimum resources presently available to keep things legal, would evaporate to the extreme detriment of Pulbic Health and Safety. See our comments in Appendix II relating to creation of MASTER JOURNEYMAN ELECTRICIAN to help even more in this area.

PAGE 7, PARA 2: More of the same as above; agree totally.

PAGE 7, PARA 3: Agree totally with the first part, but then again, if the Board sunsets, and Labor takes over, the monitoring is already present. This failure to have the data passed on from an agency that already collects it, simply underscores the present duplicity and rationale' to dump it.

Do NOT agree with the second half, relating to personal supervision. See item above, and expansion in Appendix II of this response.

PAGE 7, PARA 4: Do not necessarily agree with this comment. The Board may be guilty of lots of malfeasance as relates to how they have treated some applicants in the past, but those charges must be met head-on and individually. Simply matching the failure rate against some "goal" is NOT the criteria to measure the board's effectiveness or the importance of the examinations or screening processes.

As noted above, the Alaskan standards are high. There is no shortage of Electrical Administrators; there are plenty to go around, and creating between 60 and 110/year is plenty to meet demand.

Use great caution not to set quotas of passing rates, or the importance of the program will deteriorate, again, to the public's vast detriment.

PAGE 7, PARA 7: Concur, as above.

PAGE 7, PARA 8: Concur, as above.

PAGE 8, PARA 2: Agree with the second half, which relates to the importance of having a central figure accountable as a justification for retention of the Administrator function, but do NOT agree with the personal inspection aspect, as above. Again, see comments in Appendix II of this response.

PAGE 8, PARA 3: Concur completely; hence our suggestion that the entire program be taken over by Labor. See our materials suggesting this and drafting legislation and regulation changes to accomodate this concept, attached to Appendix II of this response.

PAGE 8, PARA 5 & 6: TOTALLY DISAGREE. Again, see comments in Appendix II and its attachments. AS 08.40.195 is one of the most ill-conceived, impractical statutes on the books!

PAGE 9, PARA 1: Concur with the second half, ref comments about "non-resident" administrators above, do NOT concur with front half, as above.

PAGE 9, PARA 2: Concur completely. This is a tough one to work on. Almost anything anyone has developed to date fails the constitutional test of unduly restricting an American Citizen's right to travel interstate. It needs work, however.

PAGE 9, PARA 4: Strongly DISAGREE, per above, and per comments and materials in Appendix II to this response.

PAGE 10, PARA 4: Concur completely. As seen in the attachments to Appendix II of this response, we even go further and feel that we need to license the technicians. Obviously, grandfather rights must apply to those of us who have been performing both functions with considerable investment in equipment, rolling stock, tools and people all these years.

PAGE 11, PARA 8: Concur 100%. Obviously, if the Board is sunseted, this problem goes away, because Labor communicates very well with Labor.

PAGE 14, PARA IV, A: Concur 1000%. As stated in the cover letter to this response, the Board has NEVER, EVER coordinated or communicated with this group, even to the point of failing the test of the Alaska Administrative Code as relates to advertising etc.

PAGE 14, PARA V, A: This is pure BULL. The Board has done almost everything possible to let folks know that their input is not only not utilized, not desired, but that it may even be USED AGAINST THEM IN THE FUTURE!

PAGE 14, PARA VI, A: I understand that there have been several CASH SETTLEMENTS of claims of applicants for licenses to the Board, when Board members mismanaged their authority and allowed personal, business and union considerations to dictate successful candidates. Check with Representative Robin Taylor for some details. Check also with the AG's office, who handled the settlements.

PAGE 23, PARA 2: Concur completely that the Board should be discharged and that the licensing of Administrators should continue.

PAGE 24, PARAS 1, 2 & 3: Concur with qualification on paragraph 3: the responsibility for licensing Administrators should be moved to LABOR.

PAGE 24, PARA 4: Strongly disagree. Of the three-part system that currently exists, (Board, Labor and Commerce), Commerce plays the SMALLEST PART. Labor does the examination in the field for technician's compliance, why then should another department supervise the operations of their supervisors. It should all be moved into ONE DEPARTMENT, once and for all: LABOR. See additional comments on this subject in Appendix II.

PAGE 24, PARA 5: More as above. Admits duplicity.

PAGE 25, PARA 1: Absolutely NOT; see comments above & in Appendix II.

PAGE 25, PARA 2: Mild concurrance. We have already commented on this proposed regulation, and find it mildly non-objectionable. The real problem, however, is the out of state folks and a poorly written statute. See additional in Appendix II.

PAGE 25, PARA 3. We concur with his concurring.

PAGE 25, PARA 4: We concur completely. His analysis is excellent! END

APPENDIX II
Specific Comments on
Relationship With Board, Commerce and Labor

There are several elements to this appendix. For each element I have provided copies of all the correspondence relating, in order to enable the reader to have all the thinking and communications available for analysis. The attachments to this Appendix are merely the "proof", and need not be read in detail unless something in this Appendix creates a question.

I - NOMINATION TO THE BOARD:

Last year we became aware that two (2) seats on the State Board of Electrical Examiners would vacate soon. We determined to nominate an INDEPENDENT for one of the seats. The first several attachments to this Appendix provide copies of the original nomination, the letters of endorsement and other communications relating to the case. As can be clearly seen, we made a MAJOR nomination, substantially supported.

The Governor's Office instead elected to appoint Mr Walt Gardner, a long time member of the "Old Boy" union network. When we requested copies of his nomination, resume' and letters of recommendation, we received a MISERABLE seven page, lackluster resume'. All attempts from that date to this, to obtain the other material, have met with absolute refusal on the part of the Office of the Governor. We can only assume that he simply had NO RECOMMENDATIONS. We are extremely distressed that the Governor would refuse to even tell us who nominated him!

We were then in a position of deciding whether to make a mass mailing to all legislators, requesting that they block his confirmation. We were starting that effort when your package arrived and we saw that simple SUNSET was by far a better solution to the over all problem.

BOTTOM LINE: This package and its treatment in Juneau, is additional proof that politics/union hold sway over the operations of this Board.

II - 02 September 1983 Altercation with the Board:

The next batch of attachments relate to difficulty in obtaining a clear reading on a confusing statute, which resulted in a flat refusal to provide a copy of some proposed regulations changes.

III - 28 November 1983 Appearance before the Board:

Though we were never provided the text of the proposed regulations changes as requested above, we were finally able to obtain a set through out own contacts. The attachments constitute the text of a presentation to the Board by Woodman, representing AIECA.

Among other items in that presentation, were complaints about COMMUNICATIONS, to the point; violation of the State's Administrative Procedures Act. In that proposed rule making and our response, was the first effort to inflict "PERSONAL INSPECTION" on Administrators. The text says it all!

THE BOARD NEVER RESPONDED TO EVEN ONE SINGLE LINE OF ALL THAT INPUT, and in fact, the only response Woodman received after the presentation, was the presentation, publically, of a humiliating CEASE AND DESIST NOTICE, by the Board. What a waste of time. They were just sitting there laughing and then they dumped an expensive harassment on one of our member firms.

IV - CEASE & DESIST ORDER:

The next batch of documents relate to the above noted order placed on Woodman the moment he completed his public testimony before the Board. (the meeting, by the way, was held at the NECA building in Anchorage..... How blatent can you get?!)

As can be seen, after the attorneys got their money, absolutely nothing happened. We wasted government and private money and time for nothing. It was a senseless harassment of a company that does everything by the numbers, while the wasted efforts could have been brought to bear on the catching of real offenders and unlicensed folks.

V - 25 April 1985 Communications to Labor; bad legislation:

This package includes a letter to the Department of Labor, with copies to Commerce, the AG and others. It points out a grave difficulty with AS Sec 08.40.195, and recommends a fix. WE NEVER RECEIVED A RESPONSE FROM ANYONE!

VI - 06 May 1985 Letter and comments on proposed changes:

This letter documents again the Board's inability to even get routine correspondence in the hands of the proper people. They simply never provided a copy of the proposed changes to us in DIRECT VIOLATION OF THE ALASKA ADMINISTRATIVE CODE. In spite of the lack of notification, we made a great effort to provide input which is the balance of the attachment. We NEVER RECEIVED A SINGLE COMMUNICATION ON THIS PRESENTATION OR OUR LETTER FROM ANYONE!

VII - 21 May 1985 Proposed changes to Statutes and Regulations:

This is an EXTREMELY IMPORTANT ATTACHMENT! We made a major effort to search through all the appropriate statutes and regulations in a coordinated attempt to get them all fixed and heading the same direction. To our knowledge, NEVER HAS THERE BEEN A COOPERATIVE EFFORT TO REPAIR FAULTY STATUTES AND/OR REGULATIONS.

We made this major effort and provided an extremely valuable body of study in a sincere effort to help the state repair some real problems. WE NEVER RECEIVED A SINGLE BIT OF COMMUNICATION ON ANY PART OF IT FROM ANYONE and yet it addresses problems everyone seems to agree need addressing.

VIII - 29 May 1985 proposed Department of Labor regulation changes:

As the cover letter in this package dramatically states, they FAILED UTTERLY IN THEIR DUTIES TO COMMUNICATE THEIR PROPOSED CHANGES LOGICALLY, TIMELY AND PROPERLY. Nevertheless, we made a massive effort to come to grips with the material and provide a major input.

WE NEVER RECEIVED ANY RESPONSE FROM ANYONE ON THIS PACKAGE.

IX - 04 November 1985 Testimony on Rule Changes:

The attachment here is the text of the testimony presented at public hearing in Anchorage. A copy of the text was provided to the recorder.

Once again, we were not served any of the proposed changes. Additionally, the hearing was held in a far too small room with over 100 people standing in the halls who could not hear testimony before or after them. During our testimony, which was carefully pared down to minimum length, and mercifully presented one time by one representative of over 26 companies, the room, which was loaded with IBEW "crowd scene" hooted, catcalled and attempted to cut the testimony to a minimum.

It was a joke. If I did not know better, I'd have said it was southern "justice", circa 1938. WE HAVE NEVER RECEIVED A SINGLE IOTA OF FEEDBACK FROM ANYONE ON ANY PART OF THIS PRESENTATION!

X - SUMMARY:

If you look through the texts of the attachments, you will see that they repeat the same errors over and over again:

1. People who write and formally request "Party of Record" status are NOT afforded copies of anything.
2. Suspenses when anything at all becomes available are non-existant.
3. Proposed Statute/Regulation changes NEVER have any justification or rationale' attached so one can come to grips with what the problem is that the proposed changes are supposed to fix.
4. Most changes proposed are NEVER coordinated between Labor, Commerce and the Board, and oftentimes conflict with others by another branch of government.
5. NEVER does any entity communicate back to folks who make input, or make requests for specific information, in writing!
6. Even proposed regulations which have been beaten down into defeat by overwhelmingly negative response, rise again with almost the same wording a year later, this time with no notice, in an attempt to ram them through anyway when no one is looking!

RECOMMENDATION:

Not only does this "triumvirate" need to be reduced by at least a factor of 1/3, when the Board does sunset, a careful, coordinated plan needs developed so that the problems do not simply move to new shoulders.

We highly recommend that a real cleanup, a real efficiency move, would be to get it all under one roof: LABOR. There is no benefit to having one set of investigators harassing an Administrator for technical compliance, and another set from a different department harassing the Administrator's Journeyman about technical compliance.

Finally, much has been said about "absentee" Administrators, and Unlicensed contractors. ALMOST NOTHING has been done to fix the problem. Over and over again come new proposed rules to tighten up on THE ADMINISTRATORS AND THE COMPANIES WHO ARE HERE, AND WHO ARE DOING IT RIGHT! [It's called "preaching to the choir']

The new rules about us all having to repaint our trucks and re-do all our letterhead to include our license number works a hardship on us, but does NOTHING WHATSOEVER to stop the unlicensed and absentee folks!

The efforts to have properly operating Administrators somehow be responsible for personal supervision and inspection of each and every job is A PHYSICAL IMPOSSIBLITY. No one has addressed the fact that the LAW IS WRITTEN BADLY.

We need to pool our thinking and get a workshop together to brainstorm a fix for this one. Recommend LABOR, COMMERCE, the AG's Office, NECA and AICECA.

SB 384: BOARD OF ELECTRICAL EXAMINERS
SUMMARY OF INFORMATION

LEGISLATIVE BUDGET AND AUDIT REPORT

A. findings:

Purpose of Board is to enforce the electrical code by monitoring current administrators and to test qualified applicants for administrator.

1. The Board does not directly enforce codes now, DOL does through electrical inspectcrs. The inspectors are responsible for large jurisdictions, so, they are dependent on administrators' reports. DOL recieved reports. The Board gets them later.
   note: 20% of the administrators at this time have permanent addresses outside the state.

2. Tests given by the Board are too broad (include subjects not applicable to the job an administrator does) and have a high rate of failure.

3. The Board should make sure that applicants are qualified. Most applications have not been accompanied by evidence of electrical licensure or letters of recommendation.

B. recommendations:

1. ENFORCEMENT
   Can be retained by the DOL, as is done now, through retaining Administrators and continuing to collect their reports.

2. PERSONAL SUPERVISION
   LB&A suggestes that the Board needs to require evidence that sites have been personally inspected by Administrators.

   Both the LB&A audit and Ak. Independent Electrical Contractors Association (AIECA) state that it is physically inpossible for administrators to inspect all sites. AIECA suggests that a requirement be made (probably in the Ak. Administrative Code) that each site have a MASTER JOURNEYMAN to do onsite supervision of all inspections so that administrators would only have to do spot checks. AIECA suggests that the job of an administrator should be to develop quality procedures and policy for a

job site, not ongoing inspections.

3. EXAMINATIONS
Tests should be limited to the category being tested for.

4. QUALIFIED APPLICANTS
Applicants should be required to prove they are qualified electricians before they are tested.

5. BOARD COMMUNICATIONS
LB&A suggested taht the Board be required to improve communications with the DOL so that violations that are reported come to the Board's attention so they can take appropriate actions.

6. RECIPROCITY
LB&A suggested the Board provide for reciprocity.

Commissioner Lounsbury rebutted in the report that reciprocity was not possible because other states will not share their examination information much less enter into reciprocal testing. There is a national effort afoot to have a national electrical administrators test, which should come forth in "the next couple of years" (Com. Lounsbury)

ADDITIONAL INFORMATION:

A. Appointment of Walt Gardiner

The Kent Woodman Story:
Administrator for Yellow Electric, Director of Administration for AIECA (Ak. Independent Electrical Contractors Asso.), was issued a cease and desist order for Amber Electric, div of Yellow.

Was endorsed for Bd. of Examiners by Robin Taylor, Jay Kerttula, AIECA, and others.

Walt was appointed. Kent and AIECA repeatedly asked the Gov's office who nominated Walt and Gov's office refuesed to tell.

The feeling of Charlie Bussell and Kent Woodman is that the Board is appointed to serve political interests and is inhibiting the efforts of those in the industry who wish to become administrators. Current appointments are one point of their arguement.

B. Testing of Administrators

As discussed earlier, tests are too difficult and too broad. This is limiting the number of Electrical Administrators in Alaska, which Charlie Bussell and Kent Woodman claim is part of the

Board's inability to serve its purpose.

COVERING THE BOARD'S DUTIES IF THEY SUNSET

Enforcement of code can continue to be done by administrators and DOL inspectors without the Board.

Testing and licensure can be handled by the Division of Occupational Licensing, probably in cooperation with DOL.

Sunset TC's — Joint L+C

4/28; 1-5pm) BDS OF VETS + ELEC EXAMINERS

SITES: KTN, ~~FBX~~, ANC, JNU,* NOM, SOL

4/30; 1-5pm) REAL EST. COMMISSION + APUC

SITES: KTN, FBX, ANC, JUN.* &
~~PALMER~~? MAT-SU (WASILLA)

BOARD: ELECTRICAL EXAMINERS, BOARD OF

TITLE: Board of Electrical Examiners

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.40.010

STATUS: 86/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: Cannot serve more than two consecutive terms

TERM: 3 years - staggered

DESCRIPTION: 3 members appointed by Governor: 2 licensed electrical administrators and 1 public member; serve at the pleasure of Governor; Board selects chair.

SPECIAL FACTS: Quorum - 2 members

FUNCTION: Regulates and controls licensing, suspension, revocations of electricians

COMPENSATION: Standard travel/per diem

MEETINGS: Normally 4 times per year; 20 days maximum

*FOR FURTHER INFORMATION CONTACT: Licensing Examiner, Division of Occupational Licensing, Dept. of Commerce and Economic Development, Box D, Juneau, AK 99811 - 465-2547

Electrical Examiners Board

MEMBER	APPT	REAPPT	TERM
Steven F. Boyd Box 5865 Ketchikan 99901 Elec/Administrator	85/05/21		87/07/10
Terence L. Duszynski 3289 Rosie Creek Fairbanks 99701 Public - Chairman	80/10/07	84/07/31	86/07/10
Walter R. Gardner 7731 Island Drive Anchorage 99504 Elec/Administrator	85/09/19		88/07/10

BOARD: REAL ESTATE COMMISSION

TITLE: Real Estate Commission

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.88.011

STATUS: 86/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS:

TERM: 4 years - staggered

DESCRIPTION: 7 members appointed by Governor: 5 real estate brokers or associate brokers licensed in Alaska for 3 years, to represent each judicial district, and 1 at-large; if none available from second judicial district, 2 shall be at-large; plus 2 public members; Commission appoints Executive Director; Commission elects chair.

SPECIAL FACTS: Quorum - majority (at least 2 judicial districts represented)

FUNCTION: Regulates and controls licensing, suspensions, revocations of real estate industry; manages surety claim fund

COMPENSATION: Standard travel/per diem

MEETINGS: 6 times per year, 2 days each; 6-12 committee meetings per year; 24 days total

*FOR FURTHER INFORMATION CONTACT: Executive Director, Real Estate Commission, Frontier Building, 3601 C Street, Suite 722, Anchorage, AK 99501 - 563-2169

Real Estate Commission

MEMBER	APPT	REAPPT	TERM
John E. Benson P.O. Box 7076 Ketchikan 99901 Broker/1st JD	83/10/19	85/01/31	89/01/31
Barry L. Brown 627 Gaffney Fairbanks 99701 Broker/4th JD	85/01/31		89/01/31
LaVerne F. Collins P.O. Box 102751 Anchorage 99510 Public	83/05/20	84/01/31	88/01/31
Barbara J. Hill 4201 Tudor Centre Drive Anchorage 99508 Broker at Large - Chairman	80/02/21	84/02/15	88/01/31
Jon "Dave" D. Ribacchi 2531 Banbury Drive Anchorage 99504 Broker/3rd JD	83/05/20		87/01/31
Gilbert Serrano c/o Land Co., 641 "A" St. Anchorage 99502 Broker at Large	83/10/19		87/01/31
Iola Young-Robinson P.O. Box 1329 Palmer 99645 Public	85/02/21		87/01/31

BOARD: UTILITIES COMMISSION, ALASKA PUBLIC

TITLE: Alaska Public Utilities Commission

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 42.05.010

STATUS: 85/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION AND FINANCIAL DISCLOSURE

PROHIBITIONS: No stock or interest in public utilities in Alaska; Check AS 42.05.131 for restrictions.

TERM: 6 years - staggered

DESCRIPTION: 5 members appointed by Governor: 1 graduate of accredited school of law; 1 graduate of accredited university, with major in engineering; and 1 one with major in finance, accounting, or business administration (5 years actual experience in field is equivalent to a degree); plus 2 consumers; Governor designates chair (for 4-year term).

SPECIAL FACTS: Quorum - 3 members; may be removed by and with consent of majority of Legislature; Attorney General is legal counsel; annual report to Legislature

FUNCTION: Certifies qualified providers of public utilities services; ensures that certified utilities and pipeline carriers, unless exempted by statute, provide adequate, efficient, and safe services and facilities to the public at just and reasonable rates, terms and conditions.

COMPENSATION: SALARIED

MEETINGS: Continuous hearings throughout the year.

*FOR FURTHER INFORMATION CONTACT: Executive Director, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, AK 99501 - 276-6222

Utilities Commission

MEMBER	APPT	REAPPT	TERM
Louis L. Agi 1730 Crescent Driv Anchorage 99504 Salaried/Attorn	83/02/07		88/10/31
Carolyn S. Guess 3226 Upland Drive Anchorage 99504 Salaried/Consumer - Chairman	81/09/15		87/10/31
Susan M. Knowles 1146 "S" Street Anchorage 99501 Salaried/Consumer	81/09/15		87/10/31
Marvin R. Weatherly 6928 Fairweather Drive Anchorage 99502 Salaried/Engineer	75/08/21	84/10/30	90/10/31
Kathleen L. Whiteaker 4321 Edinburgh Court Anchorage 99515 Salaried/Business	85/01/15		86/10/31

BOARD: VETERINARY EXAMINERS, BOARD OF

TITLE: Board of Veterinary Examiners

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.98.010

STATUS: 85/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: Cannot serve more than two successive complete terms

TERM: 4 years - staggered

DESCRIPTION: 5 members appointed by Governor: 4 licensed veterinarians in active practice in Alaska for 5 years; plus 1 public member; no person may serve who is, or was during the two years immediately preceding appointment, a member of a faculty, board of trustees, or advisory board of a veterinary school.

SPECIAL FACTS: May be removed for cause; quorum - majority

FUNCTION: Regulates and controls applications, licenses, and permits of veterinarians

COMPENSATION: Standard travel/per diem

MEETINGS: At least 3 annually; normally 3 times per year, 3 days maximum, plus 2-4 work sessions

*FOR FURTHER INFORMATION CONTACT: Licensing Examiner, Division of Occupational Licensing, Dept. of Commerce and Economic Development, Box D, Juneau, AK 99811 - 465-2544

Veterinary Examiners

MEMBER	APPT	REAPPT	TERM
David V. George 2505 David Street #49 Juneau 99801 Public	85/06/11		88/01/31
Derrick J. Leedy, DVM P.O. Box 1164 Nome 99762 Veterinarian	85/06/28		89/01/31
Stephen A. Mersch, DVM SR2 Box 880 Soldotna 99669 Veterinarian	84/03/30		87/01/31
Val D. Stuve, DVM 1651 College Road Fairbanks 99701 Veterinarian - Chairman	82/01/75		86/01/31
Pamela A. Tuomi, DVM 2036 East Northern Lights Anchorage 99508 Veterinarian	80/04/01	84/04/09	88/01/31

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4931

DISTRICT 10
BOX 111038
ANCHORAGE, ALASKA 99511
(907) 349-2192

CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

March 11, 1986

Loren H. Lounsbury, Commissioner
Department of Commerce and Economic
Development
P.O. Box D-LIC
Juneau, Alaska 99811

Dear Commissioner Lounsbury:

I understand that there is currently a bill in Senate Labor and Commerce, SB 384, that deals with the sunset of the Board of Electrical Examiners, and that it has had one public hearing already. While it is too early to predict the outcome of this bill, I understand the Committee is looking closely at the recommendation of the Legislative Budget and Audit Committee to sunset the Board.

If sunset occurs, it seems to me that this would have some impact on the proposed regulation changes in your January 17 notice, and in fact may negate them. It would be helpful to me if you could explain what the potential impact would be either with or without the Board sunset.

I would also like to formally request that you delay final approval of the proposed changes in the regulations of the Board of Electrical Examiners in your January 17 notice until the sunset issue has been resolved or until it has been made clear that the sunset would not affect the proposed regulations.

Sincerely,

Representative H.A. "Red" Boucher

RB/rp

cc: Senator Zharoff, Chair of Senate Labor & Commerce

B. HERBERT
P. O. Box 2240
Valdez, Alaska 99686

FEB 2 0 1986

February 17, 1986

Mr. Kevin Henderson
Division of Occupational Licensing
P. O. Box D-LIC
Juneau, Alaska 99811

Dear Mr. Henderson:

I have received several copies of the proposed changes to the statutes and regulations governing the Board of Electrical Examiners. At present, I am in contact with twelve other persons in the electrical industry as concerned with the proposed changes as I am.

The proposed changes are only more restrictive to the majority and favor in some instances only a small minority.

Enclosed is a list of the changes with revisions to make them more equitable. As proposed by the Board of Examiners, the changes would increase costs to the public through added administrative expense. The consumer would also have additional costs passed on as the cost of doing business. The applicant for a license would also be more restricted as he would lose rights now afforded by statute in its present form.

I am sure the public good should be considered and I hope my suggestions will be of help with your deliberations which are greatly appreciated.

Thank you for your time and attention.

Sincerely,

B. Herbert

cc: Senator Edna DeVries
Senator Fred Zharoff
Senator Richard Eliason
Senator Don Bennett
Senator Bill Ray
Senator John Sackett
Commissioner Loren Lounsbury
Representative Andre Marrou
Representative Mike Navarre
Representative Nike Davis
Representative H. A. "Red" Boucher
Representative Virginia Collins
Representative Alyce Hanley
Representative Niilo Koponen
Representative Drue Pearce
Representative Bette Cato

12.AAC.32.001 (4) Should be amended to read:

(4) An Alaska registration as a professional electrical engineer plus -

(A) Management experience in the electrical construction industry as a field engineer, office engineer or in a similar engineering position for at least four of the six years immediately preceding the date of application;

(B) Experience as a journeyman lineman in outside construction for three of the six years immediately preceding the date of application;

(C) Certified inspector for the State of Alaska or one of its municipalities with experience as a journeyman lineman in outside construction for two of the four years immediately preceding the date of application;

(D) Full time instructor at a school approved by the Board with experience as a journeyman lineman in outside construction for two of the four years immediately preceding the date of application.

12.AAC.32.090 (2) Is amended to read:

(2) Construction Management experience in inside wiring as a field superintendent, field engineer, or similar position for at least four of the six years immediately preceding the date of application; or

12.AAC.32.090 (4) Should be amended to read:

(4) An Alaska registration as a professional electrical engineer plus -

(A) Management experience in the electrical construction industry as a field engineer, office manager or in a similar position for at least four of the six years immediately preceding the date of application; or

(B) Experience as a journeyman electrician in outside construction for three of the six years immediately preceding the date of application; or

(C) Certified electrical inspector for the State of Alaska or one of its municipalities with experience in inside construction as a journeyman for two of the four years immediately preceding the date of application; or

(D) Full time electrical instructor at a school approved by the Board and experience in inside construction as a journeyman for two of the four years immediately preceding the date of application.

12.AAC.32.240 Examination Papers - Should be amended to read:

All examination papers will be preserved for a period of at least one year after notification of grade results, during which time any candidate who has failed the examination may inspect his or her papers in the presence of a Board member or his designee. However, no person may inspect examination papers during the 20 days immediately preceding any examination.

12.AAC.32.350 Exemption From Continuing Education

In agreement with changes.

12.AAC.32.900 Licensed Electrical Administrator is Responsible for Completed Project

This section should remain as is.

12.AAC.32.910 Change of Employer or Company Affiliation

This new addition is not necessary and should not be added.

12.AAC.32.990 (7) [Formerly 12.AAC.32.910 (7)]

No opinion

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
392

PROGRAM BILL # //

GOVERNOR'S PROGRAM BILL

1985 Extraordinary Session

M E M O R A N D U M

AN ACT to amend the general municipal law, the insurance law, the education law, and the local finance law, in relation to making available to municipalities a system of self-insurance, reciprocal insurance, joint insurance funding, and making certain conforming changes in relation thereto, the cancellation and renewal of commercial risk, municipal risk and professional liability insurance policies, the issuance of property/casualty insurance on a group basis for commercial risks, municipal risks and professional liability; and to amend the civil practice law and rules, in relation to limiting the liability of public entities and public employees and periodic payment by public entities and public employees of certain judgments against them; and repealing sections three thousand four hundred twenty-six and three thousand four hundred twenty-seven of the insurance law relating to the termination of product liability and professional liability insurance policies

Purpose:

To allow various local governmental entities to organize and subscribe to a reciprocal insurer or to participate in a joint insurance fund and to expand their existing authority to engage in self-insurance programs.

To establish cancellation and renewal provisions for commercial risk and municipal risk insurance policies, and to amend such provisions as they currently apply to professional and product liability policies.

To authorize the issuance of property/casualty insurance policies on a group basis for commercial risks, municipal risks and professional liability.

To limit the liability of public entities and public employees and provide for the periodic payment by public entities and public employees of certain large judgments.

Summary of Provisions:

Section 1 sets forth the legislative intent regarding the authority given to local governmental entities to organize reciprocal insurers or joint insurance funds.

Sections 2 through 11 amend the General Municipal Law and Sections 22 through 25 amend the Education Law, to accomplish the following:

1. The liability and casualty reserve fund established by Chapter 684 of the Laws of 1979 has been expanded to a self-insurance reserve fund which will authorize local governmental entities to use the fund for various types of property/casualty insurance and to pool their revenues. The entities to which such authorization is given are municipal corporations as defined in section 2 of the General Municipal Law, school districts (except school districts in cities with a population of 125,000 or more), boards of cooperative educational services, fire districts, and special improvement districts governed by separate boards of commissioners.

2. Local governmental entities, as specified above, are authorized to establish pooling arrangements to be known as "joint insurance funds" which will serve as an alternative or supplement to various types of property/casualty insurance authorized or required by law. The joint insurance funds will be created from pooled contributions of the entities which agree to assume risk on a group basis.

Section 13 of the bill adds a new section 335 to the Insurance Law to require that each insurance company issuing municipal liability insurance file a semi-annual report with the Superintendent of Insurance detailing all municipal liability claims made against its insureds and all claims paid. Section 13 also provides that the Superintendent of Insurance shall submit a report on June 1, 1987 to the Governor and the Legislature containing a summary of the data collected, an assessment of the status of municipal liability insurance costs, and recommendations for changes to reduce or contain such costs.

Section 14 of the bill adds a new paragraph 12 to subsection (b) of section 2305 of the Insurance Law to include within the list of types of rate filings which require the prior approval of the Superintendent, municipal liability insurance when written by a licensed insurer which is owned by, or whose membership or subscribers are principally comprised of, local governmental entities.

Sections 12 and 18 of the bill amend sections 107 and 6102 of the Insurance Law to enable local governmental entities as specified above to join together under a common name to exchange insurance contracts on the reciprocal plan through an attorney-in-fact.

Section 19 of the bill adds a new subsection (j) to section 6102 of the Insurance Law to require any such reciprocal insurer (whose membership is limited as set forth above) to comply with all the applicable provisions of the Insurance Law, including Article 76 (Property/Casualty Insurance Security Fund), and with such additional standards as the Superintendent of Insurance shall prescribe by regulation.

Section 20 of the bill amends section 6104(a) of the Insurance Law, which presently provides that no authorized reciprocal insurer which issues assessable policies shall make any new agreement for insurance with any subscriber which does not have assets in his, their or its own right in an amount not less than $10,000 in excess of liabilities. The bill would increase the $10,000 amount to $50,000.

Section 21 of the bill sets forth a conforming amendment to the Local Finance Law to provide a "period of probable usefulness" for the contribution of the locality to fund the reciprocal insurers.

Section 15 of the bill adds a new section 3426 to the Insurance Law to establish cancellation and renewal provisions for commercial risk, municipal risk and professional liability policies.

The bill establishes a minimum one year required policy period and provides that cancellation of covered policies may not take place during this period except for certain specific reasons set forth in the bill.

The bill also provides that commercial risk and professional liability insureds must be given sixty days notice of nonrenewal and municipal risks must be given one hundred twenty days notice of nonrenewal.

A copy of all notices of cancellation, nonrenewal and conditional renewal sent to municipal risk insureds must be

forwarded to the superintendent concurrently with the notice to the insured.

The provisions of this new law would not apply to policies issued through residual market vehicles such as the Assigned Risk Pool, the Fire Pool and the Medical Malpractice Insurance Association.

Section 16 of the bill repeals existing Section 3426 (relating to professional liability insurance contracts) and existing Section 3427 (relating to product liability insurance)

Section 17 of the bill renumbers existing section 3435 of the Insurance Law to be section 3439 and adds a new section 3435 which authorizes the approval of insurance policies which provide property/casualty insurance on a group basis for commercial risks, municipal risks, and professional liability. The bill requires that the Superintendent of Insurance promulgate regulations prior to the approval of such policies.

Sections 26 through 31 add a new Article 16 to the Civil Practice Law and Rules to require that a plaintiff must exhaust all diligent efforts to collect the equitable share of a judgment apportioned to a public entity or public employee's co-defendants prior to seeking recovery of such co-defendants' equitable share from the governmental defendant. The bill also provides that if a public entity or public employee is properly called on to assure payment in full of the judgment by paying the equitable share of a co-defendant, the governmental defendant would be entitled to make any such payment which exceeds $100,000 in equal installments over a period of five years.

The bill defines "public entity" as (a) the state of New York, (b) a county, city, town, or village, (c) a school district or board of cooperative educational services, (d) a fire district, and a special improvement district governed by a separate board of commissioners, special district or district corporation.

The term "public employee" is defined to mean any employee of a public entity as defined in the bill while acting within the scope of his public employment or duties, but does not include an independent contractor.

Section 32 of the bill sets forth an immediate effective date, except that section 13 would take effect April 1, 1986, section 16 would take effect January 1, 1986, sections 15 and 16 shall apply to all policies issued or

renewed on or after January 1, 1986, and sections 26 through 31 shall take effect February 1, 1986 and apply to all actions or proceedings instituted on or after its effective date.

Existing Law:

Chapter 684 of the Laws of 1979 established a liability and casualty reserve fund for self-insurance programs.

Currently, the local governmental entities referred to in sections 12 and 18 of the bill cannot participate in the formation of a reciprocal insurer. The present required net worth amount for a subscriber to a reciprocal is $10,000.

The Insurance Law currently provides minimum cancellation and renewal provisions for personal lines, private passenger automobile, professional liability and product liability policies. In general, no provision in the law regulates the cancellation or nonrenewal of commercial or municipal risk policies.

The Insurance Law currently does not permit the issuance of property/casualty insurance policies on a group basis. The bill would authorize the issuance of such policies for commercial risks as well as for municipal risks and professional liability.

Under existing law, in actions against public entities and employees and other parties, all the defendants are jointly and severally liable to the plaintiff for any judgment rendered against them. Plaintiffs are permitted to recover the full amount of a judgment from the governmental defendant, regardless of the other defendants' ability to pay their equitable share.

Statement in Support:

Joint Insurance Funds and Municipal Reciprocal Insurance

Recent increases in the cost of commercial insurance for municipalities has made it difficult to obtain adequate protection at reasonable cost. The number and amount of lawsuits pending against local governments have grown significantly in recent years. This, coupled with other economic factors affecting insurance companies, has created a very serious problem for municipalities to meet their insurance needs.

During the past decade municipal liability insurance costs have escalated, requiring local governments to spend a larger percentage of their budgets on insurance. This problem has been coupled with the growing need for such insurance and a general decrease in the availability of such coverage in the normal market. Local governments can no

longer tolerate such a situation, but their only alternative has been self-insurance.

The bill would provide new alternatives for local officials to consider as they face increasing costs for insurance.

Joint Insurance Funds - This bill would provide authorization for local governments to form and participate in insurance pools (called "joint insurance funds"). Properly managed insurance pools can result in both cost savings and cost stability. Provisions contained in this bill provide for minimum standards that are intended as a prerequisite that will facilitate proper management and operating practices.

The definition of the participants in the reciprocal insurer (in sections 12 and 18 of the bill) is consistent with the definition of the participants in the joint insurance fund, so that there will be two alternatives--regulated reciprocals and unregulated pools, for the same parties to consider.

Municipal Reciprocal Insurance - This bill will allow governmental entities to join together and engage in the exchange of contracts of insurance through a reciprocal plan. A reciprocal is created by a group of participants known as "subscribers" who under a common name and through an attorney-in-fact engage in the business of insuring one another. Contracts of insurance are exchanged among subscribers on a reciprocal basis so that each insured is also an insurer.

Management of the reciprocal is through an attorney-in-fact who is empowered to act on behalf of the subscribers. The attorney-in-fact is responsible for all functions required in the conduct of the business. The attorney-in-fact in turn is subject to the control of an advisory committee elected by the subscribers. The attorney-in-fact maintains a separate account for each subscriber and the account is credited with the subscriber's initial surplus contribution and the subscriber's share of any future earnings. The attorney-in-fact would also be in a position to supply loss prevention and control assistance and render technical advice in this highly specialized field.

The organization and operating requirements for a reciprocal insurer are stipulated in Article 61 of the Insurance Law. Due to the uniqueness of a reciprocal whose membership is limited to local governments, this bill authorizes the Superintendent to promulgate additional standards in order to facilitate the reciprocal's

organization, safeguard its financial soundness, and ensure the continuance of a viable organization.

The bill provides for prior approval of the municipal reciprocal insurer's rates. Coverage of the municipal reciprocal insurer by the Property/Casualty Insurance Security Fund is retained so that this type of reciprocal insurer is treated in the same manner as other reciprocals.

Increase in Net Worth Required for Subscriber - A reciprocal insurer is an unincorporated group of individuals or corporations that exchange insurance contracts through an attorney-in-fact. Each member or subscriber of a reciprocal assumes a liability for a portion of the losses of the other subscribers. This is accomplished by requiring each subscriber to enter into a contract which sets forth the subscriber's liability and grants authority to the attorney-in-fact to operate on his or its behalf.

Therefore, each subscriber must have substantial resources which the subscriber can call upon to meet its share of any underwriting deficiencies. The attorney-in-fact must ascertain and monitor the financial condition of each subscriber and requiring a minimum net worth of $50,000 is not unreasonable in today's times. In view of the tremendous decrease in the value of the dollar since the existing $10,000 net worth requirement was established more than a generation ago, a substantial increase in such amount is justified.

The increase will also affect the amount of net worth required for individuals who become members of the Lloyds underwriters of New York heretofore organized in this State under section 6116 of the Insurance Law, since section 6116(b) provides that "every such Lloyds underwriters shall be subject to all of the provisions of this chapter which are applicable to reciprocal insurers."

Cancellation and Nonrenewals

The commercial property and casualty insurance industry has recently engaged in the indiscriminate cancellation and nonrenewal of a large number of commercial and municipal insureds. These cancellations have frequently occurred during the policy term, with only minimal notice to the insured. Similarly, insureds have been informed of an insurer's intention to non-renew policies with only a few weeks' or even days' notice.

Obviously, such short term notices of cancellation and nonrenewal place an inordinate burden on the insureds. The tight market makes obtaining replacement coverage, a difficult task, more burdensome by the inadequacy of the notices provided.

The bill would eliminate indiscriminate and irresponsible mid-term cancellations of commercial risk, municipal risk and professional liability policies, as well as establish minimum time limits for notification of nonrenewal.

Group Insurance Policies see fictitious group law.

Consumers of the commercial property/casualty insurance industry are currently facing severe constriction in the availability of some insurance products and the affordability of those products which are still available.

Repeal fictitious group law 21.36.190

The availability of property/casualty insurance on a group basis to the members of associations or organizations whose membership is of a relatively homogeneous nature (i.e. housing associations, day care centers, etc.) and for public entities could result in reduced underwriting costs and enhance both the availability and affordability of insurance products for these consumers.

Exhaustion of Remedies

The bill would protect taxpayers by requiring that a plaintiff must exhaust all diligent efforts to collect the equitable share of a judgment apportioned to a governmental entity's co-defendants prior to seeking recovery of such co-defendants' equitable share from the governmental defendant. Taxpayers should not be called on to finance lack of diligence on the part of the plaintiff in obtaining satisfaction of judgments,

The bill would recognize that in the event a governmental defendant is properly called on to assure payment in full of the judgment by paying the equitable share of a co-defendant, the governmental defendant should be entitled to make a large payment in equal installments over a period of years instead of a lump sum payment.

Budget Implications:

The bill should provide savings to public entities in the state.

PRESS RELEASE
FOR IMMEDIATE RELEASE
FOR FURTHER INFORMATION CONTACT:
SENATOR JOE P. JOSEPHSON
465-4525

10 February 1986
12:30 p.m.

Senator Joe Josephson (D.-Anchorage) today introduced SB 392 to help reduce the cost of insurance and make more insurance coverage available.

"My bill recognizes the real problems that exist today, and which cry out for change in certain cases of medical and dental malpractice, day care centers, and claims in which a minor has sustained personal injury", Senator Josephson said.

"In my judgment", he added, "proposals for wholesale changes in tort law will not be enacted at this session -- and should not pass without careful study and assurances that benefits to the public, in the form of better coverage and lower premiums, will follow from their passage.

"But we can make some changes that still preserve for victims of negligence the benefits of the common law of Alaska as it has developed over the years, case-by-case", Senator Josephson asserted.

SB 392 provides that in medical or dental malpractice cases, suits against day care providers, and claims in which a minor has sustained injury, if future damages are awarded in excess of $250,000, the defendant or the defendant's insurance carrier can provide an approved annuity plan for instalment payments instead of a lump sum payment. The annuity program would be available as a way of meeting the defendant's obligation to pay amounts in excess of $250,000 for future pain and suffering, future lost wages or earnings

(or other future economic losses), or future expenses for health care or rehabilitative services.

To protect judgment creditors, security for the payment of the instalments would be required; each annuity plan would require approval by the Director of Insurance; and lump sum payments could be ordered in a case of demonstrated hardship, failure to post required security, or failure to pay a scheduled instalment when due.

"Passage of SB 392 will help doctors, dentists, and day care centers obtain coverage at reasonable rates", Senator Josephson said.

"Moreover, SB 392 gives better protection to the rights of injured minors than can be assured under existing law. Today, the guardian of an injured minor obtains immediate control of the entire award, when the award is satisfied. Under SB 392, except in cases of hardship, a portion of the award for future damages will be paid in monthly instalments, and so enhance the minor's involvement in financial planning decisions as the minor moves towards or reaches adulthood. SB 392 thus assures that proceeds of an award are used for the minor's care and properly accounted for.

"SB 392 is not, of course, the total answer", the senator concluded. "In fact, I am preparing other legislation for introduction this week which, like SB 392, will be carefully designed to improve the climate for insurance buyers and premium payers without seeking what is unattainable in 1986 or without doing fundamental violence to the civil law as we know it today."

J. P. J.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 29, 1986

Tamara Cook, Esquire
Director
Division of Legal Services
Legislative Affairs Agency
P.O. Box Y
Juneau, Alaska 99811

Dear Ms. Cook:

This letter constitutes a drafting request which you will want to refer, probably, to whomever on your staff has the greatest familiarity with insurance legislation.

I ask that there be drafted for possible introduction by me a bill addressing certain problems in property/casualty insurance.

First, I wish to authorize local government entities, including school districts (and inclusive of REAAs) to establish pooling arrangements to be known as "joint insurance funds", which will serve as an alternative or supplement to various types of property or casualty insurance authorized or required by law.

AS 21.75 provides already for reciprocal insurance for local government entities, but does not provide for joint insurance funds. I wish to cure this apparent omission. I enclose materials from the State of New York which may help your draftsperson.

Second, I wish to repeal AS 21.36.190, which discourages the formation of groups for insurance purposes. It is now clear that group insurance policies in the existing environment should be encouraged, not discouraged.

Third, I have another idea I wanted pursued. In entering judgments in actions for medical or dental malpractice, in actions against day care centers, and in all tort situations where the recovery is for the benefit of a minor, I would afford to the defense an opportunity to request the trial judge, if the findings include future damages exceeding $250,000 (e.g., for future pain and

suffering, wage loss, and medical expense), for the opportunity to provide an annuity contract that will pay the remaining amounts of future damages exceeding $250,000 in periodic installments. The present value of the annuity contract would be determined in accordance with generally accepted actuarial practices by applying the discount rate in effect at the time of the award to the full amount of the remaining future damages. The period of time over which such periodic payments shall be made and the period used to calculate the present value of the annuity contract would be the period determined by the trier of fact in arriving at the itemized verdict, or, if the verdict is not itemized, by the court that is entering the judgment, except that the period shall not exceed ten years. The amount of the judgment should reflect the interest rate attributable to unpaid judgments in Alaska. Unless otherwise agreed, the annual sum arrived at would be paid in equal monthly installments payable in advance.

Any annuity contract provided would require approval by the Director of Insurance of the State of Alaska prior to acceptance by the Court and would be executed by a qualified insurer licensed to do business in the State.

If the security is not posted within 30 days, the Court on motion of the judgment creditor may order the judgment to be paid in lump sum.

Please see the enclosed materials from New York, which provide that no portion of any periodic payment allocable to loss of future earnings will be reduced or terminated by reason of the death of the judgment creditor, but would be paid to persons to whom the judgment creditor owed a duty of support immediately prior to his death to the extent that such duty of support exists.

Please also note section 5036 in the enclosure which provides that any time after entry of the judgment, a judgment creditor or successor in interest can seek to establish that the continued payment of the judgment in periodic installments will impose a hardship, in which case the court may order that payment of remaining payments, or a portion thereof, be made in lump sum.

Sincerely,

Joe P. Josephson

Joe P. Josephson
State Senator

Enclosures

STATE OF NEW YORK

6750

1985-1986 Regular Sessions

IN SENATE

June 28, 1985

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the public health law, the civil practice law and rules, the education law, the insurance law, and the judiciary law, in relation to medical and dental malpractice, making an appropriation therefor and providing for the repeal of certain provisions added by this act upon their expiration

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and declaration. The legislature hereby finds and declares that a comprehensive reform of the medical and dental malpractice adjudication system is necessary in order to ensure the continued availability and affordability of quality health services in New York state. Escalating malpractice insurance premiums discourage physicians and dentists from initiating or continuing their practice in New York and contribute to the rising cost of health care as premium costs are passed along to the health care consumer. The legislature finds, therefore, that steps must be taken to reduce the cost of malpractice insurance and to restrain associated health care costs, while assuring the availability of compensation for persons injured as a result of malpractice. By expediting case resolution, discouraging frivolous claims and defenses, moderating attorney contingency fees, limiting the opportunity for double recoveries, and requiring the periodic payment of large future awards, the legislature intends to reduce the escalating cost of malpractice insurance and to improve the adjudication of malpractice claims. The legislature further finds that hospitals must enhance their efforts to reduce medical and dental malpractice through the establishment of medical and dental malpractice prevention programs and through greater scrutiny of physicians and dentists prior to granting hospital privileges and that increased resources should be devoted

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD11526-01-5

to the investigation and prosecution of professional misconduct. The legislature finds that the public interest further requires that premium levels for physicians and dentists must be restrained to the extent feasible in order to maintain high quality medical services for New York and to explore alternative long-term approaches to the malpractice issue.

§ 2. Paragraph (a) of subdivision one of section twenty-eight hundred three-e of the public health law, as amended by chapter one thousand five of the laws of nineteen hundred eighty-four, is amended to read as follows:

(a) Hospitals and other facilities approved pursuant to this article shall make a report or cause a report to be made within thirty days of the occurrence of any of the following: the suspension, restriction, termination or curtailment of the training, employment, association or professional privileges or the denial of the certification of completion of training of an individual licensed pursuant to the provisions of title eight of the education law or of a medical resident with such facility for reasons related in any way to alleged mental or physical impairment, incompetence, malpractice or misconduct or impairment of patient safety or welfare; the voluntary or involuntary resignation or withdrawal of association or of privileges with such facility to avoid the imposition of disciplinary measures; or the receipt of information which indicates that any professional licensee or medical resident has been convicted of a crime; the denial of staff privileges to a physician if the reasons stated for such denial are related to alleged mental or physical impairment, incompetence, malpractice, misconduct or impairment of patient safety or welfare.

§ 3. Such law is amended by adding two new sections twenty-eight hundred five-j and twenty-eight hundred five-k to read as follows:

§ 2805-j. Medical and dental malpractice prevention program. 1. Every hospital shall maintain a coordinated program for the identification and prevention of medical and dental malpractice. Such program shall include at least the following:

(a) The establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical and dental care of patients and to prevent medical and dental malpractice. Such committee shall oversee and coordinate the medical and dental malpractice prevention program and shall insure that information gathered pursuant to the program is utilized to review and to revise hospital policies and procedures. At least one member of the committee shall be a member of the governing board of the hospital who is not otherwise affiliated with the hospital in an employment or contractual capacity;

(b) A medical and dental staff privileges sanction procedure through which credentials, physical and mental capacity and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment and other events that may result in claims of medical or dental malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to paragraphs (a) through (e) of this subdivision concerning individual physicians and dentists within the physician's or dentist's personnel or credential file maintained by the hospital;

(g) Education programs dealing with patient safety, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients and causes of malpractice claims for staff personnel engaged in patient care activities;

(h) Continuing education programs for medical and dental staff in their areas of specialty; and

(i) Policies to ensure compliance with the reporting requirements of section twenty-eight hundred three-e of this article and subdivision eleven of section two hundred thirty of this chapter.

2. Any person who, in good faith and without malice, provides information to further the purposes of the medical and dental malpractice prevention program or who, in good faith and without malice, participates on the quality assurance committee shall not be subject to an action for civil damages or other relief as a result of such activity.

3. The commissioner shall make, adopt, promulgate and enforce such rules and regulations as he may deem appropriate to effectuate the purposes of this section.

§ 2805-k. Investigations prior to granting or renewing privileges. 1. Prior to granting or renewing professional privileges or association of any physician or dentist or hiring a physician or dentist, a hospital or facility approved pursuant to this article shall request from the physician or dentist and the physician or dentist shall be required to provide the following information:

(a) The name of any hospital or facility with or at which the physician or dentist had or has any association, employment, privileges or practice;

(b) Where such association, employment, privilege or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical or dental misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in such proceedings or actions, and any additional information concerning such proceedings or actions as the physician or dentist may deem appropriate;

(d) The substance of the findings in such actions or proceedings and any additional information concerning such actions or proceedings as the physician or dentist may deem appropriate;

(e) A waiver by the physician or dentist of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subdivision; and

(f) A verification by the physician or dentist that the information provided by the physician or dentist is true and accurate.

2. Prior to granting privileges or association to any physician or dentist, or hiring a physician or dentist, any hospital or facility approved pursuant to this article shall request from any hospital with or at which such physician or dentist had or has privileges, was associated, or was employed, the following information concerning such physician or dentist:

(a) Any pending professional medical conduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another; and

(c) Any information required to be reported by hospitals pursuant to section twenty-eight hundred three-e of this article.

3. If requested by the department, a hospital shall provide documentation that, prior to granting privileges, association or employing a physician or dentist, it has complied with the requirements of subdivisions one and two of this section and that, prior to renewing privileges, association or employment, it has complied with the requirements of subdivision one of this section. Copies of the information and documentation required pursuant to subdivisions one and two of this section shall be placed in the physician's or dentist's personnel or credentials file maintained by the hospital.

4. Any hospital which receives a request for information from another hospital pursuant to subdivision one or two of this section shall provide such information concerning the physician or dentist in question to the extent such information is known to the hospital receiving such a request, including the reasons for suspension, termination, curtailment of employment or privileges at the hospital. Any hospital or hospital employee providing such information in good faith shall not be liable in any civil action for the release of such information.

§ 4. Subdivision (d) of section thirty-one hundred one of the civil practice law and rules is amended to read as follows:

(d) [Material prepared for litigation. The following shall not be obtainable unless the court finds that the material can no longer be duplicated because of a change in conditions and that withholding it will result in injustice or undue hardship:

1. any opinion of an expert prepared for litigation; and

2. any writing or anything created by or for a party or his agent in preparation for litigation]

Trial preparation.

1. Experts. (i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical or dental malpractice, a party, in responding to a request, may omit the names of medical or dental experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph.

(ii) Further disclosure concerning the expected testimony of any expert may be obtained only by court order upon a showing of special circumstances and subject to restrictions as to scope and provisions concerning fees and expenses as the court may deem appropriate. However, a party, without court order, may take the testimony of a person authorized to practice medicine or dentistry who is the party's treating

or retained expert, as described in paragraph three of subdivision (a) of this section, in which event any other party shall be entitled to the full disclosure authorized by this article with respect to that expert without court order.

2. Materials. Subject to the provisions of paragraph one of this subdivision, materials otherwise discoverable under subdivision (a) of this section and prepared in anticipation of litigation or for trial by or for another party, or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent), may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

§ 5. Such law and rules is amended by adding a new rule thirty-four hundred six to read as follows:

Rule 3406. Mandatory filing and pre-calendar conference in dental and medical malpractice actions. (a) Mandatory filing. Not more than sixty days after issue is joined, the plaintiff in an action to recover damages for dental or medical malpractice shall file with the clerk of the court in which the action is commenced a notice of dental or medical malpractice action, on a form to be specified by the chief administrator of the courts. Together with such notice, the plaintiff shall file: (i) proof of service of such notice upon all other parties to the action; (ii) proof that, if demanded, authorizations to obtain medical, dental and hospital records have been served upon the defendants in the action; and (iii) such other papers as may be required to be filed by rule of the chief administrator of the courts. The time for filing a notice of dental or medical malpractice action may be extended by the court only upon a motion made pursuant to section two thousand four of this chapter.

(b) Pre-calendar conference. The chief administrator of the courts, in accordance with such standards and administrative policies as may be promulgated pursuant to section twenty-eight of article six of the constitution, shall adopt special calendar control rules for actions to recover damages for dental or medical malpractice. Such rules shall require a pre-calendar conference in such an action, the purpose of which shall include, but not be limited to, encouraging settlement, simplifying or limiting issues and establishing a timetable for disclosure, future conferences, and trial. The timetable for disclosure shall provide for the completion of disclosure not later than twelve months after the notice of dental or medical malpractice is filed and shall require that all parties be ready for the trial of the case not later than eighteen months after such notice is filed. The initial pre-calendar conference shall be held after issue is joined in a case but before a note of issue is filed and before a medical malpractice panel hearing, if any, is scheduled. To the extent feasible, the justice convening the pre-calendar conference shall hear and decide all subsequent pre-trial motions in the case and shall be assigned the trial of the case. The chief administrator of the courts also shall provide for the imposition of costs or other sanctions, including imposition of reasonable attorney's fees, dismissal of an action, claim, cross-claim, coun-

terclaim or defense, or rendering a judgment by default for failure of a party or a party's attorney to comply with these special calendar control rules or any order of a court made thereunder. The chief administrator of the courts, in the exercise of discretion, may provide for exemption from the requirement of a pre-calendar conference in any judicial district or a county where there exists no demonstrated need for such conferences.

§ 6. Subdivision (d) of rule forty-one hundred eleven of such law and rules, as added by chapter nine hundred fifty-five of the laws of nineteen hundred seventy-six, is amended to read as follows:

(d) Itemized verdict in medical or dental malpractice actions. In a medical or dental malpractice action the court shall instruct the jury that if the jury finds a verdict awarding damages it shall in its verdict specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, loss of earnings, impairment of earning ability, and pain and suffering. In a medical or dental malpractice action, each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the jury shall set forth the period of years over which such amounts are intended to provide compensation. In computing said damages, the jury shall be instructed to award the full amount of future damages, as calculated, without reduction to present value.

§ 7. Subdivision (b) of section forty-two hundred thirteen of such law and rules, as amended by chapter seven hundred one of the laws of nineteen hundred eighty-four, is amended to read as follows:

(b) Form of decision. The decision of the court may be oral or in writing and shall state the facts it deems essential. In a medical or dental malpractice action or in an action against a public employer or a public employee who is subject to indemnification by a public employer with respect to such action or both, as such terms are defined in subdivision (b) of section forty-five hundred forty-five, for personal injury or wrongful death arising out of an injury sustained by a public employee while acting within the scope of his public employment or duties, a decision awarding damages shall specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, loss of earnings, impairment of earning ability, and pain and suffering. In a medical or dental malpractice action, each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the decision and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the court shall set forth the period of years over which such amounts are intended to provide compensation. In computing said damages, the court shall award the full amount of future damages, as calculated, without reduction to present value.

§ 8. Subdivision (a) of section forty-five hundred forty-five of such law and rules, as added by chapter seven hundred one of the laws of nineteen hundred eighty-four, is amended to read as follows:

(a) Action for medical or dental malpractice. In any action for medical or dental malpractice where the plaintiff seeks to recover for the

cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, evidence shall be admissible for consideration by the court to establish that any such past or future cost or expense was or will, with reasonable certainty, be replaced or indemnified, in whole or in part, from any collateral source such as insurance (except for life insurance), social security (except those benefits provided under title XVIII of the social security act), workers' compensation or employee benefit programs (except such collateral sources entitled by law to liens against any recovery of the plaintiff). If the court finds that any such cost or expense was or will, with reasonable certainty, be replaced or indemnified from any collateral source, it shall reduce the amount of the award by such finding, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two-year period immediately preceding the accrual of such action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits. In order to find that any future cost or expense will, with reasonable certainty, be replaced or indemnified by the collateral source, the court must find that the plaintiff is legally entitled to the continued receipt of such collateral source, pursuant to a contract or otherwise enforceable agreement, subject only to the continued payment of a premium and such other financial obligations as may be required by such agreement.

§ 9. Such law and rules is amended by adding a new article fifty-A to read as follows:

ARTICLE 50-A

PERIODIC PAYMENT OF

JUDGMENTS IN MEDICAL AND DENTAL MALPRACTICE ACTIONS

5031. Basis for determining judgment to be entered.
5032. Form of security.
5033. Posting and maintaining security.
5034. Failure to make payment.
5035. Effect of death of judgment creditor.
5036. Adjustment of payments.
5037. Settlements.
5038. Assignment of periodic installments.
5039. Duties of superintendent of insurance.

§ 5031. Basis for determining judgment to be entered. In order to determine what judgment is to be entered on a verdict in an action to recover damages for dental or medical malpractice under this article, the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law, including set-offs, credits, comparative negligence pursuant to section fourteen hundred eleven of this chapter, additurs, and remittiturs, in calculating the respective amounts of past and future damages claimants are entitled to recover and defendants are obligated to pay.

(b) The court shall enter judgment in lump sum for past damages, for future damages not in excess of two hundred fifty thousand dollars, and for any damages, fees or costs payable in lump sum or otherwise under subdivisions (c) and (d) of this section. For the purposes of this section, any lump sum payment of a portion of future damages shall be deemed to include the elements of future damages in the same proportion as such elements comprise of the total award for future damages as determined by the trier of fact.

(c) Payment of litigation expenses and that portion of the attorney's fees related to past damages shall be payable in a lump sum. Payment of that portion of the attorney's fees related to future damages for which, pursuant to this article, the claimant is entitled to a lump sum payment shall also be payable in a lump sum. Payment of that portion of the attorney's fees related to the future periodically paid damages shall also be payable in a lump sum, based on the present value of the annuity contract purchased to provide payment of such future periodically paid damages pursuant to subdivision (a) of this section.

(d) Upon election of a subrogee or a lien holder, including an employer or insurer who provides workers' compensation, filed within the time permitted by rule of court, any part of future damages allocable to reimbursement of payments previously made by the subrogee or the lien holder shall be paid in lump sum to the subrogee or the lien holder in such amount as is calculable and determinable under the law in effect at the time of such payment.

(e) With respect to awards of future damages in excess of two hundred fifty thousand dollars in an action to recover damages for dental or medical malpractice, the court shall enter judgment as follows:

After making any adjustments prescribed by subdivisions (b), (c) and (d) of this section, the court shall enter a judgment for the amount of the present value of an annuity contract that will provide for the payment of the remaining amounts of future damages in periodic installments. The present value of such contract shall be determined in accordance with generally accepted actuarial practices by applying the discount rate in effect at the time of the award to the full amount of the remaining future damages, as calculated pursuant to this subdivision. The period of time over which such periodic payments shall be made and the period of time used to calculate the present value of the annuity contract shall be the period of years determined by the trier of fact in arriving at the itemized verdict; provided, however, that the period of time over which such periodic payments shall be made and the period of time used to calculate the present value for damages attributable to pain and suffering shall be ten years or the period of time determined by the trier of fact, whichever is less. The court, as part of its judgment, shall direct that the defendants and their insurance carriers shall be required to offer and to guarantee the purchase and payment of such an annuity contract. Such annuity contract shall provide for the payment of the annual payments of such remaining future damages over the period of time determined pursuant to this subdivision. The annual payment for the first year shall be calculated by dividing the remaining amount of future damages by the number of years over which such payments shall be made and the payment due in each succeeding year shall be computed by adding four percent to the previous year's payment. Where payment of a portion of the future damages terminates in accordance with the provisions of this article, the four percent added payment shall be based only upon that portion of the damages that remains subject to continued payment. Unless otherwise agreed, the annual sum so arrived at shall be paid in equal monthly installments and in advance.

(f) With the consent of the claimant and any party liable, in whole or in part, for the judgment, the court shall enter judgment for the amount found for future damages attributable to said party as such are determinable without regard to the provisions of this article.

§ 5032. Form of security. Security authorized or required for payment of a judgment for periodic installments entered in accordance with this article must be in the form of an annuity contract, executed by a qualified insurer and approved by the superintendent of insurance pursuant to section five thousand thirty-nine of this article, and approved by the court.

§ 5033. Posting and maintaining security. (a) If the court enters a judgment for periodic installments, each party liable for all or a portion of such judgment shall separately or jointly with one or more others post security in an amount necessary to secure payment for the amount of the judgment for future periodic installments within thirty days after the date the judgment is entered. A liability insurer having a contractual obligation and any other person adjudged to have an obligation to pay all or part of a judgment for periodic installments on behalf of a judgment debtor is obligated to post security to the extent of its contractual or adjudged obligation if the judgment debtor has not done so.

(b) A judgment creditor or successor in interest and any party having rights may move that the court find that security has not been posted and maintained with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that security complying with this article be posted within thirty days. If security is not posted within that time and subdivision (c) of this section does not apply, the court shall enter a judgment for the lump sum as such sum is determinable under the law without regard to this article.

(c) If a judgment debtor who is the only person liable for a portion of a judgment for periodic installments fails to post and maintain security, the right to lump sum payment described in subdivision (b) of this section applies only against that judgment debtor and the portion of the judgment so owed.

(d) If more than one party is liable for all or a portion of a judgment requiring security under this article and the required security is posted by one or more but fewer than all of the parties liable, the security requirements are satisfied and those posting security may proceed under subdivision (b) of this section to enforce rights for security or lump sum payment to satisfy or protect rights of reimbursement from a party not posting security.

§ 5034. Failure to make payment. If at any time following entry of judgment, a judgment debtor fails for any reason to make a payment in a timely fashion according to the terms of this article, the judgment creditor may petition the court which rendered the original judgment for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump sum judgment, the court shall total the remaining periodic payments due and owing to the judgment creditor, as calculated pursuant to subdivision (b) of section five thousand thirty-one of this article, and shall not convert these amounts to their present value. The court may also require the payment of interest on the outstanding judgment.

§ 5035. Effect of death of judgment creditor. (a) Unless otherwise agreed between the parties at the time security is posted pursuant to section five thousand thirty-three of this article, in all cases covered by this article [illegible]ich future damages are payable in periodic installments, the liabil[illegible]ayment of any installments for medical, dental or other costs of hea[illegible] care or noneconomic loss not yet due at the

death of the judgment creditor terminates upon the death of the judgment creditor.

(b) The portion of any periodic payment allocable to loss of future earnings shall not be reduced or terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support immediately prior to his death to the extent that such duty of support exists under applicable law at the time of the death of the judgment creditor. Such payments to such persons shall continue for the remainder of the period as originally found by the jury or until such duty of support ceases to exist, whichever occurs first. In such cases, the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the future payments of such unpaid future damages in accordance with this subdivision which apportioned amounts shall be payable in the future as provided for in this article. In the event that the judgment creditor does not owe a duty of support to any person at the time of the death of the judgment creditor or such duty ceases to exist, the remaining payments shall be considered part of the estate of the judgment creditor. In such cases, the court which rendered the original judgment may, upon petition of any party in interest, convert those portions of such periodic payments allocable to the loss of future earnings to a lump sum by calculating the present value of such payments in order to assist in the settlement of the estate of the judgment creditor.

§ 5036. Adjustment of payments. (a) If, at any time after entry of judgment, a judgment creditor or successor in interest can establish that the continued payment of the judgment in periodic installments will impose a hardship, the court may, in its discretion, order that the remaining payments or a portion thereof shall be made to the judgment creditor in a lump sum. The court shall, before entering such an order, find that: (i) unanticipated and substantial medical, dental or other needs have arisen that warrant the payment of the remaining payments, or a portion thereof, in a lump sum; (ii) ordering such a lump sum payment would not impose an unreasonable financial burden on the judgment debtor or debtors; (iii) ordering such a lump sum payment will accommodate the future medical and other needs of the judgment creditor; and (iv) ordering such a lump sum payment would further the interests of justice.

(b) If a lump sum payment is ordered by the court, such lump sum shall be calculated on the basis of the present value of remaining periodic payments, or portions thereof, that are converted into a lump sum payment. The remaining future periodic payments, if any, shall be reduced accordingly.

§ 5037. Settlements. Nothing in this article shall be construed to limit the right of a plaintiff, defendant or defendants and any insurer to settle dental or medical malpractice claims as they consider appropriate and in their complete discretion.

§ 5038. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under this article is enforceable only as to amounts: (a) to secure payment of alimony, maintenance, or child support; (b) for the cost of products, services, or accommodations provided or to be provided by the assignee for medical, dental or other health care; or (c) for attorney's fees and other expenses of litigation incurred in securing the judgment.

§ 5039. Duties of superintendent of insurance. The superintendent of insurance shall establish rules and procedures for determining which insurers, self-insurers, plans or arrangements are financially qualified to provide the security required under this article and to be designated as qualified insurers.

§ 10. Such law and rules is amended by adding a new section eighty-three hundred three-a to read as follows:

§ 8303-a. Costs upon frivolous claims and counterclaims in dental and medical malpractice actions. (a) If in a dental or medical malpractice action, an action or claim is commenced or continued by a plaintiff or a counterclaim, defense or cross claim is commenced or continued by a defendant that is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs and reasonable attorney's fees not exceeding ten thousand dollars.

(b) The costs and fees awarded under subdivision (a) of this section shall be assessed either against the party bringing the action, claim, cross claim, defense or counterclaim or against the attorney for such party, or against both, as may be determined by the court, based upon the circumstances of the case. Such costs and fees shall be in addition to any other judgment awarded to the successful party.

(c) In order to find the action, claim, counterclaim, defense or cross claim to be frivolous under subdivision (a) of this section, the court must find one or more of the following:

(i) the action, claim, counterclaim, defense or cross claim was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another;

(ii) the action, claim, counterclaim, defense or cross claim was commenced or continued in bad faith without any reasonable basis in law or fact and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action, claim, counterclaim, defense or cross claim was promptly discontinued when the party or the attorney learned or should have learned that the action, claim, counterclaim, defense or cross claim lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

§ 11. Subdivision five of section sixty-five hundred nine of the education law is amended by adding a new paragraph (d) to read as follows:

(d) Having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state.

§ 12. Subdivision eleven of section sixty-five hundred nine of such law, as added by chapter three hundred forty of the laws of nineteen hundred eighty, is amended to read as follows:

(11) A violation of section twenty-eight hundred three-d or twenty-eight hundred five-k of the public health law.

§ 13. Section six thousand five hundred twenty-four of such law is amended by adding a new subdivision ten to read as follows:

(10) For every license or registration issued after the effective date of this subdivision, an additional fee of ninety dollars shall be paid and deposited in the general fund for the purpose of increasing expenditures made pursuant to section two hundred thirty of the public health law in relation to the operation of the office of professional medical conduct within the department of health. The amount of the funds expended as a result of such increase shall not be greater than such additional fees collected over the licensure period.

§ 14. Subdivision one of section one hundred forty-eight-a of the judiciary law, as amended by chapter ninety-five of the laws of nineteen hundred seventy-eight, is amended to read as follows:

1. Each appellate division of the supreme court shall establish within its judicial department a medical malpractice panel or panels to facilitate the disposition of medical malpractice actions, including malpractice actions where a hospital is a named defendant, in the supreme court; provided, however, the provisions of this section shall not apply to the disposition of such actions in the fifth judicial district or in the county of Suffolk. The number and locations of such panels and the rules governing the operation thereof shall be determined by the respective appellate divisions.

§ 15. Subdivisions two, three and four of section four hundred seventy-four-a of such law, as added by chapter nine hundred fifty-five of the laws of nineteen hundred seventy-six, are amended to read as follows:

2. Notwithstanding any inconsistent judicial rule, a contingent fee in a medical or dental malpractice action shall not exceed the amount of compensation provided for in [either of] the following [schedules] schedule:

[SCHEDULE A]

[50] 30 percent of the first [$1,000] $250,000 of the sum recovered;
[40] 25 percent of the next [$2,000] $250,000 of the sum recovered;
[35] 20 percent of the next [$22,000] $500,000 of the sum recovered;
[25] 15 percent of the next $250,000 of the sum recovered;
10 percent of any amount over [$25,000] $1,250,000 of the sum recovered[; or

SCHEDULE B

A percentage not exceeding thirty-three and one-third percent of the sum recovered, if the initial contractual arrangement between the client and the attorney so provides, in which event the procedure hereinafter provided for making application for additional compensation because of extraordinary circumstances shall not apply].

3. Such [percentage] percentages shall be computed on the net sum recovered after deducting from the amount recovered expenses and disbursements for expert testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action. In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. For the following or similar items there shall be no deduction in computing such percentages: liens, assignments or claims in favor of hospitals, for medical care, dental care and treatment by doctors and nurses, or of self-insurers or insurance carriers.

4. In the event that claimant's or plaintiff's attorney believes in good faith that the fee [schedules] schedule set forth in subdivision two of this section, because of extraordinary circumstances, will not give him adequate compensation, application for greater compensation may

be made upon affidavit with written notice and an opportunity to be heard to the claimant or plaintiff and other persons holding liens or assignments on the recovery. Such application shall be made to the justice of the trial part to which the action had been sent for trial; or, if it had not been sent to a part for trial, then to the justice presiding at the trial term calendar part of the court in which the action had been instituted; or, if no action had been instituted, then to the justice presiding at the trial term calendar part of the Supreme Court for the county in the judicial department in which the attorney has an office. Upon such application, the justice, in his discretion, if extraordinary circumstances are found to be present, and without regard to the claimant's or plaintiff's consent, may fix as reasonable compensation for legal services rendered an amount greater than that specified in the [schedules] schedule set forth in subdivision two of this section, provided, however, that such greater amount shall not exceed the fee fixed pursuant to the contractual arrangement, if any, between the claimant or plaintiff and the attorney. If the application is granted, the justice shall make a written order accordingly, briefly stating the reasons for granting the greater compensation; and a copy of such order shall be served on all persons entitled to receive notice of the application.

§ 16. The insurance law is amended by adding a new section two thousand three hundred forty-three to read as follows:

§ 2343. Medical malpractice insurance rates; special additional provisions regarding such rates. (a) Whereas the provisions of a chapter of the laws of nineteen hundred eighty-five regarding medical and dental malpractice will have both a prospective and retrospective effect upon the loss experience of physicians, dentists and hospitals professional liability insurers, including the medical malpractice insurance association, the superintendent is directed forthwith to review rates previously in effect for the period commencing July first, nineteen hundred eighty-four and ending June thirtieth, nineteen hundred eighty-five, and, where appropriate, require modification of such rates for such period.

(b) Any such modified rate shall remain in effect as a provisional rate for the period commencing July first, nineteen hundred eighty-five and ending on November thirtieth, nineteen hundred eighty-five. The superintendent, subsequent to December first, nineteen hundred eighty-five, shall approve final rates for the period commencing July first, nineteen hundred eighty-five and ending June thirtieth, nineteen hundred eighty-six. No insurer shall have the duty to file for final rates for the period commencing July first, nineteen hundred eighty-five prior to December first, nineteen hundred eighty-five.

(c) Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to December first, nineteen hundred eighty-five.

(d) The superintendent shall promulgate a regulation, which may be amended from time to time, establishing a physicians professional liability insurance merit rating plan which reflects an individual physician's or surgeon's experience with respect to incidents or occur-

rences of alleged medical malpractice. The regulation shall establish standards and limitations intended to insure that merit rating plans are reasonable and are not unfairly discriminatory, inequitable, violative of public policy or otherwise contrary to the best interests of the people of this state. Such regulation shall include:

(1) reasonable standards to be applied in arriving at premium rates, surcharges and discounts based on an evaluation of the hazards of the insured, geographical area, specialties of practice, past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, and the limited nature, if any, of the practice of the insured;

(2) rules for recognizing experience of individual risks;

(3) any other factors deemed relevant in a system of merit rating for the purpose of establishing equitable merit rates.

The superintendent shall also consider, in establishing such regulation, whether premium rates unfairly burden physicians who are initiating their practice, those who are transitioning to retirement or those who practice part-time or hold academic positions.

Insurers shall review merit rating plans which were approved by the superintendent prior to the promulgation of the regulation required by this subsection and shall, before January first, nineteen hundred eighty-six, file with the superintendent statements that their merit rating plans conform with the regulation, or file an appropriate plan or amendments to their existing plans which will bring them into compliance with the standards of the regulation. Any such amendments shall become effective upon approval by the superintendent.

§ 17. Such law is amended by adding a new section three thousand four hundred thirty-seven to read as follows:

§ 3437. Insurance contracts for medical malpractice; availability of additional coverages. (a) Every authorized insurer which issues a policy of medical or dental malpractice insurance with primary levels of insurance in an amount equal to or greater than one million dollars for each claimant under that policy and three million dollars for all claimants under that policy in any one year must make available, and, if requested by the policyholder, provide coverage of at least one million dollars per claimant and three million dollars for all claimants in excess of such primary levels of insurance. Such insurers shall, subject to the approval of the superintendent, make available and, if requested by the policyholder, provide additional excess coverage in an amount requested by such policyholder.

(b) With respect to the excess coverage and additional excess coverage required to be made available on and after July first, nineteen hundred eighty-five by subsection (a) of this section, the superintendent shall establish and promulgate provisional rates to be charged for such excess coverage and additional excess coverage. The superintendent, subsequent to December first, nineteen hundred eighty-five, shall approve final rates for such excess coverage and additional excess coverage for the period commencing July first, nineteen hundred eighty-five and ending June thirtieth, nineteen hundred eighty-six. No insurer shall have the duty to file for final rates for such excess coverage or additional excess coverage for the period commencing July first, nineteen hundred eighty-five prior to December first, nineteen hundred eighty-five.

§ 18. Paragraph one of subsection (e) of section five thousand five hundred two of such law is amended to read as follows:

(1) To issue, or to cause to be issued, policies of insurance to physician applicants subject to primary limits specified in the plan of operation not in excess of one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one year, and excess coverage as provided in this paragraph. Each applicant shall be entitled to purchase a policy providing primary limits not to exceed one million dollars for each claimant and three million dollars for all claimants in any one year. In addition, any applicant insured by the association in an amount equal to or greater than one million dollars for each claimant and three million dollars for all claimants in any one year, or any other applicant covered under a policy or policies providing such primary levels of insurance against liability for medical or dental malpractice that is issued by an authorized insuror, shall be entitled to purchase a policy from the association providing excess coverage of at least one million dollars per claimant and three million dollars for all claimants in any one year. The association shall, subject to the approval of the superintendent, make available, and if requested by the applicant, provide additional excess coverage in an amount requested by such applicant. With respect to the coverage required to be made available on and after July first, nineteen hundred eighty-five by this paragraph, the superintendent shall establish and promulgate provisional rates to be charged for such excess coverage and additional excess coverage. The superintendent, subsequent to December first, nineteen hundred eighty-five, shall approve final rates for such excess coverage for the period commencing July first, nineteen hundred eighty-five and ending June thirtieth, nineteen hundred eighty-six. The association shall not have the duty to file for final rates for such excess coverage and additional excess coverage for the period commencing July first, nineteen hundred eighty-five and prior to December first, nineteen hundred eighty-five.

§ 19. Every general hospital which maintains facilities for providing emergency medical care shall purchase a policy for excess insurance coverage, as authorized by paragraph one of subsection e of section five thousand five hundred two and section three thousand four hundred thirty-seven of the insurance law, or shall provide equivalent excess coverage in a form approved by the superintendent of insurance, for medical or dental malpractice occurrences between July first, nineteen hundred eighty-five and June thirtieth, nineteen hundred eighty-six for physicians or dentists requesting such coverage and having professional privileges in such hospital who, from time to time, provide emergency medical or dental care in such hospital to persons who require such care, provided, however, that such physicians or dentists must have in force an individual policy, from an insuror licensed in this state of primary malpractice insurance coverage in amounts of no less than one million dollars for each claimant and three million dollars for all claimants under that policy during the period of such excess coverage for such occurrences. During such period, such policy for excess coverage must, when combined with the physician's or dentist's primary malpractice insurance coverage, total an aggregate level of two million dollars for each claimant and six million dollars for all claimants from all such policies with respect to occurrences in such year. In the event that a physician or dentist has professional privileges in more than one hospital, such excess coverage shall be purchased or provided by the hospital designated by such physician or dentist as the hospital with which the physician or dentist is primarily affiliated.

§ 20. Notwithstanding the provisions of subdivision five of section twenty-eight hundred seven-a of the public health law, the commissioner of health or his designees shall adjust the inpatient revenue cap for those general hospitals which are required to purchase a policy for excess insurance coverage for medical malpractice occurrences or who provide equivalent excess insurance coverage pursuant to section nineteen of this act. An adjustment shall be made to the inpatient revenue cap of such hospitals to reflect the cost of such excess coverage for the period of July first, nineteen hundred eighty-five to December thirty-first, nineteen hundred eighty-five. Such adjustment shall be made by the commissioner of health within sixty days of submission of adequate evidence of costs incurred for such excess coverage.

§ 21. Notwithstanding the provisions of article twenty-eight of the public health law relating to rate adjustment, the commissioner of health or his designee shall adjust the established rate for those general hospitals which are required to purchase a policy for excess insurance coverage for medical malpractice occurrences or who provide equivalent excess coverage pursuant to section nineteen of this act. An adjustment effective January first, nineteen hundred eighty-six, shall be made to the established rate to reflect the cost of such excess coverage for the period January first, nineteen hundred eighty-six to June thirtieth, nineteen hundred eighty-six and shall not be carried forward.

§ 22. The chief administrator of the courts shall conduct a study of the impact of section fourteen of this act upon the disposition of medical malpractice actions in the fifth judicial district and in the county of Suffolk, as compared to medical malpractice actions in the seventh judicial district and in the county of Nassau. On or before January first, nineteen hundred eighty-eight, the chief administrator shall prepare and transmit to the legislature, the governor and the chief judge of the court of appeals a report of his findings, including but not limited to numbers of actions brought, the speed with which cases reached final disposition, and the impact of the panels on the adjudication of the action, together with any appropriate recommendations.

§ 23. Severability. If any provision of any section of this act shall be held void or unconstitutional, all other provisions and all other sections of this act which are not expressly held to be void or unconstitutional shall continue in full force and effect.

§ 24. Appropriation. The sum of two million dollars ($2,000,000), or so much thereof as may be necessary, is hereby appropriated to the department of health from any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated, to improve and expand the operations of the office of professional medical conduct. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of health, or his duly designated representative in the manner prescribed by law.

§ 25. This act shall take effect July first, nineteen hundred eighty-five; provided, however, that: section four of this act shall be applicable to any actions commenced on or after such date; sections five, six, seven, eight, nine and ten of this act shall be applicable to any action for dental or medical malpractice commenced on or after such date; section fourteen of this act shall apply to medical malpractice actions for which a medical malpractice panel hearing has not been conducted by such date; section fifteen of this act shall be applicable to any retainer agreement executed on or after such date; section three

thousand four hundred thirty-seven of the insurance law, as added by section seventeen of this act, shall be of no further force or effect on and after July first, nineteen hundred eighty-six when upon such date such section of the insurance law shall be deemed repealed; the amendment made by section eighteen of this act to paragraph one of subsection (e) of section five thousand five hundred two of the insurance law shall be of no further force or effect on and after July first, nineteen hundred eighty-six when upon such date the provisions of paragraph one of subsection (e) of section five thousand five hundred two of the insurance law as they existed immediately before the effective date of section eighteen of this act shall be deemed revived and in full force or effect on and after such date; section nineteen of this act shall be of no further force or effect on and after July first, nineteen hundred eighty-six; section twenty of this act shall be of no further force or effect on and after December thirty-first, nineteen hundred eighty-five; and except that section twenty-one of this act shall take effect on January first, nineteen hundred eighty-six and shall be of no further force or effect on and after July first, nineteen hundred eighty-six.

Alaska State Legislature
Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 21, 1986

The Honorable Fred Zharoff
Chairman
Senate Labor and Commerce
Committee
P.O. Box V
Juneau, Alaska 99811

Dear Chairman Zharoff:

All legislators realize the insurance problems of our constituents across Alaska.

Many of us are reluctant, however, to adopt wholesale changes in the law of torts. The principles of torts have evolved through judicial decisions, here and elsewhere in our country, over the centuries. Personally, I am hesitant to support any abrupt changes that would represent legislative intervention into a process of case-by-case development of the law.

That is especially true inasmuch as we do not know whether changes in tort law will have significant effects upon the insurance market place.

At the same time, I do believe we can make certain changes that may ameliorate the problems of insurance premium-payers today.

That is why I have offered SB 392, now before your Committee. I believe that the changes proposed in SB 392 would be productive, and that the Legislature could monitor its effects in the market place.

SB 392 would apply in certain actions for mental or dental malpractice, or where personal injuries are sustained by a minor who recovers a verdict, or where day care facilities or nurseries are defendants.

I have selected these particular areas because the problems of the health care community are well known; some

doctors are giving up their specialties or practices, or are practicing with no insurance at all. These trends are not good for the public.

The day care business is often only marginally profitable in the first place. The effects, therefore, of a dramatic rise in insurance premiums, resulting from a few well-publicized cases of child sexual abuse elsewhere in the country, are extremely serious. Like medical and dental care, day care is of critical importance to our economy and quality of life.

Lump sum payments when a minor has suffered a severe personal injury are often not in the minor's best interests. The proceeds of a judgment or recovery pursuant to settlement may not be used for the benefit of the minor. By the time the minor attains the age of majority, or maturity, important choices have already been made that will control the minor's financial destiny. Thus, by allowing a payment of a portion of the recovery to be paid in instalments, through approved, secured, annuity plans, SB 329 would often inure to the benefit of the injured person, while reducing the costs of the judgment debtor and the judgment debtor's insurance carrier.

I believe the bill is well balanced. It allows for the defendant to request that a portion of itemized damages for future loss to be paid through an approved annuity contract that is interest-bearing. The director of insurance would have to approve the annuity contract before it could be accepted by the court. If any instalment is not paid when due, the judgment creditor may obtain an order requiring that all outstanding payments be remitted by lump sum, without discount to present value.

On the other hand, if the judgment creditor can show genuine hardship, the court may order a lump sum satisfaction of the judgment.

If the judgment creditor dies, the liability to pay for future pain and suffering, or health care costs, terminates. However, the dependents or heirs of the judgment creditor would be entitled to receive after the judgment creditor's death money representing lost future earnings.

In summary, this bill calls for using the "structured settlement" approach in certain cases, and is limited to actions where the recovery for future loss exceeds $250,000. It will save defendants and insurance carriers money, but it

will not involve any changes to the law of negligence or tort liability, since it reaches only to the question of how verdicts are to be itemized and how a judgment is to be paid.

It is not a perfect answer to the issues before the legislature, but it is a sound piece that deserves, I think, discussion and consideration.

I look forward to discussing the bill with the Committee at its earliest opportunity.

With best wishes, I am

Sincerely,

Joe P. Josephson
State Senator

JPJ:rak

PROGRAM BILL # 118

AN ACT

to amend the general municipal law, the insurance law, the education law and the local finance law, in relation to making available to municipalities a system of self-insurance, reciprocal insurance, joint insurance funding, and making certain conforming changes in relation thereto, the cancellation and renewal of commercial risk, municipal risk and professional liability insurance policies, the issuance of property/casualty insurance on a group basis for commercial risks, municipal risks and professional liability; and to amend the civil practice law and rules, in relation to limiting the li-

ability of public entities and public employees and periodic payment by public entities and public employees of certain judgments against them; and repealing sections three thousand four hundred twenty-six and three thousand four hundred twenty-seven of the insurance law relating to the termination of product liability and professional liability insurance policies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The legislature finds that recent increases in the cost of commercial insurance for municipalities has made it difficult to obtain adequate protection at reasonable cost.

The legislature finds that the state can take several steps that would provide alternatives for local officials faced with increasing costs for insurance, improve the municipal insurance information system to accurately reflect local government risk, and recognize the impact of pressures within the marketplace on questions of cost and availability of coverage.

One important step is state authorization for local governments to form and participate in insurance pools. Properly managed insurance pools can result in both cost savings and cost stability. Provisions contained in this act provide for minimum standards that are intended as a prerequisite that will facilitate proper management and operating practices.

The legislature also finds that a reciprocal insurer form of organization is well suited to achieve the objectives of cost containment and availability of coverage for municipalities. In order to provide an environment which will help local officials to obtain adequate protection at reasonable cost, the legislature hereby enacts the following provisions.

§ 2. Section six-n of the general municipal law, as added by chapter six hundred eighty-four of the laws of nineteen hundred seventy-nine, paragraph d of subdivision nine as amended by chapter eight hundred five of the laws of nineteen hundred eighty-four and subdivision eleven as amended by chapter three hundred seventy-seven of the laws of nineteen hundred eighty-four, is amended to read as follows:

§ 6-n. [Liability and casualty reserve fund] Self-insurance reserve fund; self-insurance by municipal corporations. 1. a. "Municipal corporations", as used in this section, shall mean a municipal corporation, as defined in section two of this chapter, school district[,] [except a school district in a city with a population of one hundred twenty-five thousand or more], board of cooperative educational services, fire district, a district corporation, a special district and a special improvement district governed by a separate board of [commissioner] commissioners.

b. "Judgments", "actions" and "claims", as used in this section, shall mean those judgments, actions and claims against the municipal corporation [that are founded upon tort or that arise out of any acts or omissions of officers or employees of the municipal corporation that result in personal injuries or property damage if such officers or employees, at the time the damages were sustained, were executing or performing, or in good faith purporting to exercise or perform, their powers and duties] involving those types of protection for which a municipal corporation has elected to self-insure pursuant to subdivision two of this section.

2. Notwithstanding any provision of law to the contrary, the governing board of a municipal corporation which is otherwise authorized or required by general, special or local law, charter, rule or regulation to obtain and maintain any type of insurance as described in section one thousand one hundred thirteen of the insurance law, except those specified in paragraphs one, two, three, eighteen and twenty-three of subsection (a) of such section, for municipal, school or fire purposes, from any insurance company created by or under the laws of this state or any insurance company authorized by law to transact business in this state,

is hereby authorized to elect to act as a self-insurer either in whole or in part for any or all types of protection it is otherwise authorized or required to obtain and maintain from any such insurance company.

3. The governing board of any municipal corporation which is, or shall hereafter become, a self-insurer pursuant to subdivision two of this section may establish a reserve fund to be known as [a liability and casualty reserve fund] the self-insurance reserve fund of such municipal corporation, provided, however, no municipal corporation shall establish a reserve fund pursuant to this section for any type of coverage authorized in subdivision two of this section if such municipal corporation has already established a reserve fund for such purpose under any other provision of law.

[3] 4. There may be paid into such fund:

a. Such amounts as may be provided by budgetary appropriations;

b. Amounts from any other fund authorized by this chapter by resolution subject to permissive referendum; and

c. Such other funds as may be legally appropriated.

[4] 5. The cash balance of such fund at the end of any fiscal year shall not exceed the greater of one hundred thousand dollars or five per centum of the total budget for such fiscal year. The amount paid into such fund during any fiscal year shall not exceed the greater of thirty-three thousand dollars or [one and two-thirds] three per centum of the total budget for such fiscal year.

[5] 6. The moneys in such fund shall be deposited in one or more of the banks or trust companies designated in the manner provided by law as depositories of the funds of such municipal corporation. The governing board, or the chief fiscal officer or officer having custody of such

money of such municipal corporation, if the governing board shall delegate such duty to him, may invest the moneys in such fund in obligations specified in section six-f of this chapter; provided, however, that moneys of school districts and boards of cooperative educational services may be invested in obligations specified in section seventeen hundred twenty-three-a of the education law. Any interest earned or capital gain realized on the money so deposited or invested shall accrue to and become part of such fund.

[6] 7. The chief fiscal officer shall account for this fund separate and apart from all other funds of the municipal corporation. Such accounting shall show: the source, date and amount of each sum paid into the fund; the interest earned by such fund; capital gains or losses resulting from the sale of investments of this fund; and for each type of protection the order, source thereof, date and amount of each payment from this fund; the assets of the fund, indicating cash balance and a schedule of investments. The chief fiscal officer, within sixty days of the end of each fiscal year, shall furnish a detailed report of the operation and condition of this fund to the governing board.

[7. Notwithstanding any provision of law to the contrary, municipal corporations, shall not have the power to enter into agreements, among themselves or one for the other, to pool their reserve fund established pursuant to subdivision two of this section for the payment of judgments, actions and claims.]

8. The chief fiscal officer shall also keep a separate account within the self-insurance reserve fund for each type of protection the municipal corporation elects to self-insure pursuant to subdivision two of this section.

9. Any action or claim shall be compromised or settled by the governing board, officer or employee of the municipal corporation authorized to settle or compromise actions or claims on behalf of the municipal corporation.

[9] 10. An expenditure may be made from this fund for the payment of all or part of the cost, including interest, of:

a. Judgments;

b. Actions that have been compromised or settled and that have been approved by the court in which the action or proceeding is pending;

c. Claims that have been settled or compromised and that have been approved by a justice of the supreme court of the judicial district in which the municipal corporation is located;

d. The uninsured portion of any loss to property owned by a municipal corporation if such loss is one for which insurance is authorized pursuant to paragraphs four, five, six, nine, ten, twelve and subparagraph (A) of paragraph seven of subsection (a) of section one thousand one hundred thirteen of the insurance law.

e. Expert or professional services rendered in connection with the investigation, adjustment or settlement of claims, actions or judgments.

f. Any or all of the contribution required to subscribe to a reciprocal insurer, as defined in subsection (a) of section one hundred seven of the insurance law, or to participate in a joint insurance fund, as defined in section one hundred nineteen-ooo of this chapter.

[10] 11. The order of the court or the justice approving such settlement or compromise may be granted upon motion of the body, officer or employee of the municipal corporation authorized to do so, supported by an affidavit setting forth the cause of action or claim against the municipal corporation and also such other information which, in its or

his opinion, will enable the court or justice to arrive at a determination that such compromise or settlement is just, reasonable and to the interest of the municipal corporation. Such body, officer or employee may also present the affidavit of other persons in support of such motion. The court or the justice, in order to arrive at such a determination, may require such body, officer or employee to present additional information by a supplementary affidavit or affidavits or may require other persons to present additional information by their affidavits.

[11] 12. Notwithstanding subdivisions [eight] nine and [nine] ten of this section, the governing body of any municipal corporation may [make] approve an expenditure from this fund, without judicial approval, for the compromise or settlement of any action or claim when such municipal corporation is a subscriber to a reciprocal insurer, as defined in subsection (a) of section one hundred seven of the insurance law, or is a participant in a joint insurance fund, as defined in section one hundred nineteen-ooo of this chapter, or where the amount of such settlement or compromise does not exceed [ten] twenty-five thousand dollars.

[12] 13. The members of the governing board shall be guilty of a misdemeanor if they:

a. Authorize a withdrawal from this fund for any purpose except as provided in this section; or

b. Expend any money withdrawn from this fund for a purpose other than as provided in this section.

[13] 14. If, after the establishment of such fund, the municipality determines that such fund is no longer needed, the moneys remaining in such fund may be transferred to any other reserve fund of the municipal corporation authorized by this chapter that is comprised of moneys which were raised on the same tax base as the moneys in the reserve fund esta-

blished under this section or section thirty-six hundred fifty-one of the education law, only to the extent that the moneys in this fund shall exceed the sum sufficient to pay all liabilities incurred or accrued against it. Prior to the discontinuance of such fund, the fiscal and legal officers of such municipal corporation shall certify to the governing board thereof the amount that may be necessary to retain in such fund to satisfy all liabilities incurred or accrued against it and such sum shall be retained in the fund for payment of such amounts or until later certified that such funds are no longer needed.

15. Notwithstanding any provision of law to the contrary, municipal corporations shall have the power to enter into agreements, among themselves, individually or through a plan sponsored by their respective statewide association, to pool their reserve funds established pursuant to subdivision three of this section with any other contributions of funds, from appropriations or any other source, and to make expenditures therefrom, and perform functions one for the other related thereto, for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law, or to organize and/or join a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter.

§ 3. Such law is amended by adding a new section ninety-nine-p to read as follows:

§ 99-p. Reciprocal insurer and joint insurance fund. Any "municipal corporation" as used in this section meaning municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district

governed by a separate board of commissioners, may become a subscriber to a reciprocal insurer formed under article sixty-one of the insurance law, or become a participant of a joint insurance fund formed under article five-G of this chapter.

§ 4. Section one hundred nineteen-n of such law is amended by adding a new subdivision f to read as follows:

f. With respect to a joint insurance fund created pursuant to section one hundred nineteen-ooo of this article, the following terms shall mean:

1. "Municipal corporation". A municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners.

2. "Governing body". The governing body of a municipal corporation participating in a joint insurance fund.

3. "Cooperative agreement". A written agreement entered into by two or more municipal corporations pursuant to the provisions of this article for the purpose of establishing or participating in a joint insurance fund.

4. "Board of directors". The board provided for in a cooperative agreement to administer a joint insurance fund.

5. "Administrative expenses". Expenses of operation of a joint insurance fund including but not limited to: compensation of employees, costs of office equipment and supplies, rental of facilities, and utility costs.

6. "Administrator". An officer of a joint insurance fund appointed by the board of directors who shall also be charged with care, custody, and control of funds of a joint insurance fund. Statewide associations representing municipal corporations may also be designated as the administrator, including but not limited to: the New York state association of counties, the New York state conference of mayors, association of towns of New York, and the New York school boards association.

7. "Fund". A joint insurance fund created pursuant to this article.

8. "Adjustment expenses". Expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits.

§ 5. Subdivision one of section one hundred nineteen-o of such law, as amended by chapter four hundred seven of the laws of nineteen hundred seventy-two, is amended to read as follows:

1. In addition to any other general or special powers vested in municipal corporations and districts for the performance of their respective functions; powers or duties on an individual, cooperative, joint or contract basis, municipal corporations and districts shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project or for a joint insurance fund. Any agreement entered into hereunder shall be approved by each participating municipal corporation or district by a majority vote of the voting strength of its governing body. Where the authority of any municipal corporation or district to perform by itself any function, power and duty or to provide by itself any facility, service, activity, project or undertaking or the financing

thereof is, by any other general or special law, subject to a public hearing, a mandatory or permissive referendum, consents of governmental agencies, or other requirements applicable to the making of contracts, then its right to participate in an agreement hereunder shall be similarly conditioned.

§ 6. Such law is amended by adding a new section one hundred nineteen-ooo to read as follows:

§ 119-ooo. Joint insurance fund. 1. In addition to any other powers granted under this article, municipal corporations shall have the power to enter into a cooperative agreement for the purpose of establishing or operating or participating in a joint insurance fund. The term "joint insurance fund" means a joint fund created from the pooling of contributions of funds, from appropriations or any other source, by municipal corporations which collectively agree to assume risks from a loss or losses on a group basis or to purchase coverage on a group basis. Such fund may be established for any kind of insurance as described in section one thousand one hundred thirteen of the insurance law, except those specified in paragraphs one, two, three, eighteen and twenty-three of subsection (a) of such section. Such fund shall be an alternative or supplement to any policy or contract of insurance authorized or required by law. A joint insurance fund herein provided for shall not be considered insurance for the purpose of any other law of this state and shall not be subject to the regulations of the state insurance department except as provided herein. Any joint insurance fund established pursuant to this section to provide the kinds of insurance specified in paragraphs thirteen, fourteen, nineteen, twenty and twenty-one of subsection (a) of section one thousand one hundred thirteen of the insurance law

shall be subject to the provisions of section three thousand four hundred twenty of such law.

2. The cooperative agreement shall provide for the proper operation of the fund, and include provision for:

a. Administration of the fund by a board of directors, and specifying the number of members of such board and all other requirements necessary for the proper functioning of the board;

b. Appointment of an administrator and any other persons as may be necessary for the proper functioning of the fund;

c. Organization of the fund, including a roster of all participating municipal corporations and the names of all members of the board of directors;

d. Procedures to establish and promote an aggressive risk management program among fund members to include, but not limited to: identifying and reducing those risks which can be reduced through the implementation of better safety technologies, improved work techniques and sounder procedures, enforce the collection of any contributions or payment in default; for the addition to the fund of new municipal corporations or the withdrawal from the fund of municipal corporations, and for termination of the fund and disposition of its assets;

e. An annual determination by a casualty actuary who is a member of the American academy of actuaries that procedures for establishing reserves for losses are actuarially sound;

f. The method of apportioning costs and disposition, if any, of excess contributions;

g. An annual independent audit conducted in accordance with generally accepted auditing standards that shall include a review of the actuarial assumptions and adequacy of reserves and certification from a casualty

actuary who is a member of the American academy of actuaries that the actuarial assumptions continue to be sound and the level of reserves are adequate;

h. A method of accounting that is in conformance with generally accepted goverment accounting principles;

i. Provision for transmission of financial statements and audit reports of the fund to participating municipal corporations; and

j. Notice to each prospective participant that the fund is not subject to the insurance law except as provided herein, is not regulated by the superintendent of insurance, and is not covered by the property/casualty insurance security fund set forth in article seventy-six of the insurance law.

3. The cooperative agreement may authorize the board of directors to enter into contracts with any person, firm, or corporation for services necessary to perform the functions of a joint insurance fund; provided, however, that any such person, firm or corporation performing such functions must be licensed if the insurance law so requires.

4. The cooperative agreement may authorize the board of directors to adopt rules and regulations not inconsistent with law for the fair and equitable administration of the fund.

5. The cooperative agreement may delegate to the board of directors, or may authorize delegation by the board to an attorney or claims adjuster, or any other person or group, the power to compromise, arbitrate or otherwise settle claims.

6. The cooperative agreement may authorize the board of directors to purchase excess or catastrophe insurance on behalf of the fund. The cost of such insurance shall be apportioned in the manner specified in the cooperative agreement. Such insurance shall only be purchased from an

insurer authorized to do business in this state, or an unauthorized insurer if placed through a licensed excess lines broker.

7. There may be paid into a joint insurance fund (a) such amounts as may be contributed by participating municipal corporations through budgetary appropriation and/or from transfers from a self-insurance reserve fund created pursuant to section six-n of this chapter, (b) such amounts as may be contributed by officers and employees of participating municipal corporations pursuant to an employee benefit plan and (c) all amounts collected by the fund through subrogation of a claim paid by the fund to a participating municipal corporation.

8. An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest thereon, if any, and the administrative and adjustment expenses incurred in connection therewith, involving those types of protection for which the fund provides coverage as specified in the cooperative agreement.

9. Nothwithstanding any provisions of law to the contrary, a cause of action shall accrue to the fund for reimbursement in such sum or sums paid to a participating municipal corporation as against any third party against whom the participating municipal corporation shall have a cause of action for loss or injuries.

10. The administrator shall keep this fund separate and apart from any and all other funds of a participating municipal corporation. For each type of protection offered by the fund, the method of accounting shall show the order, source thereof, date and amount of each payment from this fund. The administrator, within sixty days of the end of the fiscal year, shall furnish a detailed report of the operation and condition of the fund to the board of directors, the superintendent of insurance, and the secretary of state. The report furnished to the sup-

erintendent of insurance and the secretary of state shall be available for public inspection.

11. Any moneys held by a joint insurance fund as reserves and any moneys not needed for day-to-day operations may be invested: (a) in special time deposit accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in this state, provided, however, that such time deposit account or certificate of deposit shall be payable within such time as the proceeds shall be needed to meet expenditures for which such moneys were obtained and provided further that such time deposit account or certificates of deposit be secured by a pledge of direct or guaranteed obligations of the United States of America or its agencies or obligations of the state of New York or obligations of any municipal corporation, school district or district corporation of the state of New York if such obligations are not in default as to principal or interest and are payable, as to both principal and interest, from (i) taxes levied or by law required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit or (ii) adequate special revenues pledged or otherwise appropriated or required to be provided for the purpose of such payment, excluding obligations payable solely out of special assessments on properties benefited by local improvements; or (b) in obligations of the federal government or obligations of the state of New York. Such obligations, unless registered or inscribed in the name of the joint insurance fund for which such investment is made, shall be purchased through, delivered to and held in the custody of a bank or trust company in this state and shall be sold or presented for redemption or payment only by such bank or trust company or dealer in obligations upon receipt of written instructions from the board of

directors or the administrator if the board of directors shall have delegated the duty of making investments to him. Such obligations shall be purchased only if they are payable or redeemable at the option of the holder within such time as the proceeds shall be needed to meet expenditures for which moneys so invested were obtained.

12. Notwithstanding subdivision two of this section, no fund shall be terminated unless the administrator shall certify that an amount of money sufficient to pay all expenditures, both accrued and contingent, has been placed in a fully collateralized escrow account.

13. Copies of the cooperative agreement shall be filed with the superintendent of insurance and the secretary of state at least sixty days prior to the effective date of the agreement. Such agreement shall be available for public inspection.

14. The authority contained in this section is intended to confirm and supplement authority already possessed by municipal corporations, as defined in subdivision a of section one hundred nineteen-n of this article, to enter into cooperative agreements to self-insure through a joint insurance fund. To the extent, however, that the provisions of this section may be inconsistent with other provisions of this article, the provisions of this section shall prevail. The authority contained in this section shall be in addition to and not in substitution for or a limitation of a municipal corporation's authority to participate in a county self-insurance plan established pursuant to article five of the workers' compensation law.

§ 7. Section one hundred nineteen-u of such law is amended by adding two new subdivisions i and j to read as follows:

i. The term "municipality" shall also mean a municipal corporation, as defined in section two of this chapter, school district (except a school

district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, when a comprehensive study and report is prepared for the consideration of a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, or reciprocal insurer, as defined in subsection (a) of section one hundred seven of the insurance law.

j. The term "local agency" as defined in subdivision e of this section shall also mean the New York state association of counties, New York state conference of mayors, association of towns of the state of New York, and the New York school boards association for the purpose of conducting comprehensive studies and reports on reciprocal insurers and joint insurance funds.

§ 8. The opening paragraph of subdivision one and subdivision three of section two hundred thirty-nine-n of such law, as amended by chapter two hundred three of the laws of nineteen hundred eighty-three, are amended to read as follows:

Any county outside the city of New York, city, town, village, school district, board of cooperative educational services, or fire district or any combination thereof, or for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law or to organize and/or participate in a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, any municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, spe-

cial district and a special improvement district governed by a separate board of commissioners, may create by agreement an intergovernmental relations council to strengthen local governments and to promote efficient and economical provision of local governmental services within or by such participating municipalities, and to that end such council shall have power to:

3. The board of supervisors of a county, the appropriate officials of a city, the governing body of a school district, board of cooperative educational services or fire district, the board of trustees of a village, or the town board of a town, or for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law or to organize and/or participate in a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, the governing body of a municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, is hereby authorized to include annually in the budget and raise by taxation in such county, city, school district, village or town or for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law or to organize and/or participate in a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, such municipal corporation, school district, board of cooperative educational services, fire district, district corporation, special district and special improvement district a sum to meet all or an appropriate share of the

actual and necessary expenses of establishing, maintaining and continuing such intergovernmental relations council.

§ 9. Subdivision one of section four hundred sixty-one of such law, as added by chapter eight hundred fifty-nine of the laws of nineteen hundred fifty-seven, is amended to read as follows:

1. (a) The term "public agency" shall mean any county, city, town, village, school district, improvement district or district corporation of the state of New York; and any local governmental unit, subdivision, or special district of another state.

(b) The term "public agency" shall mean any municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, when an agreement entered into pursuant to this article is for the purpose found in subparagraph twenty-four of paragraph (a) of subdivision one of section four hundred sixty-two of this article.

§ 10. Subparagraph twenty-three of paragraph (a) of subdivision one of section four hundred sixty-two of such law, as added by chapter seven hundred forty-one of the laws of nineteen hundred sixty-nine, is amended to read as follows:

(23) Roads and highways[.]

§ 11. Paragraph (a) of subdivision one of section four hundred sixty-two of such law is amended by adding a new subparagraph twenty-four to read as follows:

(24) Organization or participating in a reciprocal insurer or a joint insurance fund.

§ 12. Paragraph thirty-seven of subsection (a) of section one hundred seven of the insurance law is amended to read as follows:

(37) "Reciprocal insurer" means any aggregation of persons, municipal corporations as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts, and special improvement districts governed by separate boards of commissioners, firms or corporations, called "subscribers" in article sixty-one of this chapter, who or which under a common name engage in the business of inter-insurance or exchanging contracts of insurance on the reciprocal plan through an attorney-in-fact having authority to obligate the subscribers severally, within such limits as may lawfully be specified in the subscriber's agreement, on contracts of insurance made with any subscriber as a policyholder through such attorney-in-fact acting on behalf of all other subscribers. Such term includes any reciprocal or inter-insurance exchange, by whatever name known, and any reference thereto as an insurer shall be deemed to mean any such aggregation of inter-insurers operating through an attorney-in-fact individually and collectively as an insurance organization for the benefit of its policyholders.

§ 13. Such law is amended by adding a new section three hundred thirty-five to read as follows:

§ 335. Reports of claims for municipal liability. (a) As used in this section:

(1) The term "municipal liability insurance" means insurance issued or delivered in this state insuring against liability of a municipal corporation, as defined in section two of the general municipal law, school

district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, for damages for personal injury, death or property damages.

(2) This section shall apply to all new and renewal policies written to become effective on or after the effective date of this section.

(b) Each insurance company engaged in issuing municipal liability insurance in this state as defined in this section shall file with the superintendent semi-annual reports of all claims for municipal liability made against any of its insureds and received by it during the preceding six month period, and all claims paid during that period.

(c) Such reports shall be in writing on a form prescribed by the superintendent and shall contain such information as the superintendent shall prescribe.

(d) Such reports shall be made to the superintendent on dates determined by the superintendent.

(e) Any report on the information contained therein, furnished or compiled pursuant to the provisions of this section shall be deemed to be a confidential communication and shall not be open for review or subject to a subpoena except by a public agency or authority of this state.

(f) The superintendent shall furnish not later than the first day of June, nineteen hundred eighty-seven, to the governor and the legislature a report containing (1) a summary of the data collected, (2) an assessment of the status of municipal liability insurance costs, and (3) recommendations, if appropriate, for statutory or administrative changes designed to reduce or contain such costs.

§ 14. Subsection (b) of section two thousand three hundred five of such law is amended by adding a new paragraph twelve to read as follows:

(12) municipal liability insurance, as such term is defined in section three hundred thirty-five of this chapter, when such insurance is written by a licensed insurer which is owned by, or whose membership or subscribers is principally comprised of municipal corporations as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts and special improvement districts governed by separate boards of commissioners.

§ 15. Such law is amended by adding a new section three thousand four hundred twenty-six to read as follows:

§ 3426. Commercial risk insurance policies; municipal risk insurance policies; professional liability policies; cancellation and renewal provisions. (a) Definitions:

(1) "Commercial risk policy" means a contract of insurance issued or issued for delivery in this state, on a risk located in this state, arising from the conduct of an association, business, corporation or other organization, insuring any of the following contingencies:

(A) loss of or damage to real property not used for residential purposes;

(B) loss of or damage to real property used for residential purposes which consists of more than four dwelling units;

(C) loss of or damage to personal property;

(D) losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for business purposes;

(E) liabilities of persons acting as officers or directors; or

(F) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(2) "Municipal risk policy" means a contract of insurance issued to a public entity as defined in paragraph five of this subsection.

(3) "Product liability" means liability of the insured for damages for personal injury, death or property damage, where liability is based upon negligence, implied warranty or strict liability, arising out of a design, inspection, testing or manufacturing defect, or any other defect in a product, or is based upon any failure to warn, or to properly instruct in the use of a product or for any liability for any damage arising out of the handling or use of any product manufactured, sold, handled or distributed by the insured or work completed by or on behalf of the insured.

(4) "Professional liability policy" means a contract of insurance covering liability arising out of the practice of any profession for which a license is required by the education department, the health department, or any other governmental authority of this state, or out of the operation of a duly certified hospital with respect to the treatment of patients.

(5) "Public entity" means:

(A) the state of New York;

(B) a county, city, town, village or any other political subdivision or civil department or division of the state;

(C) a school district, board of cooperative educational services or any other governmental entity or combination or association of governmental entities operating a public school, college or community college or university;

(D) a fire district, public improvement or special district or district corporation;

(E) a public authority, commission, agency or public benefit corporation; or

(F) any other public corporation or other governmental instrumentality or unit in the state of New York.

(6) "Required policy period" means a period of one year from the date as of which a commercial risk, municipal risk or professional liability policy is first issued or renewed.

(7) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely, if made within fifteen days after the mailing to the insured of a notice of cancellation for nonpayment of premium.

(8) "Renewal" or "to renew" means the issuance and delivery by an insurer, at the end of the policy period, of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance or delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than one year shall, for the purpose of this section, be considered as if written for a policy period or term of one year, or any policy with no fixed expiration date, shall, for the purpose of this section, be considered as if written for successive policy periods or terms of one year.

(9) "Administrative suspension" means a temporary suspension of a driver's license pending a hearing, prosecution or investigation or an indefinite suspension of a driver's license because of the failure of the person suspended to perform an act, which suspension will be terminated by the performance of the act by the person suspended.

(b) During the first sixty days a commercial risk, municipal risk or professional liability policy is in effect, no notice of cancellation shall be issued or be effective unless it states or is accompanied by a statement of the specific reason or reasons for such cancellation.

(c) After a commercial risk, municipal risk or professional liability policy has been in effect for sixty days, or upon the effective date if the policy is a renewal, no notice of cancellation shall be issued to become effective unless such cancellation is based on one or more of the following:

(1) With respect to all commercial risk, municipal risk and professional liability policies:

(A) nonpayment of premium;

(B) discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;

(C) discovery of willful or reckless acts or omissions increasing the hazard insured against, or a willful violation of any policy conditi

(D) physical changes in the property insured occurring after issuance or last annual renewal anniversary date of the policy which result in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed;

(E) required pursuant to a program approved by the superintendent as necessary because a continuation of the present premium volume of an in-

surer would be hazardous to the interests of policyholders of the insurer, its creditors or the public; or

(F) a determination by the superintendent that the continuation of the policy would violate or would place the insurer in violation of this chapter.

(2) With respect to commercial automobile insurance policies, in addition to the bases for cancellation set forth in paragraph one of this subsection, suspension or revocation during the required policy period of the driver's license of any person who customarily operates an automobile insured under the policy, other than a suspension issued pursuant to subdivision one of section five hundred ten-b of the vehicle and traffic law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date of cancellation.

(3) With respect to professional liability policies, in addition to the bases for cancellation set forth in paragraph one of this subsection, revocation or suspension of the insured's license to practice his profession, or, if the insured is a hospital, it no longer possesses a valid operating certificate under section twenty-eight hundred one-a of the public health law.

(d) (1) Unless the insurer, at least sixty days in advance of the end of the required policy period in the case of commercial risk and professional liability insurance policies, or one hundred twenty days in advance of the end of the required policy period in the case of municipal risk policies, mails or delivers to the named insured, at the address shown in the policy, a written notice of its intention not to renew such policy, or to condition its renewal upon change of limits, elimination of any coverages or change in the type of coverage provided, the named

insured shall be entitled to renew the policy upon timely payment of the premium billed to the insured for the renewal. The specific reason or reasons for nonrenewal or conditioned renewal shall be stated in or shall accompany the notice. This paragraph shall not apply when the named insured, an agent or broker authorized by the named insured, or another insurer of the named insured, has mailed or delivered written notice that the policy has been replaced or is no longer desired.

(2) A copy of each notice of cancellation, nonrenewal and conditioned renewal issued on a municipal risk policy shall be mailed or delivered to the superintendent concurrent with its mailing or delivery to the named insured.

(e) This section shall not apply to policies issued pursuant to a plan established under article fifty-three, fifty-four or fifty-five of this chapter.

§ 16. Sections three thousand four hundred twenty-six and three thousand four hundred twenty-seven of such law are REPEALED.

§ 17. Section three thousand four hundred thirty-five of such law is renumbered section three thousand four hundred thirty-nine and a new section three thousand four hundred thirty-five is added to read as follows:

§ 3435. Group property/casualty insurance; commercial risk policies.

(a) Definitions:

(1) "Commercial risk policy" means a contract of insurance issued or issued for delivery in this state, on a risk located in this state, arising from the conduct of an association, business, corporation or other organization, insuring any of the following contingencies:

(A) loss of or damage to real property not used for residential purposes;

(B) loss of or damage to real property used for residential purposes which consists of more than four dwelling units;

(C) loss of or damage to personal property;

(D) losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for business purposes;

(E) liabilities of persons acting as officers or directors; or

(F) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(2) "Municipal risk policy" means a contract of insurance issued to a public entity as defined in paragraph five of this subsection, arising from the conduct or activities of a public entity, insuring any of the following contingencies:

(A) loss of or damage to real property not used for residential purposes;

(B) loss of or damage to real property used for residential purposes which consists of more than four dwelling units;

(C) loss of or damage to personal property;

(D) losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for business purposes;

(E) liabilities of persons acting as officers or directors; or

(F) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(3) "Product liability" means liability of the insured for damages for personal injury, death or property damage, where liability is based upon negligence, implied warranty or strict liability, arising out of a design, inspection, testing or manufacturing defect, or any other defect in a product, or is based upon any failure to warn, or to properly instruct in the use of a product or for any liability for any damage aris-

ing out of the handling or use of any product manufactured, sold, handled or distributed by the insured or work completed by or on behalf of the insured.

(4) "Professional liability policy" means a contract of insurance covering liability arising out of the practice of any profession for which a license is required by the education department, the health department, or any other governmental authority of this state, or out of the operation of a duly certified hospital with respect to the treatment of patients.

(5) "Public entity" means:

(A) the state of New York;

(B) a county, city, town, village or any other political subdivision or civil department or division of the state;

(C) a school district, board of cooperative educational services or any other governmental entity or combination or association of governmental entities operating a public school, college or community college or university;

(D) a fire district, public improvement or special district or district corporation;

(E) a public authority, commission, agency or public benefit corporation; or

(F) any other public corporation or other governmental instrumentality or unit in the state of New York.

(b) Notwithstanding any other provision of this chapter, commercial risk policies and professional liability policies providing group coverage to members of commercial or professional associations and organizations whose membership is of a homogeneous nature, and municipal risk policies providing group coverage, may be approved subject to regula-

tions to be promulgated by the superintendent for the kinds of insurance set forth in subsection (c) of this section.

(c) Group commercial risk policies may be written pursuant to this section for any of the kinds of insurance authorized by subsection (a) of section one thousand one hundred thirteen of this chapter except the kinds of insurance authorized by paragraphs one, two, three, sixteen, seventeen, eighteen, twenty-one, twenty-two and twenty-three of such subsection.

(d) Policies of insurance approved pursuant to this section shall not be eligible for the filing exemptions specified in section six thousand three hundred one of this chapter.

§ 18. Subsection (a) of section six thousand one hundred two of such law is amended to read as follows:

(a) Twenty-five or more persons, firms [and], corporations, or, in the alternative, municipal corporations as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts and special improvement districts governed by separate boards of commissioners, each having the qualifications of subscribers as prescribed in this article, may organize a reciprocal insurer to do any one or more of the basic kinds of insurance set forth in subsection (a) of section four thousand one hundred one of this chapter. However, any reciprocal insurer authorized to do the business of workers' compensation insurance shall be deemed to be a mutual carrier within the meaning of the definition of that term in section one hundred six of the workers' compensation law and shall be subject to the provisions of article six-A of such law.

§ 19. Section six thousand one hundred two of such law is amended by adding a new subsection (j) to read as follows:

(j) Any reciprocal insurer organized pursuant to this section and whose membership is limited to municipal corporations, as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts and special improvement districts governed by separate boards of commissioners, shall be required to comply with all the applicable provisions of this chapter including the provisions of article seventy-six of this chapter, and with such additional standards as the superintendent shall prescribe by regulation. Such reciprocal insurer shall establish and promote an aggressive risk management program among subscribers to include, but not limited to: identifying and reducing those risks which can be reduced through the implementation of better safety technologies, improved work technologies and sounder procedures.

§ 20. Paragraph one of subsection (a) of section six thousand one hundred four of such law is amended to read as follows:

(1) No authorized reciprocal insurer shall make any new agreement for insurance containing a provision for contingent liability of subscribers with any person, firm [or], private corporation, municipal corporation, as defined in section two of the general municipal law, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by separate boards of commissioners who or which does not have assets in his, their or its own right in an

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amount not less than [ten] fifty thousand dollars in excess of liabilities as shown by a commercial agency report as hereinafter provided, or by a sworn statement on file with the attorney-in-fact, verified by such subscriber or by an officer of a corporation subscriber.

§ 21. Paragraph (a) of section 11.00 of the local finance law is amended by adding a new subdivision eighty-three to read as follows:

83. Certain liability insurance. Payments, other than annual insurance premiums, required of a subscriber of a reciprocal insurer formed under article sixty-one of the insurance law, five years, except where such payments amount to more than one per centum of the average assessed valuation of such subscriber, ten years.

§ 22. Subdivision six of section sixteen hundred four of the education law is amended to read as follows:

6. To insure the school buildings, furniture and school apparatus in an insurance company created by or under the laws of this state, [or] in an insurance company authorized by law to transact business in this state, or in a joint insurance fund created by or under the laws of this state, and to comply with the conditions of the policy, and raise by a district tax the amount required to pay the premiums thereon.

§ 23. Subdivision eight of section seventeen hundred nine of such law, as amended by chapter six hundred ninety-five of the laws of nineteen hundred sixty-nine, is amended to read as follows:

8. To insure the schoolhouses and their furniture, apparatus and appurtenances, and the school library, in some insurance company created by or under the laws of this state, [or] in some insurance company authorized by law to transact business in this state, or in a joint insurance fund created by or under the laws of this state, and to comply with the conditions of the policy, and raise the sums required for pre-

miums by district tax; provided, however, that the members of the board shall not be personally liable for any claim arising out of the use or condition of the aforementioned property if the board, after due diligence, is unable to obtain such insurance.

§ 24. Subdivision eight-c of section seventeen hundred nine of such law, as amended by chapter three hundred eighteen of the laws of nineteen hundred seventy-nine, is amended to read as follows:

8-c. To establish and maintain a program of reserves not to exceed three per centum, exclusive of any planned balance presently authorized, of the annual budget of the district to cover property loss and liability claims. In the event that three per centum, exclusive of any planned balance presently authorized, of the annual budget of the district would result in less than fifteen thousand dollars, the total reserve funds may be for an amount not to exceed fifteen thousand dollars. Separate funds shall be established for property loss and for liability claims and the separate identity of each fund shall be maintained whether its assets consist of cash or investments or both. The moneys in such funds shall be held in separate bank accounts and may be invested in obligations specified in section seventeen hundred twenty-three-a of this chapter. Any interest earned or capital gain realized on the moneys so deposited shall accrue and become part of such funds. Such reserve funds shall not be reduced to amounts less than the total of the amounts estimated to be necessary to cover incurred but unsettled claims or suits including expenses in connection therewith other than by payments for losses for which such amounts were established. Payments from such reserve funds shall not be made for purposes other than those for which such funds were established without authorizations by vote of the electors of the district, except that such board may authorize use

of such funds other than amounts allocated for unsettled claims or suits including expenses in connection therewith to pay premiums for insurance policies purchased to insure subsequent losses in areas previously self-insured, in the event of dissolution of the self-insurance plan. The cash balance of such reserve fund at the end of any fiscal year shall not exceed five per centum of the total budget for such fiscal year when the district enters into an agreement to pool their reserve fund for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law or to organize and/or participate in a joint insurance fund as defined in section one hundred nineteen-ooo of the general municipal law.

§ 25. Subdivision thirteen of section two thousand twenty-one of such law, such section as renumbered by chapter eight hundred one of the laws of nineteen hundred fifty-three, is amended to read as follows:

13. To authorize the trustees to cause the schoolhouses, and their furniture, appurtenances and school apparatus to be insured by any insurance company created by or under the laws of this state, or any other insurance company authorized by law to transact business in this state, or in a joint insurance fund created by or under the laws of this state.

§ 26. Declaration of legislative findings and intent. The legislature hereby finds that the state, its local governments and public employees, by virtue of the nature of the services provided and the functions performed by the state and local governments and because of the consequences of unlimited liability on effective government process, should be liable for their actions only to such extent and subject to such conditions as are provided in this act. Actions against the state and its local governments are burgeoning and judgments for personal injury and

property damage are being rendered in amounts which place great burdens on public budgets. Local governments across the state have experienced substantial increases in liability, the impact of which has been most severe for smaller municipalities.

While the legislature continues to recognize the right of persons who suffer injury as a result of acts of public entities and public employees to recover for the harm suffered, it has now become necessary for this state, like a majority of the states, to place reasonable limits on such recovery. It is therefore reasonable and necessary to limit the liability of public entities and public employees to their equitable share of damages, unless the injured party has exhausted all of its remedies against the other parties, and to provide for the periodic payment by public entities and public employees of their excess liability which exceeds a specified monetary amount.

§ 27. The civil practice law and rules is amended by adding a new article sixteen to read as follows:

ARTICLE 16

LIMITED LIABILITY OF PUBLIC ENTITIES AND PUBLIC EMPLOYEES

Section 1600. Definitions.

1601. Application.

1602. Liability of public entities and public employees limited to equitable share of judgment.

1603. Contribution and indemnification.

§ 1600. Definitions. As used in this article:

1. The term "public entity" means (a) the state of New York, (b) a county, city, town, or village, (c) a school district (except a school district in a city with a population of one hundred twenty-five thousand

or more), or board of cooperative educational services, (d) a fire district, district corporation, special district, or special improvement district governed by a separate board of commissioners.

2. The term "public employee" means any employee of a public entity, as defined in subdivision one of this section, while acting within the scope of his public employment or duties, but does not include an independent contractor. Such term includes a former employee and an employee's estate or judicially appointed personal representative.

§ 1601. Application. The provisions of this article shall apply to all claims against any public entity or public employee for personal injury, property damage or wrongful death, except for claims against any public entity or public employee for damages because of injury or death resulting from health care or treatment rendered or failed to be rendered to any person.

§ 1602. Liability of public entities and public employees limited to equitable share of judgment. (a) Notwithstanding any other provisions of law, when a judgment in an action for personal injury, property damage or wrongful death is entered by the injured party against a public entity or public employee, or both and another party, the payment, if any, by the public entity or public employee to an injured party shall not exceed the equitable share of the judgment recovered against such public entity or public employee, as determined in accordance with the provisions of section fourteen hundred two of this chapter, unless such injured party has complied with the requirements set forth in subdivision (b) of this section.

(b) The public entity or public employee shall be liable to pay the excess over and above the equitable share of the judgment recovered against such public entity or public employee only if the injured party

has filed with the court an affidavit upon notice to all parties which demonstrates and describes in detail the diligent efforts it has taken to exhaust those remedies available and which may reasonably be available as determined herein to collect such excess from the other party or parties. Upon review of all affidavits submitted pursuant to this subdivision, the court shall determine whether any further efforts must be made before the public entity or public employee shall be required to pay the excess and shall have the power to order any further efforts which it may deem reasonable and necessary. Any party against whom judgment has been entered may submit an affidavit to the court in connection with the foregoing procedures within ten days of receipt of the injured party's affidavit. If an affidavit in opposition is filed, the court shall render its determination under this subdivision within thirty days of submission of all affidavits. If no affidavit in opposition is filed, the injured party shall be deemed to have fulfilled his obligations under this subdivision.

If the injured party, at the time of an impleader action, could have sued a party who has been impleaded by a public entity for contribution and indemnification and has failed to do so, the public entity shall not be liable to pay the excess to the injured party attributable to such impleaded party beyond the amount that the public entity has recovered or will recover as determined by the court pursuant to this section from such impleaded party in accordance with the requirements of this subdivision.

(c) (1) In the event the excess described in subdivision (b) of this section exceeds one hundred thousand dollars plus any amounts that will be paid from such excess to a lien holder or subrogee on account of expenses that are compensated in the judgment, the public entity and pu-

blic employee shall satisfy their liability for the amount over and above one hundred thousand dollars by paying it in equal installments over a period of five years and upon such dates as the court shall determine.

(2) If, at any time after entry of judgment, a judgment creditor or successor in interest can establish that the continued payment of the judgment in periodic installments will impose a hardship, the court may, in its discretion, order that the remaining payments or a portion thereof shall be made to the judgment creditor in a lump sum. The court shall, before entering such an order, find that: (i) unanticipated and substantial other needs have arisen that warrant the payment of the remaining payments, or a portion thereof, in a lump sum; (ii) ordering such a lump sum payment would not impose an unreasonable financial burden on the judgment debtor or debtors; (iii) ordering such a lump sum payment will accomodate the future needs of the judgment creditor; and (iv) ordering such a lump sum payment would further the interests of justice.

(3) If a lump sum payment is ordered by the court, such lump sum shall be calculated on the basis of the present value of remaining periodic payments, or portions thereof, that are converted into a lump sum payment. The remaining future periodic payments, if any, shall be reduced accordingly.

(d) Nothing in this section shall be construed to affect or impair any right of a public entity or public employee under section 15-108 of the general obligations law:

§ 1603. Contribution and indemnification. The limitation set forth in this article shall apply to any claim for contribution or indemnification, but shall not include:

(a) a claim for indemnification if, prior to the accident or occurrence on which the claim is based, the claimant and the public entity had entered into a written contract in which the public entity had expressly agreed to indemnify the claimant for the type of loss suffered; or

(b) a claim for indemnification by a public employee, including indemnification pursuant to section fifty-k of the general municipal law or section seventeen or eighteen of the public officers law.

§ 28. If any provision of section twenty-seven of this act shall be held to be invalid or ineffective in whole or in part or inapplicable to any person or situation, it is the purpose and intent of section twenty-seven of this act that all other provisions shall be separate and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 29. Section twenty-seven of this act shall not be construed to impair, alter, limit, modify, abrogate or restrict any immunity or right of indemnification available to or conferred upon any public entity or public employee, or to confer a right of action upon any person against a public entity or public employee; nor shall anything in section twenty-seven of this act be construed to impose liability on a public entity or public employee for any negligent or wrongful act or omission.

§ 30. The provisions of section twenty-seven of this act shall not apply to claims under the workers' compensation law.

§ 31. The provisions of section twenty-seven of this act shall not be construed to affect the limitation set forth in section twenty-a of the court of claims act.

§ 32. This act shall take effect immediately, provided, however, that

(a) section thirteen of this act shall take effect on the first day of April next succeeding the date on which is shall have become a law;

(b) section sixteen of this act shall take effect January first, nineteen hundred eighty-six;

(c) sections fifteen and sixteen of this act shall apply to all policies issued or renewed on or after January first, nineteen hundred eighty-six; and

(d) sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one of this act shall take effect February first, nineteen hundred eighty-six and shall apply to all actions or proceedings instituted on or after its effective date.

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

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Date

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February ... 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the electric cooperative and telephone cooperative taxes.

This bill will amend AS 10.25.540 to expressly authorize the Department of Revenue to use standard tax assessment and collection procedures in enforcing the electric cooperative and telephone cooperative taxes. At the present time, this section does not expressly provide for the levy of penalties or interest if the taxpayer fails to file a return or pay the tax on time. Without this change, there is little incentive for a taxpayer to comply with this tax statute. This bill will correct that problem, and I urge your support.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: 377-052-86 SB39E
Title: Amend electric and telephone cooperative tax
Sponsor: Governor
Requestor: Senate Rules
Date of Request: December 31, 1985

FISCAL DETAIL
Agency Affected: Department of Revenue
BRU: Audit Administration
Components:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	OPERATING						
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800	MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
	CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
	REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: This bill adopts the standard assessment and collection procedures for the electric and telephone cooperative tax, and will allow the Department of Revenue to include penalty and interest provisions of AS 43.05 in its administration of the tax law

Prepared By: Martin J. Richard Phone: 465-2320
Division: Audit Division Date: December 31, 1985

Approved by Commissioner: Date: Dec 31, 1985
Agency: Revenue

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

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)


SB
399

University of Alaska

Risk Management Collateral Fund

Collateral Fund:

Pool of money for payment of large uninsured claims.

Benefits:

Provides security to excess carriers.

Alternative to purchase of high cost primary coverage.

Alternative to campus assessments for large losses.

Provides annual investment income.

Characteristics:

Limited access to only large specified claims.

Reimbursement requests on a specific claim basis.

Investment earnings available for reimbursement of claims or expansion of the fund.

SB 399

University of Alaska
Risk Management Collateral Fund
HB-531/SB-399

1986 Risk Management Problems:

- **Premiums have increased for primary layers of coverage.**
- **Selected primary and excess coverages are not available.**

Effect on University of Alaska

- The University must respond to increased costs by:
  - Increasing deductible levels
  - Decreasing limits of insurance coverage
  - Deleting of selected insurance coverages
  - Limiting funds available for loss prevention
  - Assessing campus instructional programs for losses
- The University must thus assume greater loss liability, meaning:
  - Specific exposures and coverages are uninsured
  - Budget instability due to large uninsured exposures
  - Wide fluctuation in annual loss levels
  - Decreased ability to forecast loss levels
  - Inability to settle claims promptly once funds are depleted

Risk Management Collateral Fund Characteristics:

- Nonlapsing collateral fund held by Department of Revenue
- Pays for uninsured losses in excess of self-insured levels
- Used for liability and property losses
- Legislature may replenish fund as necessary
- Independent actuarial determination of loss assumption levels used each year by Department of Administration and University
- Annual reporting of activity to OMB and Legislative Budget & Audit

Benefits of Fund:

- Provides alternative to high-cost primary coverage
- Provides security to excess insurance carriers
- Provides budget stability
  - Funds large uninsured claims
  - Funds excluded coverages above self-insurance levels
  - Limits annual loss levels in operating budget
- Provides funding for prompt settlement of claims
- Provides alternative to campus assessment or deficits
- Investment earnings accrue to state instead of insurance companies

University of Alaska
Schedule of Unplaced Insurance Coverage
(Excluding Workers' Compensation Coverage)

	July 1 1985	Aug 1 1985	Nov 1 1985
	(% Not Placed)		
Property:			
Primary $10 Mil	18%	18%	13%
$30 Mil excess of $10 Mil	67%	58%	-
$30 Mil excess of $40 Mil	74%	27%	-
Casualty:			
Primary $5 Mil (Placed 8/1/85)	100%	-	-
$5 Mil excess of $5 Mil 100%	75%	20%	20%
$40 Mil excess of $10 Mil	-	-	-
$50 Mil excess of $50 Mil	10%	-	-
Aggregate (Stop Loss):			
$2 Mil	50%	50%	50%
Board Errors and Omissions:			
$1 Mil	100%	100%	100%
Medical Malpractice:			
$1 Mil	100%	100%	100%
Environmental Impairment:			
$1 Mil	100%	100%	100%

University of Alaska
FY87 Risk Management
Cost Projections
(Excluding Workers' Compensation Coverage)

	Low	High	Forecast
Sources of funds:			
State General Fund	$ 910.4	$ 910.4	$ 910.4
Expenditures:			
Premiums	1,358.6	1,594.9	1,476.8
Claims	789.7	1,230.0	1,034.8
Loss prevention	48.7	48.7	48.7
Other	48.3	86.8	50.1
Total	2,245.4	2,960.4	2,610.4
Deficiency	($1,335.0)	($2,050.0)	($1,700.0)
Premium increase rate	15%	35%	25%
Loss confidence level	80%	25%	50%

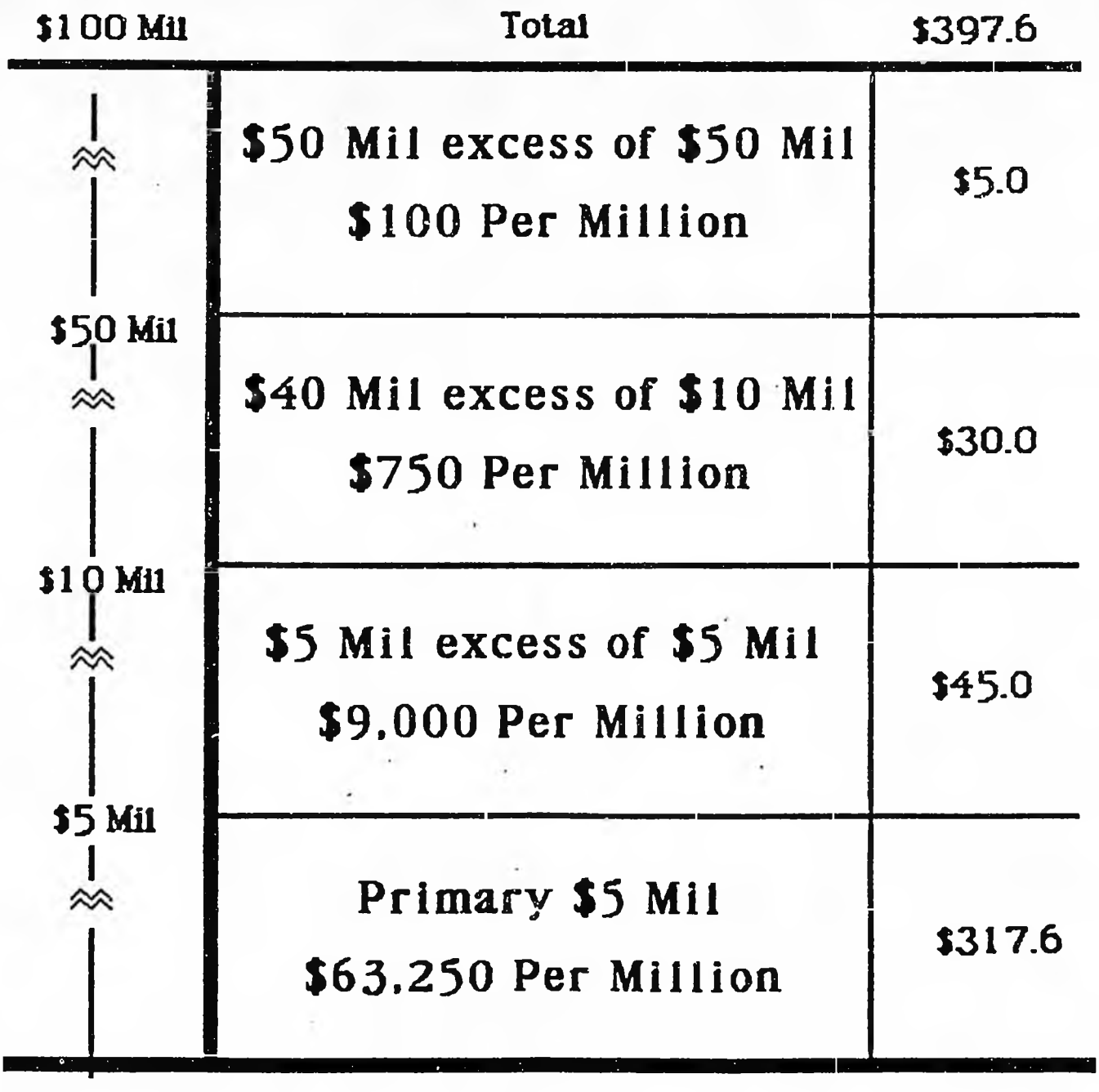
University of Alaska
FY87 Risk Management Loss Projections
(Excluding Workers' Compensation Coverage)

Confidence Level	Loss Projection
80%	$789.7
70%	$889.6
50%	$1,034.8
25%	$1,230.0
10%	$1,425.1

Confidence level - assurance that actual losses will meet or exceed loss projection

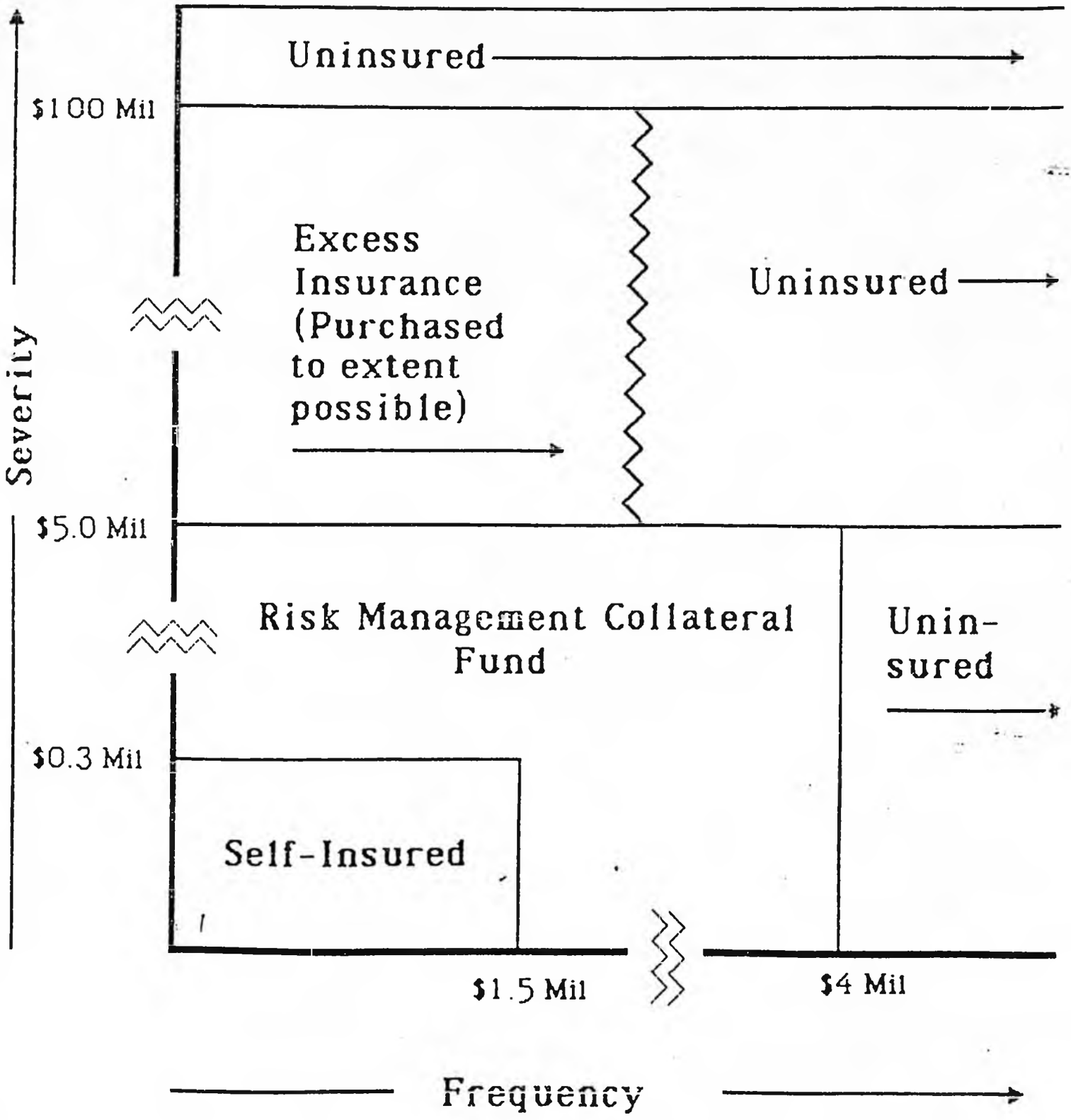
University of Alaska

General Liability Premium Cost Per Layer of Coverage



University of Alaska

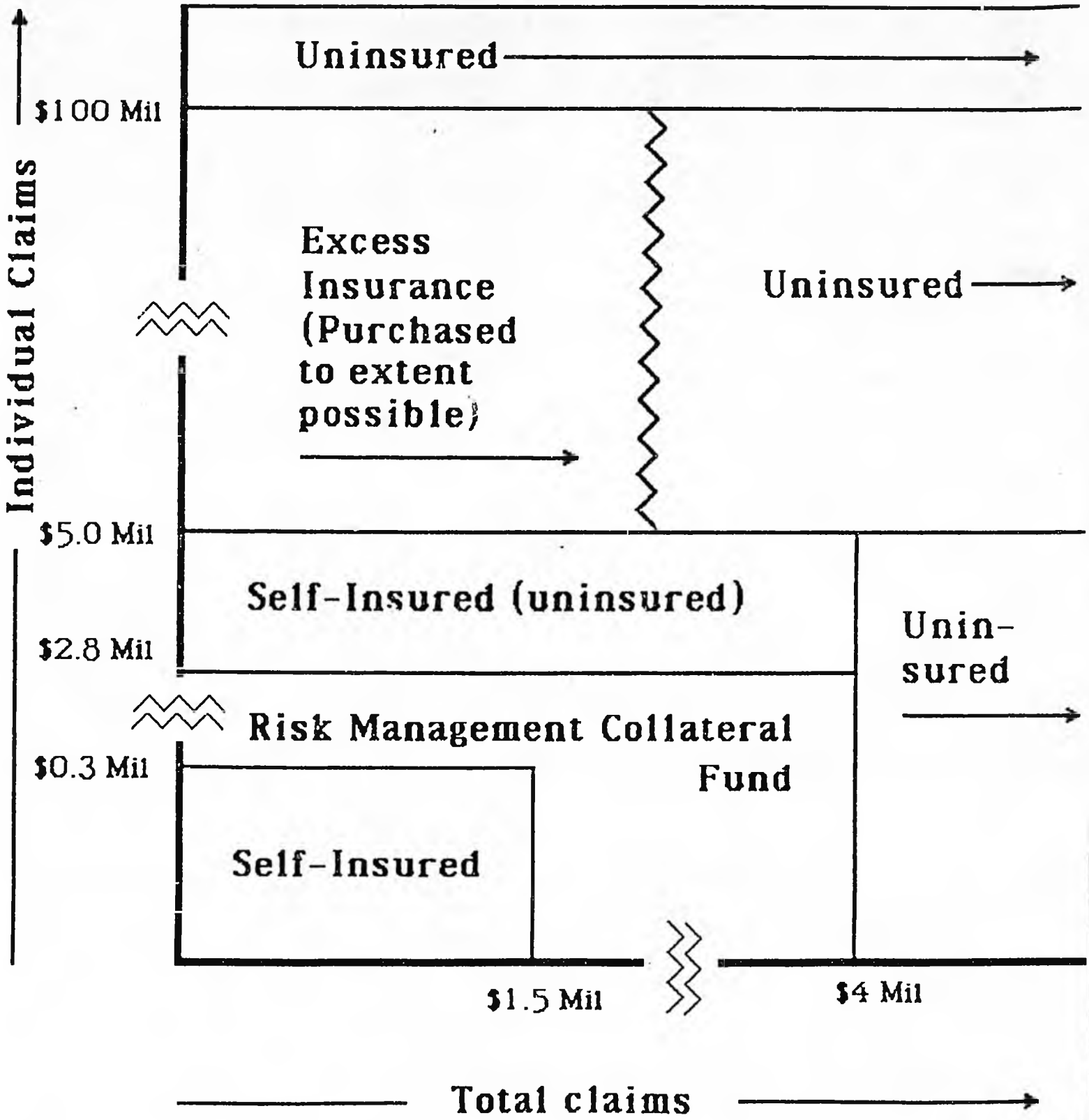
FY87 Risk Funding Plan



University of Alaska

FY87 Risk Funding Plan

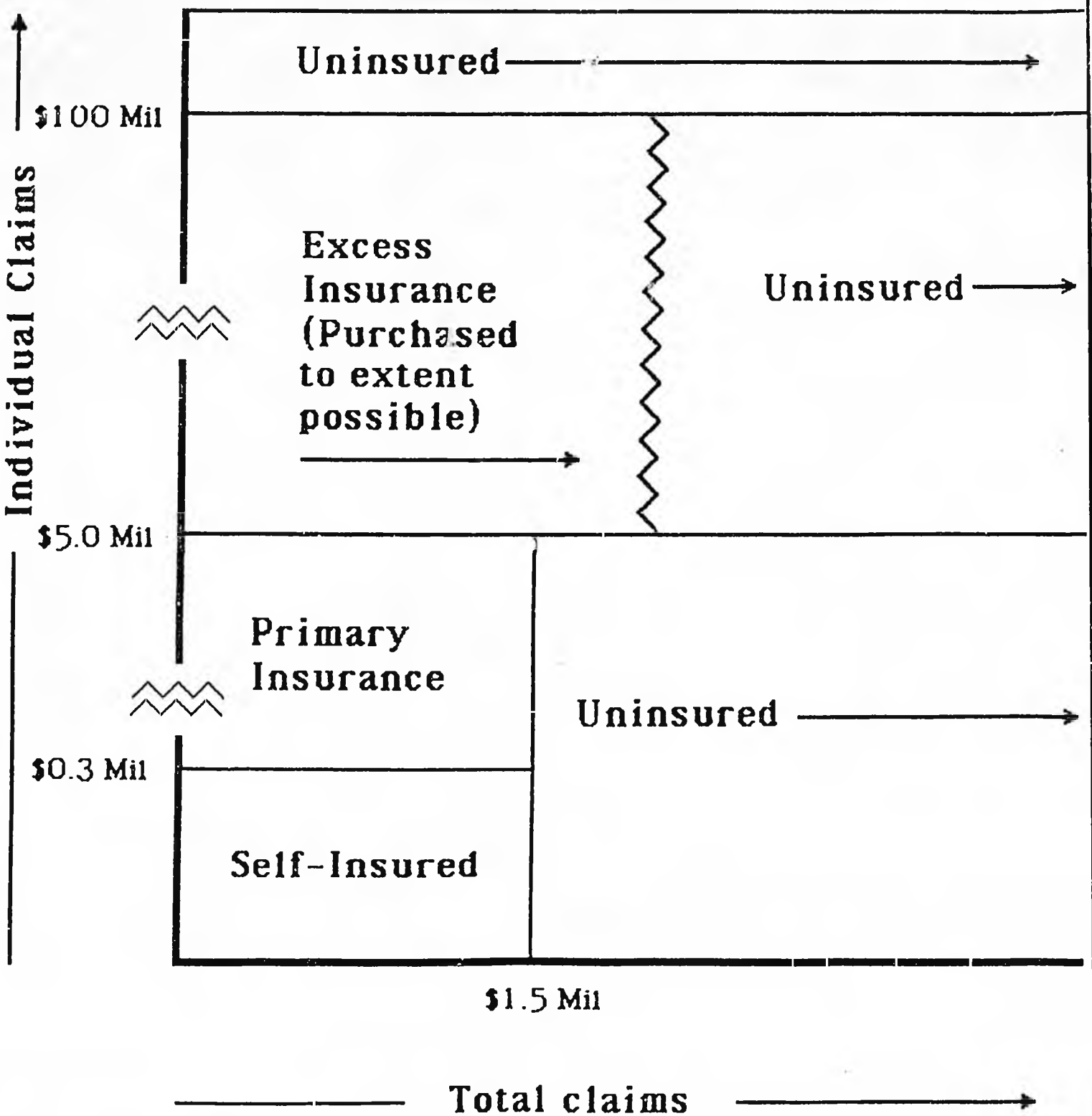
Under HB-531/SB-399



University of Alaska

FY87 Risk Funding Plan

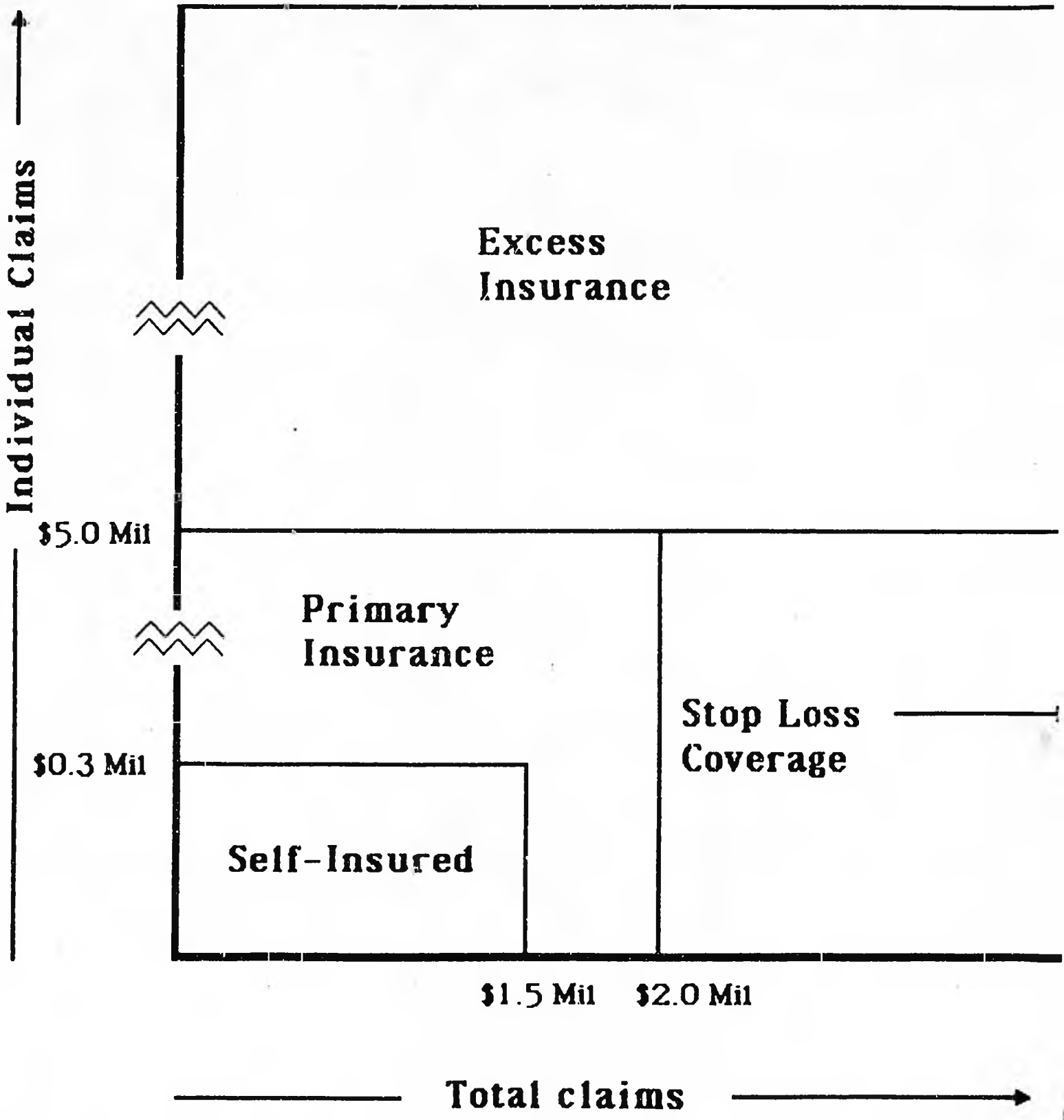
Without HB-531/SB-399



University of Alaska

FY85 Risk Funding Plan

(Prior to 1985 Crisis)



AS37.07.080 DOCUMENT
CHAPTER = 37.07
SECTION = 37.07.080
TITLE = 37
HEADINGS TITLE 37.
Public Finance.
CHAPTER 07.
Executive Budget Act.
CITATION Sec. 37.07.080.
CATCH LINE
PROGRAM EXECUTION.
TEXT (a) Except as limited by policy decisions of the governor, appropriations by the legislature, and other provisions of law, the several state agencies have full authority for administering their program service assignments and are responsible for their proper management.

(b) Each state agency shall prepare an annual plan for the operation of each of its assigned programs except for programs that are exempted from this requirement by the office. The operations plan shall be prepared in the form and content and be transmitted on the date prescribed by the office.

(c) The office shall

(1) review each operations plan to determine that it is consistent with the policy decisions of the governor and appropriations by the legislature, that it reflects proper planning and efficient management methods, that appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year;

(2) approve the operations plan if satisfied that it meets the requirements under (1) of this subsection; otherwise, the office shall require revision of the operations plan in whole or in part.

(d) No state agency may increase the salaries of its employees, employ additional employees, or expend money or incur obligations except in accordance with law and properly approved operations plan.

(e) Transfers or changes between objects of expenditures or between allocations may be made by the head of a state agency upon approval of the office. No transfers may be made between appropriations except as provided in an act making the transfers between appropriations.

(f) The office shall report quarterly to the governor and the legislature on the operations of each state agency, relating

actual accomplishments to those planned and modifying, if necessary, the operations plan of any agency for the balance of the fiscal year.

(g) The governor may direct the withholding or reduction of appropriations to a state agency at any time during the fiscal year only if the governor determines that

(1) the planned expenditures can no longer be made due to factors outside the control of the state which make the expenditure factually impossible; or

(2) estimated receipts and surpluses will be insufficient to provide for appropriations.

(h) The increase of an appropriation item based on additional federal or other program receipts not specifically appropriated by the full legislature may be expended in accordance with the following procedures:

(1) the governor shall submit a revised program to the Legislative Budget and Audit Committee for review;

(2) 45 days shall elapse before commencement of expenditures under the revised program unless the Legislative Budget and Audit Committee earlier recommends that the state take part in the federally or otherwise funded activity;

(3) should the Legislative Budget and Audit Committee recommend within the 45-day period that the state not initiate the additional activity, the governor shall again review the revised program and if the governor determines to authorize the expenditure, the governor shall provide the Legislative Budget and Audit Committee with a statement of the governor's reasons before commencement of expenditures under the revised program.

HISTORY (Sec. 1 ch 188 SLA 1970; am secs. 1-3 ch 26 SLA 1976; am secs. 2, 3 ch 74 SLA 1977; am secs. 4, 5 ch 60 SLA 1979; am secs. 9-12 ch 63 SLA 1983)

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 399: SUMMARY

SB 399 would allow the legislature to appropriate funds to establish a non-lapsing risk management collateral fund for the University of Alaska to cover uninsured losses. After the fund is established the legislature would be able to appropriate earnings from temporary investments from the fund, restore funds spent on claims and reappropriate recoveries from losses to the fund. The Department of Administration and University of Alaska would set loss assumption levels. The Department of Administration would be required to submit a yearly report on activities and expenditures to the Office of Management and Budget and to the Legislative Budget and Audit Committee.

SB 399

HB 531

Revision Date : _____

REQUEST Page 1 of 2

Bill/Resolution No. : HB 531
Title : Establishing Risk Management Collateral Fund for University of Alaska , ed.
Sponsor : Duncan
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : University of Alaska
BRU : Statewide Programs and Services

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 39	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		2,500.0				
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		2,500.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached

Prepared by : Brian Rogers Phone : 907-474-7593
Division : University of Alaska Date : 2/19/86

Approved by Commissioner : Brian Rogers for Sherman Carter Date : 2/19/86
Agency : University of Alaska

FISCAL NOTE

HB 531

For Bill/Resolution No. HB 531 Page 1 of 2

This bill establishes a Risk Management Collateral Fund in the general fund. The fund is to be used to pay for uninsured losses at the University of Alaska in excess of pre-established loss assumption levels. The loss assumption levels are to be determined annually by the Department of Administration and the University of Alaska based on independent actuarial assumptions.

Creation of a risk management collateral fund was recommended to the University by Corroon and Black Corporation, the State's risk management consultants. Their proposal considered the primary layer of general liability insurance, the $4.7 million in coverage between $300,000 and $5 million. This coverage currently costs the University $317,500 annually. Corroon and Black recommended an initial appropriation to the fund "in the range of $2.5 - $5.0 million." The University is requesting establishment of the fund at the lower end of this range. Also covered by the fund would be losses in other lines of insurance, or in areas not covered by insurance companies.

Coopers and Lybrand, certified public accountants, gave preliminary estimates to the University based on insurance industry statistics and estimates. The actuarial assumptions used for this fiscal note should be revised prior to the beginning of the fiscal year, but will have little effect on the size of the fund. Assuming that the risk management collateral fund provides coverage for claims of up to $5 million, the estimated retained loss for fiscal year 1987 in general liability would be $2,119.3. For auto liability, the estimated retained loss would be $76.4. Retained losses for property insurance were not calculated by Coopers and Lybrand.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: SB 399
Title: An Act Establishing the Risk Management Collateral Fund for the University of Alaska
Sponsor: Senator Fahrenkamp
Requestor: Senator Zharoff
Date of Request: March 26, 1986

FISCAL DETAIL
Agency Affected: Department of Administration
BRU: Division of Risk Management
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Brad Thompson, Deputy Director
Phone: 465-2180
Division: Risk Management
Date: 03/28/86

Approved by Commissioner: Eleanor Andrews
Date: 4/1/86
Agency: Department of Administration

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

Rev. 11/8/85

Position Paper
SB 399

SB 399 establishes a risk management collateral fund for the University of Alaska. This fund will be utilized to pay uninsured property and casualty claims excess of established loss assumption levels.

The fund creates a viable method for the university to increase self insurance obligations, avoid prohibitive premium costs for primary layer excess insurance and maintain uninterrupted program operations.

The bill as proposed requires the Department of Administration to submit an annual report on the activity of the fund. This requirement adds an insignificant administrative task, with no fiscal impact, on the department.

The Department of Administration supports the proposed legislation.

for Donald J. Hitchcock, Director
Division of Risk Management

3-28-86
Date

Commissioner Eleanor Andrews
Department of Administration

4/2/86
Date

CHAIRMAN'S INFORMATION: SB 399

1) BILL TITLE: "An act establishing the risk management collateral fund for the university of Alaska; and providing for an effective date."

a) Introduced: Sen Fahrenkamp

b) Co-sponsors:

2) INTENT: This measure authorizes the Legislature to appropriate funds to establish a non lapsing risk management collateral fund for the U of A to cover uninsured losses.

FISCAL NOTE: $2,500,000 appropriation; U of A is only looking for enabling legislation at this time, and would defer on the appropriation until the state has the bucks.

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

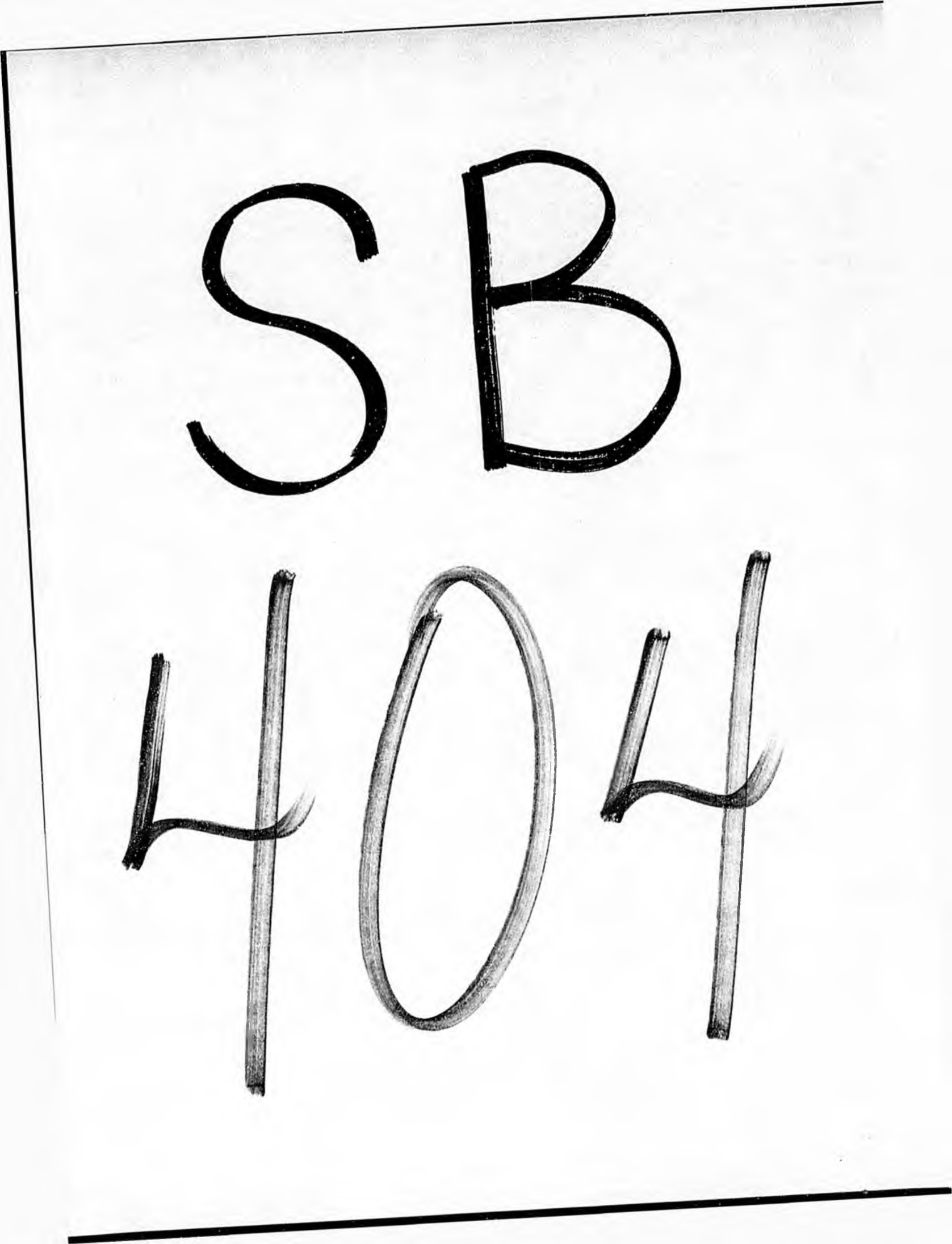
RECORDS CERTIFICATION

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James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)


SB
404

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSSB 404 Sectional Analysis

Section 1) Makes an exception in the fictitous group statutes for municipalities, school districts, and REAAs so that groups of them covered by a group workers compensation policy need not have a constitution or bylaws.

Section 2) Exempts joint arrangements formed under section 12 of the draft from the prohibition against "fictitous groups" that are formed for the purpose of insurance.

Section 3) Changes terminology to reflect other changes in the bill.

Section 4) Shifts the exceptions currently found in the AS 21.36.300 (repealed in the bill) to AS 21.36.210(d).

Section 5) Shifts the substance of AS 21.36.210 (e) (repealed in the bill) to AS 21.36.210(f) by inserting the term "personal insurance"; "personal insurance" is defined in section 11 of the bill to cover the types of insurance formerly described in AS 21.36.210(e).

Section 6) Provides for a 20 day notice period for cancellation of personal insurance except in cases of non payment of premium, for which there is a 10 day notice period.

Section 7) Provides for a 60 day notice period for the cancellation of business or commercial insurance except in cases of nonpayment of premium, for which there is a 10 day notice period.

Section 8) Requires the return of unearned premium within 30 days after notice if business or commercial insurance is cancelled.

Section 9) Provides for a 20 day notice of non renewal of personal insurance and a 60 day notice of nonrenewal of business and commercial insurance.

Section 10) Makes technical changes to conform to other amendments.

Section 11) Definitions

Section 12) 21.76.010 Authorizes joint insurance arrangements by municipalities, school districts, and REAAs. Allows group self insurance only for property insurance. Allows purchase of coverage on a group basis for the types of insurance not described in (c) (1) and (2).

21.76.020 Exempts joint insurance arrangements from regulation by the Director of the Division of Insurance.

21.76.030 Prescribes the types of provisions that must be contained in agreements that set up joint insurance arrangements.

21.76.040 Prescribes the financial provisions that must be contained in agreements that set up joint insurance arrangements, including a requirement for an annual audit.

21.76.050 Allows the board of directors of a joint insurance arrangement to contract with someone to run the arrangement

21.76.060 Allows the directors to delegate the power to settle claims on behalf of a joint insurance arrangement.

21.76.070 Allows a joint insurance arrangement to obtain excess insurance.

21.76.080 Requires a joint insurance arrangement to establish a fund to receive contributions from members and to pay out claims or other expenses, depending on the type of arrangement.

21.76.090 Requires the filing of the agreement establishing a joint insurance arrangement.

21.76.100 Provides that the agreement may allow the board of directors to adopt regulations for the operation of the arrangement.

21.76.110 Gives subrogation rights to a joint insurance arrangement.

21.76.900 Definitions.

Section 13) Exempts joint insurance arrangements from a general requirement that insurers for workers compensation must join in the assigned risk pool.

Section 14 and 15) Exempts joint insurance arrangements from laws that currently already exempt reciprocals composed of municipalities.

Section 16) repeals sections dealing with the cancellation of insurance policies in order to correspond to other sections in the bill to which substance of these sections was transferred.

Section 17) Effective date.

Department of Commerce / POSITION PAPER
Economic Development

SB 404: "An Act relating to insurance, authorizing joint insurance arrangements, repealing a prohibition against certain types of group insurance, and providing for an effective date."

This legislation allows municipalities, school districts and Regional Educational Attendance Areas to establish joint insurance arrangements for group assumption of losses or group purchase of insurance coverage.

This bill effectively allows self insurance by groups of municipalities, school districts and Regional Educational Attendance Areas. This is probably a reasonable action provided the parties to the grouping are fully aware of the implications of that action, and the Division of Insurance has no regulatory responsibility for those groups.

Markets are currently available for workers compensation, and group purchase is possible through a safety group. We view inclusion of workers' compensation in this bill as a reduction of the protections built into the system for the benefit of the injured worker. Insurer financial regulation, 100% backup by the Alaska Insurance Guaranty Act, rate regulation, and more accrue to assure that the insurer meets its obligations in a timely fashion. We believe that that action is unnecessary for workers' compensation insurance.

This bill repeals the fictitious group statute. That statute is intended to avoid unfairly discriminatory rates. We have no problem with removing the entities impacted by the joint insurance arrangement from that law, except for workers compensation, but the law should not be repealed.

We recommend that Section 5 on page 7, which repeals AS 21.36.190, be amended to read:

Add a new subsection to AS 21.36.190 to read:

(e) Except as provided in (d)(2)-(4) of this section, this section does not apply to coverage purchased through a joint insurance arrangement formed under AS 21.76.

Also on page 1, line 23, after "disability," insert the words "workers' compensation."

T. Gregory Baker Sr

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 3/07/86

John L. George, Director of Insurance

Date: 3/6/86

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Letter of Intent for CSSB 404 (L&C)

It is the intent of the Senate Labor and Commerce Committee that the Division of Insurance urge both domestic and foreign insurance companies, conducting business in the state, to write insurance policy contracts in comprehensible, "layman's" language.

CHAIRMAN'S INFORMATION: CSSB 404 (L&C)

1) BILL TITLE: "An act relating to insurance; authorizing joint insurance arrangements; repealing a prohibition against certain types of group insurance; and providing for an effective date." N.B. L&C CS has a title change which will need to be moved when we adopt CS for discussion purposes.

The new Title reads: "An act relating to cancellation and nonrenewal of insurance; authorizing joint insurance arrangements; and providing for an effective date."

We also have a letter of intent on "easy read contracts" which must be adopted.

a) Introduced: By Sen Josephson

b) Co-sponsors:

2) INTENT: This measure, (CS), has been expanded to include more strict requirements on cancellation notices for insurance policies, as well as time certain dates for the return of unearned premium on business and commercial insurance.

The bill also authorizes "joint insurance arrangements" (group insurance pools) for municipalities, school districts, and REAA's for property insurance.

FISCAL NOTE: Not received

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the Senate L&C CS and the title change;

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Letter of Intent for CSSB 404 (L&C)

It is the intent of the Senate Labor and Commerce Committee that the Division of Insurance urge both domestic and foreign insurance companies, conducting business in the state, to write insurance policy contracts in comprehensible, "layman's" language.

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 404 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cancellation and nonrenewal of insurance; authorizing joint insurance arrangements; and providing for an effective date."

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

* Section 1. AS 21.36.190(d) is amended to read:

(d) This section does not apply to workers' compensation insurance when issued to an association of employers formed for purposes other than the purchase of insurance and that

(1) has a constitution and bylaws; the requirement of this paragraph does not apply to municipalities, school districts, and regional educational attendance areas;

(2) incorporates a safety program;

(3) as a group has preferred characteristics over similar risks written on an individual basis; and

(4) has filed and received approval from the director for the rating program to be applied to the group.

* Sec. 2. AS 21.36.190 is amended by adding a new subsection to read:

(e) The provisions of (a) and (b) of this section do not apply to coverage purchased through a joint insurance arrangement formed under AS 21.76.

* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of personal [AN] automobile insurance [POLICY] except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

* Sec. 4. AS 21.36.210(d) is amended to read:

(d) This section does not apply to

(1) the failure to renew a policy, except as to coverage in force for less than 12 months;

(2) a policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy;

(3) a policy issued under an automobile assigned risk plan or automobile insurance plan;

(4) a policy insuring more than four motor vehicles;

(5) a policy covering the operation of a garage; automobile sales agency, repair shop, or service station; or public parking place;

(6) a policy providing insurance only on an excess basis;

(7) any other contract providing insurance to the named insured, even though the contract may incidentally provide insurance with respect to motor vehicles.

* Sec. 5. AS 21.36.210(f) is amended to read:

(f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons [THE

TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDITIONS OR CIRCUMSTANCES ARISES]:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against; or

(5) physical changes in the insured property that result in the property becoming uninsurable.

* Sec. 6. AS 21.36.220 is amended to read:

Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not exercise its right to cancel a personal insurance policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the effective date of cancellation. However, if [, EXCEPT THAT WHEN] cancellation is for nonpayment of premium, the notice shall be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation, and must [SHALL] include or be accompanied by a statement of the reason for the cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12 MONTHS.]

* Sec. 7. AS 21.36.220 is amended by adding a new subsection to read:

(b) An insurer may not exercise its right to cancel a policy of

business or commercial insurance unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, and to the agent or broker of record, at least 60 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, the notice shall be mailed or delivered to the named insured at the address shown in the policy and to the agent or broker of record at least 10 days before the effective date of cancellation, and must include or be accompanied by a statement of the reason for the cancellation.

* Sec. 8. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.235. RETURN OF PREMIUM UPON CANCELLATION. If an insurer cancels a policy under AS 21.36.220(b), it shall return any unearned premium to the agent or broker of record or directly to the insured or premium finance company, if applicable, by the effective date of cancellation, except that if cancellation is for nonpayment of premium, any unearned premium shall be returned within 30 days after the notice of cancellation is given. If the unearned premium is returned by the insurer to a person other than the insured, that person shall promptly return the unearned premium to the insured unless otherwise provided by agreement between the person and the insured.

* Sec. 9. AS 21.36.240 is amended to read:

Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to renew a <u>personal insurance</u> policy in force for less than 12 months. An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR MORE] unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days <u>for a personal insurance policy, and at least 60 days for a business or commercial insurance policy,</u> before the expiration date of

the policy [,] or of the anniversary date of a policy written for term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

* Sec. 10. AS 21.36.250 is amended to read:

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or <u>is not renewed in accordance with</u> [FOR FAILURE TO RENEW A POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [APPLIES], the insurer shall notify the named insured of possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification <u>must</u> [SHALL] accompany or be included in the notice of cancellation or nonrenewal required by <u>AS 21.36.220</u> [AS 21.36.230] and 21.36.240.

* Sec. 11. AS 21.36.310 is amended to read:

Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

<u>(1) "business or commercial insurance" means insurance other than personal insurance, life insurance, disability insurance, title insurance, or an annuity contract;</u>

<u>(2)</u> "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension

of credit;

(3) "personal automobile insurance" means insurance not related to business or commercial activities, covering [(2) "POLICY" MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile liability [COVERAGE], uninsured or underinsured motorists [MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automobile physical damage [COVERAGE], that is delivered or issued for delivery in this state, [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD,] and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others, or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

(4) "personal insurance" does not include an annuity contract or a policy of life insurance, disability insurance, or title insurance; the term means personal automobile insurance, or insurance covering

(A) loss of or damage to real property that is used predominantly for residential purposes and that does not consist of more than four dwelling units;

(B) loss of or damage to personal property, including personal effects, household furniture, fixtures and equipment located in not more than four dwelling units; or

(C) legal liability of natural persons for loss of,

damage to, or injury to, persons or property if the insuranc
does not cover liability arising from or in connection wit
business or commercial activities;

(5) [(3)] "renewal" or "renew" means

(A) the issuance and delivery by an insurer of policy replacing at the end of the policy period a policy previ ously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate o notice extending the term of a policy beyond its policy period o term, or

(C) the extension of the term of a policy beyond it policy period or term under a provision for extending the polic by payment of a continuation premium.

* Sec. 12. AS 21 is amended by adding a new chapter to read:

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGE MENTS. (a) Municipalities, school districts, and regional educa tional attendance areas may enter into cooperative agreements wit each other for the purpose of establishing, operating, or participat ing in joint insurance arrangements through which the participatin members agree to pool contributions and

(1) assume risks from losses on a group basis; or

(2) purchase coverage on a group basis.

(b) A joint insurance arrangement under (a)(1) of this sectio may be only for property insurance.

(c) A joint insurance arrangement under (a)(2) of this sectio may be for any kind of insurance defined by this title except for

(1) life, annuity, disability, and title insurance; and

(2) surety.

(d) A joint insurance arrangement shall be considered an alternative or supplement to any other policy or contract of insurance authorized or required by law, including insurance under AS 21.75.

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of excess contributions;

(8) transmission of financial statements and audit report of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooperative agreement may delegate to the board of directors, or authorize

delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve; and

(2) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source,

date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative,

processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 13. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 14. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity

Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 15. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 16. AS 21.36.210(e), 21.36.230, and 21.36.300 are repealed.

* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Version #2
Lauterbach
3/10/86

Original sponsor: Josephson

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 404 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance; and providing for an effective date."

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

* Section 1. AS 21.36.190(d) is amended to read:

(d) This section does not apply to workers' compensation insurance when issued to an association of employers formed for purposes other than the purchase of insurance and that

(1) has a constitution and bylaws; the requirement of this paragraph does not apply to municipalities, school districts, and regional educational attendance areas;

(2) incorporates a safety program;

(3) as a group has preferred characteristics over similar risks written on an individual basis; and

(4) has filed and received approval from the director for the rating program to be applied to the group.

* Sec. 2. AS 21.36.190 is amended by adding a new subsection to read:

(e) The provisions of (a) and (b) of this section do not apply to coverage purchased through a joint insurance arrangement formed under AS 21.76.

* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of personal [AN] automobile insurance [POLICY] except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

* Sec. 4. AS 21.36.210(d) is amended to read:

(d) This section does not apply to

(1) the failure to renew a policy, except as to coverage in force for less than 12 months;

(2) a policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy;

(3) a policy issued under an automobile assigned risk plan or automobile insurance plan;

(4) a policy insuring more than four motor vehicles;

(5) a policy covering the operation of a garage; automobile sales agency, repair shop, or service station; or public parking place;

(6) a policy providing insurance only on an excess basis;

(7) any other contract providing insurance to the named insured, even though the contract may incidentally provide insurance with respect to motor vehicles.

* Sec. 5. AS 21.36.210(f) is amended to read:

(f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons [THE TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING

CONDITIONS OR CIRCUMSTANCES ARISES]:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against; or

(5) physical changes in the insured property that result in the property becoming uninsurable.

* Sec. 6. AS 21.36.220 is amended to read:

Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not exercise its right to cancel a personal insurance policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the effective date of cancellation. However, if [, EXCEPT THAT WHEN] cancellation is for nonpayment of premium, the notice shall be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation, and must [SHALL] include or be accompanied by a statement of the reason for the cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12 MONTHS.]

* Sec. 7. AS 21.36.220 is amended by adding a new subsection to read:

(b) An insurer may not exercise its right to cancel a policy of business or commercial insurance unless a written notice of

cancellation is mailed or delivered to the named insured, at the address shown in the policy, and to the agent or broker of record, at least 60 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, the notice shall be mailed or delivered to the named insured at the address shown in the policy and to the agent or broker of record at least 10 days before the effective date of cancellation, and must include or be accompanied by a statement of the reason for the cancellation.

* Sec. 8. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.235. RETURN OF PREMIUM UPON CANCELLATION. If an insurer cancels a policy under AS 21.36.220(b), it shall return any unearned premium to the agent or broker of record or directly to the insured or premium finance company, if applicable, by the effective date of cancellation, except that if cancellation is for nonpayment of premium, any unearned premium shall be returned within 30 days after the notice of cancellation is given. If the unearned premium is returned by the insurer to a person other than the insured, that person shall promptly return the unearned premium to the insured unless otherwise provided by agreement between the person and the insured.

* Sec. 9. AS 21.36.240 is amended to read:

Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to renew a <u>personal insurance</u> policy in force for less than 12 months. An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR MORE] unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days <u>for a personal insurance policy, and at least 60 days for a business or commercial insurance policy,</u> before the expiration date of the policy [,] or of the anniversary date of a policy written for a

term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

* Sec. 10. AS 21.36.250 is amended to read:

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [APPLIES], the insurer shall notify the named insured of possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification must [SHALL] accompany or be included in the notice of cancellation or nonrenewal required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

* Sec. 11. AS 21.36.310 is amended to read:

Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

(1) "business or commercial insurance" means insurance other than personal insurance, life insurance, disability insurance, title insurance, or an annuity contract;

(2) "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(3) "personal automobile insurance" means insurance not related to business or commercial activities, covering [(2) "POLICY" MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile liability [COVERAGE], uninsured or underinsured motorists [MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automobile physical damage [COVERAGE], that is delivered or issued for delivery in this state, [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD,] and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others, or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

(4) "personal insurance" does not include an annuity contract or a policy of life insurance, disability insurance, or title insurance; the term means personal automobile insurance, or insurance covering

(A) loss of or damage to real property that is used predominantly for residential purposes and that does not consist of more than four dwelling units;

(B) loss of or damage to personal property, including personal effects, household furniture, fixtures and equipment located in not more than four dwelling units; or

(C) legal liability of natural persons for loss of, damage to, or injury to, persons or property if the insurance

does not cover liability arising from or in connection with business or commercial activities;

(5) [(3)] "renewal" or "renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium.

* Sec. 12. AS 21 is amended by adding a new chapter to read:

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) Municipalities, school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions and

(1) assume risks from losses on a group basis; or

(2) purchase coverage on a group basis.

(b) A joint insurance arrangement under (a)(1) of this section may be only for property insurance.

(c) A joint insurance arrangement under (a)(2) of this section may be for any kind of insurance defined by this title except for

(1) life, annuity, disability, and title insurance; and

(2) surety.

(d) A joint insurance arrangement shall be considered an

alternative or supplement to any other policy or contract of insurance authorized or required by law, including insurance under AS 21.75.

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of excess contributions;

(8) transmission of financial statements and audit reports

of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to

compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve; and

(2) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source, date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services

incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 13. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 14. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint

Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 15. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 16. AS 21.36.210(e), 21.36.230, and 21.36.300 are repealed.

* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 2/13/86
Referred: Labor and Commerce
and Finance

IN THE SENATE BY JOSEPHSON

SENATE BILL NO. 404

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance; authorizing joint insurance arrangements; repealing a prohibition against certain types of group insurance; and providing for an effective date."

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

* Section 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) Municipalities, school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions and

(1) assume risks from losses on a group basis; or

(2) purchase coverage on a group basis.

(b) A joint insurance arrangement may be for any kind of insurance defined by this title except for

(1) life, annuity, disability, and title insurance; and

(2) surety.

(c) A joint insurance arrangement shall be considered an alternative or supplement to any other policy or contract of insurance authorized or required by law, including insurance under AS 21.75.

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose

of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of excess contributions;

(8) transmission of financial statements and audit reports of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic

insurance on behalf of the joint insurance arrangemen The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve; and

(2) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source, date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available

for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 3. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of

competent jurisdiction;

* Sec. 4. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 5. AS 21.36.190 is repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

CHAPTER = 21.36
SECTION = 21.36.190
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.190.
CATCH LINE
FICTITIOUS GROUPS.
TEXT (a) An insurer, whether an authorized or unauthorized insurer, may not make available through a rating plan or form, property, casualty or surety insurance to a firm, corporation, or association of individuals, a preferred rate or premium based upon a fictitious group of the firm, corporation, or association of individuals.

(b) A form or plan of insurance covering a group or combination of persons or risks may not be written or delivered inside or outside this state to cover persons or risks in this state at a preferred rate or on a form other than that offered to persons not in the group or combination and to the public generally, unless the form, plan of insurance, and the rates or premiums to be charged have been submitted to and approved by the director as being not unfairly discriminatory and not otherwise in conflict with (a) of this section or with AS 21.39 to the extent that AS 21.39 is, by its terms, applicable to it.

(c) This section does not apply to mortgage guaranty insurance, life insurance, disability insurance, or annuity contracts.

(d) This section does not apply to workers' compensation insurance when issued to an association of employers formed for purposes other than the purchase of insurance and that

(1) has a constitution and bylaws;

(2) incorporates a safety program;

(3) as a group has preferred characteristics over similar risks written on an individual basis; and

(4) has filed and received approval from the director for the rating program to be applied to the group.

HISTORY (Sec. 1 ch 120 SLA 1966; am sec. 9 ch 206 SLA 1976; am sec. 1 ch 75 SLA 1977)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.195
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.195.
CATCH LINE
SURPLUS LINES BROKERS; PROHIBITED ACTS.
TEXT A surplus lines broker may not fail to provide the evidences of insurance, affidavits, filings, or reports, or fail to maintain the records, or fail to pay the taxes and fees, required under AS 21.34.
HISTORY (Sec. 22 ch 117 SLA 1984)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.200
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.200.
CATCH LINE
FALSE APPLICATIONS, CLAIMS, PROOFS OF LOSS.
TEXT _Repealed, sec. 22 ch 149 SLA 1984._

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.210
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.210.
CATCH LINE
LIMITS ON CANCELLATION.
TEXT (a) An insurer may not exercise its right to cancel an automobile insurance policy except for the following reasons:
(1) nonpayment of premium; or
(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or,

if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(b) During the policy period, a modification of automobile physical damage coverage, except coverage for loss caused by collision, whereby provision is made for the application of a deductible amount not exceeding $100 is not a cancellation of the coverage or of the policy.

(c) Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of the renewal.

(d) This section does not apply to the failure to renew a policy, except as to coverage in force for less than 12 months.

(e) An insurer may not cancel an insurance policy that covers

(1) loss of or damage to real property that is used predominantly for residential purposes and does not consist of more than four dwelling units;

(2) loss of or damage to personal property, including but not limited to personal effects, household furniture, fixtures and equipment located in not more than four dwelling units; or

(3) legal liability of natural persons for loss of, damage to or injury to persons or property when the insurance does not cover liability arising from or in connection with business or commercial activities.

(f) Notwithstanding (e) of this section, an insurer may cancel a policy of the type described in

(e) of this section if one of the following conditions or circumstances arises:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against;

(5) physical changes in the insured property that result in the property becoming uninsurable.

HISTORY (Sec. 1 ch 28 SLA 1970; am sec. 1 ch 13 SLA 1972)

END OF DOCUMENT

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4195 SLAB SB 404 - SB 429

1075

CHAPTER = 21.36
SECTION = 21.36.220
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.220.
CATCH LINE
NOTICE OF CANCELLATION.
TEXT An insurer may not exercise its right to cancel a policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the effective date of cancellation, except that when cancellation is for nonpayment of premium the notice shall be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation and shall include or be accompanied by a statement of the reason for the cancellation. This section does not apply to the failure to renew a policy, except as to coverage in force for less than 12 months.
HISTORY (Sec. 1 ch 28 SLA 1970)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.230
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.230.
CATCH LINE
STATEMENT OF REASONS.
TEXT A notice of cancellation issued under AS 21.36.210(a)(2) or (f) shall either state the reasons for the cancellation, or contain a statement that upon the written request of the named insured, mailed or delivered to the insurer at least 10 days before the effective date of cancellation, the insurer will specify in writing the reason for the cancellation. If the reason for cancellation is not included in the notice of cancellation, the insurer shall upon written request of the named insured specify in writing the reason for cancellation. The insurer shall mail or deliver this explanation to the named insured within 10 days after receipt of a written request. Failure to specify the reason following a request constitutes a violation of this title, but does not invalidate the cancellation.
HISTORY (Sec. 1 ch 28 SLA 1970; am sec. 4 ch 13 SLA 1972)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.240
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.240.
CATCH LINE
FAILURE TO RENEW.
TEXT An insurer may not fail to renew a policy in force for less than 12 months. An insurer may not fail to renew a policy in force for 12 months or more unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the expiration date of the policy, or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

HISTORY (Sec. 1 ch 28 SLA 1970)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.250
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.250.
CATCH LINE
NOTICE OF ELIGIBILITY.
TEXT When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or for failure to renew a policy of automobile liability insurance to which AS 21.36.240 applies, the insurer shall notify the named insured of possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification shall accompany or be included in the notice of cancellation or nonrenewal required by AS 21.36.230 and 21.36.240.
HISTORY (Sec. 1 ch 28 SLA 1970)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.260
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.260.
CATCH LINE
PROOF OF MAILING.
TEXT Proof of mailing of notice of cancellation, or of nonrenewal or of reasons for cancellation, to the named insured at the address shown in the policy, is sufficient proof of notice.
HISTORY (Sec. 1 ch 28 SLA 1970)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.270
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.270.
CATCH LINE
EFFECT OF FAILURE TO COMPLY.
TEXT Notwithstanding the failure of an insurer to comply with AS 21.36.210 - 21.36.310, termination of coverage under the policy either by cancellation or nonrenewal is effective on the effective date of any other policy providing similar coverage on the same risk or motor vehicle or a replacement of it.
HISTORY (Sec. 1 ch 28 SLA 1970; am sec. 2 ch 13 SLA 1972)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.280
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.280.
CATCH LINE
IMMUNITY OF INSURER, DIRECTOR AND INFORMER.
TEXT There is no liability on the part of, and a cause of action of any nature may not arise against, the director of insurance or against an insurer, its authorized representatives, agents, or employees, or a person furnishing to the insurer information as to reasons for cancellation, for any statement made by any of them in a written notice of cancellation, or in any other communication, oral or written, specifying the reasons for cancellation, or the providing of information pertaining to a

cancellation or for statements made or evidence submitted at a hearing conducted in connection with a cancellation. However, this immunity from liability does not apply when the information furnished or statement made is untrue and the person furnishing the information or making the statement knew of the lack of truth or was grossly negligent in ascertaining the truth.

HISTORY (Sec. 1 ch 28 SLA 1970)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.290
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.290.
CATCH LINE
POLICY PERIOD.
TEXT A policy with a policy period or term of less than 12 months shall, for the purposes of AS 21.36.210 21.36.310 be considered to be written for a policy period or term of 12 months except in case of cancellation under any of the circumstances specified in AS 21.36.210, and a policy written for a term longer than one year or a policy with no fixed expiration date shall be considered to be written for successive policy periods or terms of one year and termination by an insurer effective on an anniversary date of the policy shall be considered a failure to renew.
HISTORY (Sec. 1 ch 28 SLA 1970)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.300
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.300.
CATCH LINE
APPLICABILITY OF AS 21.36.210 - 21.36.310.
TEXT AS 21.36.210 - 21.36.310 do not apply to any

(1) policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;

(2) policy issued under an automobile assigned risk plan or automobile insurance plan;

(3) policy insuring more than four motor vehicles;

(4) policy covering the operation of a garage,

automobile sales agency, repair shop, service station or public parking place;

(5) policy providing insurance only on an excess basis; or

(6) other contract providing insurance to the named insured even though the contract may incidentally provide insurance with respect to motor vehicles.

HISTORY (Sec. 1 ch 28 SLA 1970)

END OF DOCUMENT

CHAPTER = 21.36
SECTION = 21.36.310
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.
CITATION Sec. 21.36.310.
CATCH LINE
DEFINITIONS.
TEXT In AS 21.36.210 - 21.36.310

(1) "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(2) "policy" means an insurance policy covering the risks and exposures listed in AS 21.36.210(e) or an automobile policy that includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured, one individual or husband and wife resident of the same household, and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession or business of the insured, nor used as a public or livery conveyance nor rented to others;

(3) "renewal" or "renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy

period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium.

HISTORY (Sec. 1 ch 28 SLA 1970; am sec. 3 ch 13 SLA 1972)

END OF DOCUMENT

CHAPTER = 21.80
SECTION = 21.80.020
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 80.
Alaska Insurance Guaranty Association Act.
CITATION Sec. 21.80.020.
CATCH LINE
APPLICABILITY.
TEXT This chapter applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.
HISTORY (Sec. 1 ch 121 SLA 1970)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 21.80
SECTION = 21.80.180
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 80.
Alaska Insurance Guaranty Association Act.
CITATION Sec. 21.80.180.
CATCH LINE
DEFINITIONS.
TEXT In this chapter, unless the context requires otherwise,

(1) "account" means any one of the three accounts created by AS 21.80.040;

(2) "association" means the Alaska Insurance Guaranty Association;

(3) Repealed, sec. 20 ch 21 SLA 1985.

(4) "covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer becomes an insolvent insurer after August 6, 1970, and (A) the claimant or insured is a resident of this state at the time of the insured event; or

(B) the property from which the claim arises is permanently located in this state; "covered claim" does not include any amount due a reinsurer, insurer,

insurance pool, or underwriting association, as subrogation recoveries or otherwise;

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

(6) "member insurer" means a person except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

(7) "net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on direct business; "net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

HISTORY (Sec. 1 ch 121 SLA 1970; am secs. 43, 44 ch 102 SLA 1976; am secs. 5, 6 ch 104 SLA 1983; am sec. 20 ch 21 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

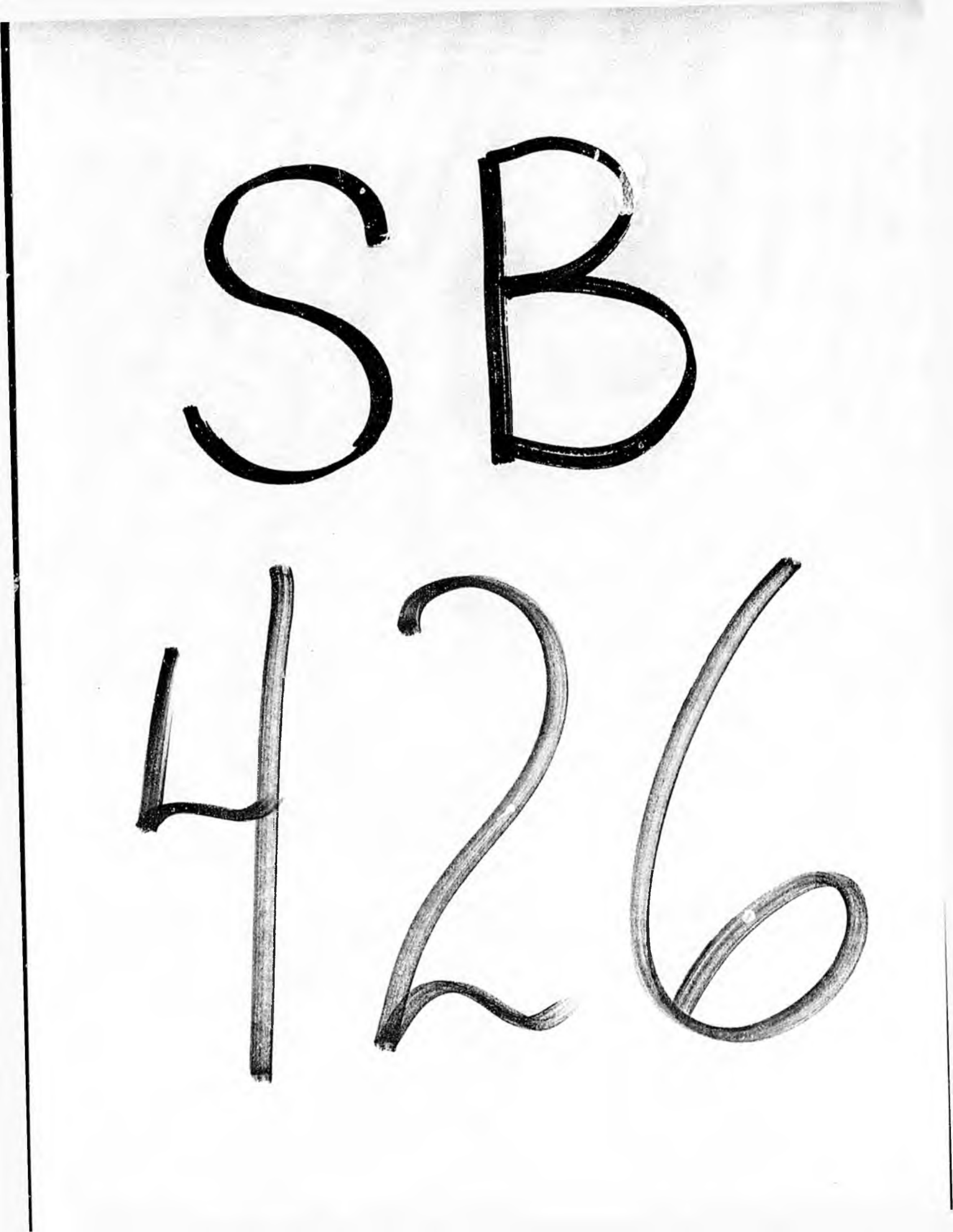
RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)


SB
426

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 426
Title: An Act exempting certain telephone and electrical utilities from AOUC regulation
Sponsor: Coghill
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
BRU: APUC
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: Carolyn Guess
Division: Commisioner Alaska Public Utilities Comm.
Phone: 276-6222
Date: April 8, 1986

Approved by Commissioner: Brown L. Parrish
Agency: Commerce and Economic Development
Date: April 8, 1986

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor

Introduced: 3/18/86
Referred: Labor and Commerce

IN THE SENATE BY COGHILL

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 426

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act exempting certain telephone and electric utilities from regulation by the Alaska Public Utilities Commission."

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

* Section 1. AS 42.05.711(e) is amended to read:

(e) Notwithstanding any other provisions of this chapter, an [ANY] electric or telephone utility that does not gross $50,000 annually or that has fewer than 250 subscribers is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation. The commission may not combine the revenue or subscribers of different utilities owned by the same company when determining whether a utility is exempt under this subsection.



Introduced: 2/14/86
Referred: Labor and Commerce

IN THE SENATE BY COGHILL

SENATE BILL NO. 426

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act exempting certain telephone and electric utilities from regulation by the Alaska Public Utilities Commission."

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

* Section 1. AS 42.05.711(e) is amended to read:

(e) Notwithstanding any other provisions of this chapter, an [ANY] electric or telephone utility that does not gross $50,000 annually or that has fewer than 750 subscribers is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation.

CHAIRMAN'S INFORMATION: SSSB 426

1) BILL TITLE: "An act exempting certain telephone and electric utilities from regulation by the Alaska Public Utilities Commission."

a) Introduced: Sen Coghill

b) Co-sponsors:

2) INTENT: This measure expands the economic deregulation provisions for utilities with fewer than 250 subscribers. It also precludes the APUC from "combining" the revenue or subscriber numbers of different utilities owned by the same company when determining this exemption.

FISCAL NOTE: 0 (There is a consideration that economic deregulation could result in a diminished workload for the APUC, thus reducing their budgetary requirements.)

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

Department of Commerce
Economic Development

/ POSITION PAPER

SB 426 "An Act exempting certain telephone and electrical utilities from APUC regulation."

The Commission is opposed to this bill. The Commission agrees that AS 42.05.711 should be amended to provide a uniform and consistent opportunity for economic exemption regardless of the type of utility service offered to the public. However, the Commission disagrees that customer number is an acceptable criterion for exemption. One of the reasons it has been proposed to alter the statute is to the assumption that the financial well-being of small utilities necessitates economic deregulation. The Commission proposes that the limit should be reflective of revenue levels, not customer levels.

The history of Commission proceedings reflects that some of the utilities with the fewest customers are those with the most problems and whose customers have most benefited from the oversight and assistance of the Commission. If this Act were passed, the Legislature would need to assure itself that, absent the Commission authority, there is an agency with sufficient authority to address health and safety problems arising from a utilities operation.

Further, the Commission observes that this bill would legislatively deregulate some small utilities whose customers, under a deregulation election, have mandated that their utilities not be exempt from Commission regulation.

The Commission also wishes to point out concerns regarding exemption of telephone utilities. Given the sweeping changes taking place in the telecommunications industry as mandated by the Federal Communications Commission, the technical interconnection between all telephone systems and the fact that some local exchange telephone costs are shared by all Alaskan telephone consumers, the Commission raises the question of whether for purposes of an overall statewide telecommunications policy, it would be appropriate for the Legislature to consider excluding telephone utilities in the majority of the state's communities from regulation.

Loren H. Lounsbury

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: _____

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-7332

April 11, 1986

TO: All Members of Labor & Commerce Committee

FROM: Senator Coghill

RE: SB 426

I believe that the economic regulation of small power and telephone utilities is not in the best interest of the consumer or the utility operator.

This statement concerning the consumer, may seem paradoxical, since the economic regulation of these small utilities is supposed to ensure the well being of the consumer.

After speaking with five owners of small utilities, representing 15 operations, it is apparent that the costs associated with compliance--rate hearings and annual reports-- passes on to the consumer unreasonable increases.

For example, one utility calculates its annual cost of compliance at between $40-60,000 a year.

Another estimates that a rate case over an 18 month period cost more than $180,000.

Another on-going rate case has cost $26,000 so far.

I think it is necessary to balance the need for regulation against the burden to the operator and the cost to the consumer.

These costs have been passed on to the consumer. One operator estimates that about $400 per subscriber has been passed on to his customers in little over a year.

These costs are made up of attorneys fees, consultants and accountant fees that must be paid to comply.

BACK UP INFORMATION

None of the utilities owners we spoke to objected to retaining the statutes dealing with safety and maintenance of their facilities. I certainly do not object to the retention of these statutes either.

The utility owners' intent is to sell their services based on normal business considerations and not on hikes predicated on an inflated rate caused by regulation.

I want the economic regulation issue to be controlled on the local level. Under SB 426, a petition signed by 25% of the subscribers will commence regulation. Only 63 subscribers, maximum, need object to the deregulated operation.

I do not believe we need this kind of protectionism when it is costing the people it is attempting to protect.

Nationally, other states have deregulated or substantially eased the regulatory burden of small utilties. Illinois, Iowa, Minnesota and Nebraska have done so. Presently the legislatures in Utah and Virginia are considering the issue.

With state revenues as they are, it makes sense to fashion ways in which we can cut down administrative costs and attempt to lower costs to the consumer related to those administrative costs.

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SSSB 426: Summary

This measure expands one of the economic deregulation sections of the APUC statutes, (42.05.711(e), to include electric or telephone utilities with less than 250 subscribers.

Additionally, the APUC would not be permitted to combine the revenue or subscribers of different utilities, owned by the same company, to circumvent this economic deregulation proposal.

The measure also retains the provision for utility subscribers to petition the APUC (vote of 25% of subscribers) for economic regulation.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Oc Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

4209

AS24.20.445 DOCUMENT
CHAPTER = 24.20
SECTION = 24.20.445
TITLE = 24
HEADINGS TITLE 24.
Legislature.
CHAPTER 20.
Agencies of the Legislature.
ARTICLE 3.
Administrative Regulation Review Committee.
CITATION Sec. 24.20.445.
CATCH LINE
POWER OF SUSPENSION.
TEXT (a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a resolution of the Administrative Regulation Review Committee resolving that the regulation be suspended is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a resolution is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's resolution is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) Action under (a) of this section may not be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations.

HISTORY (Secs. 1, 2 ch 3 SLA 1978; am sec. 2 ch 1 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS24.20.460 DOCUMENT
CHAPTER = 24.20
SECTION = 24.20.460
TITLE = 24
HEADINGS TITLE 24.
Legislature.
CHAPTER 20.
Agencies of the Legislature.
ARTICLE 3.
Administrative Regulation Review Committee.
CITATION Sec. 24.20.460.
CATCH LINE
POWERS.
TEXT The Administrative Regulation Review Committee has the following powers:

(1) to organize and adopt rules for the conduct of its business;

(2) to hold public hearings;

(3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) to examine all administrative regulations to determine if they properly implement legislative intent;

(5) to make recommendations for legislative annulment of administrative regulations under AS 44.62.320;

(6) to prepare and distribute reports, memoranda, or other materials;

(7) to promote needed revision or repeal of regulations that have been adopted by state departments and agencies and, when the committee determines a regulation should be repealed or amended, to introduce a bill that would enact a statute that would supersede or nullify the regulation;

(8) to investigate findings that are transmitted to the committee by a standing committee in accordance with AS 24.05.182 and, as appropriate, to either introduce a bill annulling the regulation or exercise the committee's power to suspend the effectiveness of the regulation in accordance with AS 24.20.445.

HISTORY (Sec. 1 ch 27 SLA 1975; am sec. 3 ch 1 SLA 1982)
R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS44.62.180 DOCUMENT
CHAPTER = 44.62
SECTION = 44.62.180
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 62.
Administrative Procedure Act.
ARTICLE 4.
Procedure for Adopting Regulations.
CITATION Sec. 44.62.180.
CATCH LINE
EFFECTIVE DATE.
TEXT A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under AS 44.62.250, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal.

HISTORY (Sec. 3 art IV (ch 1) ch 143 SLA 1959; am sec. 7 ch 40 SLA 1969)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS44.62.190 DOCUMENT
CHAPTER = 44.62
SECTION = 44.62.190
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 62.
Administrative Procedure Act.
ARTICLE 4.
Procedure for Adopting Regulations.
CITATION Sec. 44.62.190.
CATCH LINE
NOTICE OF PROPOSED ACTION.
TEXT (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, that the state agency prescribes and in the Alaska Administrative Journal;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency,

(A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by AS 44.62.060;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency;

(7) furnished to the standing committee of each house of the legislature having legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or order of repeal for the committee's use in conducting the review authorized by AS 24.05.182;

(8) furnished to the staff of the Administrative Regulation Review Committee.

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under AS 44.62.180 - 44.62.290. (5 art IV (ch 1) ch 143 SLA 1959; am sec. 2 ch 149 SLA 1962; am sec. 1 ch 3 SLA 1968; am sec. 16 ch 143 SLA 1968; am sec. 4 ch 64 SLA 1978; am sec. 5 ch 1 SLA 1982; am sec. 3 ch 59 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS44.62.195 DOCUMENT
CHAPTER = 44.62
SECTION = 44.62.195
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 62.
Administrative Procedure Act.
ARTICLE 4.
Procedure for Adopting Regulations.
CITATION Sec. 44.62.195.
CATCH LINE
FISCAL NOTES ON REGULATIONS.
TEXT If the adoption, amendment, or repeal of a regulation would require increased appropriations by the state, the department or agency affected shall prepare an estimate of the appropriation increase for the fiscal year following adoption, amendment, or repeal of the regulation and for at least two succeeding fiscal years.
HISTORY (Sec. 1 ch 16 SLA 1980)
R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS44.62.200 DOCUMENT
CHAPTER = 44.62
SECTION = 44.62.200
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 62.
Administrative Procedure Act.
ARTICLE 4.
Procedure for Adopting Regulations.
CITATION Sec. 44.62.200.
CATCH LINE
CONTENTS OF NOTICE.
TEXT (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include
(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;
(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;
(3) an informative summary of the proposed subject of agency action;
(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;
(5) a summary of the fiscal information required to be prepared under AS 44.62.195.
(b) A regulation which is adopted, amended or repealed may

vary in content from the summary specified in (a)(3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject.

(c) An agency that issues a notice under this section shall assure that the notice is prepared in a form adequate for publication in the Alaska Administrative Journal.

HISTORY (Sec. 6 art IV (ch 1) ch 143 SLA 1959; am sec. 1 ch 185 SLA 1970; am sec. 2 ch 16 SLA 1980; am sec. 4 ch 59 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS44.62.640 DOCUMENT
CHAPTER = 44.62
SECTION = 44.62.640
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 62.
Administrative Procedure Act.
ARTICLE 9.
General Provisions.
CITATION Sec. 44.62.640.
CATCH LINE
DEFINITIONS.
TEXT (a) In AS 44.62.010 - 44.62.320, unless the context otherwise requires,

(1) "lieutenant governor" means the office of the lieutenant governor in the executive branch of the state government, or another agency designated by executive order under the constitution;

(2) "order of repeal" means a resolution, order or other official act of a state agency which expressly repeals a regulation in whole or in part;

(3) "regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of a rule, regulation, order or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, which have the effect of rules, orders, regulations or standards of general application, and this and similar phraseology shall not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is

covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public;

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

(b) In AS 44.62.330 - 44.62.630, unless the context otherwise requires,

(1) "agency" includes the state boards, commissions and officers listed in AS 44.62.330 and those to which this chapter is made applicable by law or executive order involving reorganization under the constitution;

(2) "agency member" means a person who is a member of an agency to which AS 44.62.330 - 44.62.630 apply, and includes a person who individually is an agency;

(3) "hearing officer" means a hearing officer qualified under AS 44.62.350;

(4) "party" includes the agency, the respondent, and a person, other than an officer or an employee of the agency in an official capacity, who has been allowed to appear in the proceeding;

(5) "respondent" means a person against whom an accusation is filed under AS 44.62.360 or against whom a statement of issues is filed under AS 44.62.370.

(c) In this chapter "teleconferencing" means information exchange by audio or video medium.

HISTORY (Sec. 2, 3 art I (ch 1) ch 143 SLA 1959; sec. 1 (ch 2) ch 143 SLA 1959; am sec. 78 ch 69 SLA 1970; am sec. 8 ch 54 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/8/86

REQUEST

Bill/Resolution No. : SB 429
Title : An Act relating to regulations

Sponsor : Senator Fahrenkamp
Requestor : Senate Labor and Commerce
Date of Request : 4/3/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Management and Administration

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		44.4	44.4	44.4	44.4	44.4
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		44.4	44.4	44.4	44.4	44.4
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		44.4	44.4	44.4	44.4	44.4
FEDERAL FUNDS						
OTHER						
TOTAL		44.4	44.4	44.4	44.4	44.4

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

An Administrative Assistant III position would be established to coordinate the regulation adoption requirements.

Prepared by : David Creekman
Phone : 561-2020
Division : Office of the Commissioner
Date : 4/8/86

Approved by Commissioner : Norm D Arnold, Deputy
Date : 4/9/86
Agency : Natural Resources

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : "An Act relating to regulations that affect small businesses..."

Sponsor : Sen. Farenkamp
Requestor : Governor's Office/OMB
Date of Request : April 3, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Legal Services

Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis. -

Richard I. Pegues

Prepared by : Richard I. Pegues, Director — Phone : 465-3672
Division : Administrative Services Division — Date : 4/4/86

Richard I. Pegues /for/

Approved by Commissioner : Harold M. Brown — Date : 4/4/86
Agency : Department of Law

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

This bill adds new sections to the Administrative Procedure Act that require that agencies adopting regulations, under the Act, consider the probable economic effect of the proposed action on small businesses and small municipalities. Although these changes may cause a fiscal impact for several departments, the Department of Law adopts few regulations of its own, and the bill will probably not have a direct fiscal impact on the department. The department does, however, review all regulations prior to their adoption, and it sometimes assists other departments in drafting their regulations. To the extent that we are requested to advise other agencies about the sufficiency of their efforts to conform to the economic analysis provisions in this bill, we can expect innumerable requests for advice. These requests will probably result in our regulations and legislative drafting staff becoming more swamped than they already are.

Because we cannot accurately predict the additional workload that will occur if this bill becomes law, we are not requesting fiscal note funds at this time. Such a request may become necessary in the future, and the potential for this additional cost should be noted while the bill is being considered.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : Regulations affecting small businesses, et al.

Sponsor : Senator Fahrenkamp
Requestor : Senators Fahrenkamp & Zharoff
Date of Request : 3/24/86

FISCAL DETAIL

Agency Affected : ADEC
BRU : Environmental Quality

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		72.7	73.0	73.3	73.6	73.9
TRAVEL		1.5	1.5	1.5	1.5	1.5
CONTRACTUAL		5.0	3.0	3.0	3.0	3.0
SUPPLIES		1.5	1.6	1.7	1.8	1.9
EQUIPMENT		3.6	.5	.5	.5	.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		84.3	79.6	80.0	80.4	80.8
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		84.3	79.6	80.0	80.4	80.8
FEDERAL FUNDS						
OTHER						
TOTAL		84.3	79.6	80.0	80.4	80.8

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached

Prepared by : Billie Trent
Division : Office of the Commissioner
Phone : 465-2600
Date : 3/27/86

Approved by Commissioner : Bill Ross
Agency : Environmental Conservation
Date : 3/28/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

While the Department of Environmental Conservation certainly supports and encourages the concept of responsiveness of government to the public it serves, the ability to do so will (for this legislation, at least) require the hiring of a Research Analyst III and a half-time Clerk Typist III. We also envision the need for minimal contractual services when proposed regulatory changes involve complex matters affecting a diverse population.

We would point out that many of our regulations have federal mandates behind them, requiring federal approval before promulgation. If such regulations were excluded from the requirements of AS 44.63.020 and AS 44.63.030 (although AS 44.63.030(a)(1) and (2) represent theories of responsible rule-making which we support), we could reduce our fiscal note to a half-time Research Analyst III with minimal contractual services.

Position Title	Research Analyst III			No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
				1	18A	GGU			
Time Status	Staff Months	RP Number		Location	Election District		Leg.		
PFT	12			Juneau					

Type of Expenditure		Amount
1	2	3
Salary	37,596	
Benefits	12,324	
Premium Pay		
Other		
Total Personal Services		49,920
Travel		1,500
Contractual		2,000
Commodities		1,000
Equipment		2,000
Other		
Total Cost		56,420

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	56,420
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

Because of the complex nature of this agency's programs, and the wide variety of entities and individuals served and affected, this position's expertise would be required to provide the various analyses and reports and summaries required by the legislation.

This position would coordinate data from staff who write regulations, from affected entities, and from other appropriate sources, analyzing impace and making recommendations to staff; preparing required analyses, documents, and notices, with staff input and evaluation as to correlation between data, federal requirements, and the like.

For more complex matters, this position would work closely with an economics-type contractor to achieve the provisions of the law.

Costs associated with this position include average per-employee costs for contractual and commodities. Equipment expense for a desk, chair, etc. are a one-time expenditure.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component:

FY 87

Position Title	Clerk Typist III			No. of Positions	Range/Step	Bargaining Unit	Gov.	Approv.	Disapp.
				1	8A	GGU			
Time Status	Staff Months	RP Number		Location	Election District		Leg.		
Half-time	6			Juneau					

Type of Expenditure		Amount
1	2	3
Salary	10,153	
Benefits	3,851	
Premium Pay		
Other		
Total Personal Services		14,004
Travel		
Contractual		2,000
Commodities		1,000
Equipment		1,600
Other		
Total Cost		18,604

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	18,604
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position would provide clerical support to the Research Analyst III and regulations-writing staff in handling the clerical duties imposed by this legislation, including maintenance of the records accumulated.

Costs associated with this position are average per-employee costs. The equipment expense for a desk, chair, etc. is a one-time expenditure.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component:

Revised Date

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB - 429
Title : ...regulations that affect... small governmental jurisdictions...

Sponsor : Fahrenkamp
Requestor : Senate Labor and Commerce
Date of Request : March 25, 1986

FISCAL DETAIL

Agency Affected : Department of Education
BRU : Executive Administration

Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		33.6	33.6	33.6	33.6	33.6
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL		5.0	5.0	5.0	5.0	5.0
SUPPLIES		5.0	5.0	5.0	5.0	5.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		46.6	46.6	46.6	46.6	46.6
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		46.6	46.6	46.6	46.6	46.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Personnel costs are a result of administrative activities required by first section 2. These will require the addition of an administrative assistant. Nonpersonnel costs are a result of increased number of publications and public hearings.

Prepared by : Steve Hole — Phone : 465-2800
Division : Commissioner's Office — Date : March 27, 1986

Approved by Commissioner : Marshall L. Lind — Date : March 27, 1986
Agency : Department of Education

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : An act relating to regulations that effect small businesses; small organizations, etc.
Sponsor : Fahrenkamp
Requestor : Senate Labor & Commerce
Date of Request : 2/18/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Commissioner's Office

Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		72.4	72.4	72.4	72.4	72.4
TRAVEL						
CONTRACTUAL		34.0	34.2	34.3	34.5	34.7
SUPPLIES		1.5	1.6	1.6	1.7	1.8
EQUIPMENT		3.2	-	-	-	-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		111.1	108.2	108.3	108.6	108.9

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		111.1	108.2	108.3	108.6	108.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

(See Attached)

Prepared by : Eileen Plate
Division : Commissioner's Office
Phone : 465-2700
Date : 3/28/86

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 3/28/86

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

In order for the department to comply with the provisions of SB 429, the addition of two staff members would be necessary. A Regulations Specialist II and a Clerk Typist III, both located in Juneau, would be necessary for the additional research, analyses and documentation required by the bill. (See attached New Position Justification Forms for detail).

More specifically, the Regulation Specialist would be responsible for developing the Department's agenda of proposed regulations twice yearly, and for the review of departmental regulations before July 1, 1991. Also, this position would be responsible for coordinating with consulting firms to prepare the initial "flexibility analysis" on all proposed regulations. Expertise does not currently exist in the department to complete this type of analysis. We estimate $30,000 in contracts would be required each year. The Regulations Specialist would be able to prepare the final analysis.

Also required is additional published information when notices of regulations are placed in newspapers. We estimate an addition of $6,000 in advertising expenses each year to meet these requirements.

Assumptions:

1. The department would have 10 regulation proceedings a year that would fall under the requirements of this bill.

2. Effective date of July 1, 1986.

3. Annual inflation of 4% on non-personal service items.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Regulations Specialist II	1	16A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	33,660	
Benefits	10,775	
Premium Pay		
Other		
Total Personal Services		44,436
Travel		0
Contractual		2,000
Commodities		500
Equipment		1,600
Other		
Total Cost		48,535

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	48,535
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

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Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position would be responsible for coordinating the department's activity in meeting the requirements of this bill. The person would review all proposed regulations to determine if they are justified and develop 1) the agenda of proposed regulations twice yearly and 2) a plan for periodic review of the Department's regulation as required under this bill. The position would contract with consulting firms for the completion of the initial "flexibility analysis". This position would complete the final "flexibility analysis".

Costs associated with this position would include average per-employee costs for contractual and commodities. The equipment expense for a desk, chair, etc. would be a one-time cost.

Request For New Position

Agency: Labor
BRU: Commissioner's Office
Component: Commissioner's Office

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	1	8A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	20,316	
Benefits	7,702	
Premium Pay		
Other		
Total Personal Services		28,018
Travel		0
Contractual		2,000
Commodities		1,000
Equipment		1,600
Other		
Total Cost		32,618

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	32,618
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ -

Justification

This position would handle the clerical duties associated with this bill. The position would keep records of all proposed actions on all regulations in the department and assure the additional documentation requirements of this bill are met. This person would make sure all correspondence was properly handled and type the justifications, file logs and other required documents.

Costs associated with this position are average per employee costs. The equipment expense for a desk, chair, cabinets, etc. would be a one-time cost.

Request For New Position

Agency Labor
BRU Commissioner's Office
Component Commissioner's Office

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: "An Act relating to regulations that effect small businesses."

Sponsor: Senator Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Real Estate Commission

Components: Economic Development

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		42.0	43.5	22.5	23.5	23.5
TRAVEL		4.0	4.0	3.0	3.0	3.0
CONTRACTUAL		3.0	3.0	1.5	1.5	1.5
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		5.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		55.0	51.5	28.0	29.0	29.0
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		55.0	51.5	28.0	29.0	29.0
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER		-0-	-0-	-0-	-0-	-0-
TOTAL		55.0	51.5	28.0	29.0	29.0

POSITIONS:

FULL-TIME		1	1	-0-	-0-	-0-
PART-TIME		-0-	-0-	1	1	1
TEMPORARY		-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary.

To comply with this act and enact the regulations needed, the commission would require a full-time regulations specialist for the first two years and then at least a half-time regulations specialist for the years after that. The act would add enormously to the paperwork burden in producing regulations.

Prepared by: James L. Magowan
Division: Real Estate Commission
Phone: 563-2169
Date: March 19, 1986

Approved by Commissioner: Louis L. Lounsbury
Agency: _____
Date: March 19, 1986

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: An Act relating to regulations that affect small businesses, small organizations, and small gov. juris.
Sponsor: Senator Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		20.9	20.9*	20.9*	20.9*	20.9*
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		20.9	20.9*	20.9*	20.9*	20.9*
CAPITAL						
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		20.9	20.9	20.9	20.9	20.9
FEDERAL FUNDS						
OTHER						
TOTAL		20.9	20.9	20.9	20.9	20.9

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill adds four new requirements to the process of adopting regulations to ensure special consideration that notices and public hearings are given to small entities.

Although Section 44.63.200(a) of the bill provides each agency with the flexibility to amend the definition of "small business" or "small organization" as appropriate (see attached)

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 3-19-86

Approved by Commissioner: Lowell D. Lounsbury Date: 3-20-86
Agency: Commerce and Economic Development

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

10/25/85

to the activities of the agency, Occupational Licensing has no method to differentiate small versus large businesses currently licensed.

Contractual expenditures will result from printing, postage and hearing costs of providing direct notification to all licensees within each professional occupation which has the potential of including "small entities".

*Costs have been repeated in subsequent years since, without actually experiencing the impact of this bill, it is extremely difficult to predict future charges for the variables involved.

It is expected that this legislation will delay the length of processing time currently required for each individual regulation project from approximately six months to nine months.

In addition, to comply with provisions to be included in each notice, much of the attention of the Regulations Specialist would be devoted to satisfying these new requirements.

The Division assists in the regulatory process of 23 licensing areas including regulations promulgated under the Centralized Licensing Act. During each year, approximately 20 regulation topics are handled within each licensing occupation.

Therefore, having to prepare an initial flexibility analysis, final flexibility analysis and conduct periodic review of regulations, in addition to the initial review of all existing regulations before 1991, may require a new Regulations Specialist position in the future to keep up with the increased workload.

Contractual costs were based on:

1.	Printing costs at .36¢ per document multiplied by the number of affected licensees within each occupation;	$ 8.7
2.	Postage costs of .22¢ multiplied by the number of affected licensees;	5.3
3.	Public Notice costs printed in three newspapers of general circulation, which is standard practice within this agency;	2.1
4.	Public Hearing costs using the teleconference network based on the standard two hour hearing at $50 per site, per hour, and assuming that the sites of Anchorage, Fairbanks and Juneau are on the network;	4.8*
		$20.9

*Note: Hearing costs for 4 licensing areas were based on a one hour teleconference because of the small number of licensees affected.

The above calculation is a summary of more detailed calculations on file with this agency.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: An Act relating to regulations that effect small businesses

Sponsor: Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
BRU: Banking and Securities

Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: Willis Kirkpatrick
Division: Division of Banking, Securities and Corporations
Phone: 465-2521
Date: March 21, 1986

Approved by Commissioner: Lowell S. Lounsbury
Agency: Commerce and Economic Development
Date: March 21, 1986

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

10/25/85

0201k32186a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429

Title: An Act relating to regulations that affect small businesses, small organizations, and small governmental jurisdictions

Sponsor: Senator Fahrenkamp

Requester: _____

Date of Request: March 17, 1986

FISCAL DETAIL

Agency Affected: Oil & Gas Conservation Comm.

BRU: Oil & Gas Conservation

Components: Operations

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: C.V. Chatterton
Division: Oil & Gas Conservation Commission
Phone: 279-1433
Date: March 19, 1986

Approved by Commissioner: Lonnie C. Smith
Agency: _____
Date: 3/21/86

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

10/25/85

3694W31986a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: "An Act relating to regulations providing for an effective date."

Sponsor: Senator Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Division of Investments

Components: Economic Development

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		7.0	0.5	0.5	0.5	0.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		7.0	0.5	0.5	0.5	0.5
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		7.0	0.5	0.5	0.5	0.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

To satisfy the requirement that all existing regulations (12 loan programs) be reviewed and analyzed, a one-month professional services contract at $5,000 will be let in FY 87. Advertising, printing, and mailing costs are estimated at $2,000 for the initial review in FY 87 and $500 for new regulations and changes in succeeding years.

Prepared by: Paul B. Arnoldt Paul B. Arnoldt Phone: 465-2510
Division: Division of Investments Date: March 19, 1986

Approved by Commissioner: Lorn S. Lounsbury Date: March 19, 1986
Agency: Commerce and Economic Development

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

10/25/85

3693W31986b

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: Relating to regulations that affect small business, small organizations and small governmental, etc.
Sponsor: Senator Fahrenkamp
Requester: Fahrenkamp
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		25.0	25.0	25.0	25.0	25.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		25.0	25.0	25.0	25.0	25.0
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		25.0	25.0	25.0	25.0	25.0
FEDERAL FUNDS						
OTHER						
TOTAL		25.0	25.0	25.0	25.0	25.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill requires the acquisition and use of data concerning cost impact of regulation o components of the overall group regulated by the division. We do not have in-house expe tise in this area, so it will be necessary to contract for these needs. The amount show is an estimate. Based on the size of the group regulated, we feel it is conservative.

Prepared by: John George, Director P. R. Trod Phone: 465-2515
Division: Division of Insurance Date: March 21, 1986

Approved by Commissioner: Lowell S. Lowell Date: March 21, 1986
Agency: Commerce and Economic Development

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

10/25/85

3705W32186a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429

Title: Req. that affects small business, small org. and small gov. jurisdictions

Sponsor: Fahrenkamp

Requester: _____

Date of Request: _____

FISCAL DETAIL

Agency Affected: APUC

BRU: APUC

Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		5.0	5.0	5.0	5.0	5.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		5.0	5.0	5.0	5.0	5.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of dollars)

GENERAL FUND		5.0	5.0	5.0	5.0	5.0
FEDERAL FUNDS						
OTHER						
TOTAL		5.0	5.0	5.0	5.0	5.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

Public utilities are, in essence, given an exclusive franchise by the commission to operate in their defined service areas, which would constitute them as dominant entities in their field. Thus, it is arguable whether the provisions of the legislation would be applicable to the regulations of the commission.

Prepared by: T. S. Moninski, Deputy Director Phone: 276-6222

Division: APUC Date: 3/19/86

Approved by Commissioner: Louis H. Lounsbury Date: 3/21/86

Agency: _____

Distribution (by Agency preparing fiscal note):

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

10/25/85

1825M

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

Moreover, the commission notes that it has geared its regulations in several respects to consider the size of the utilities covered by them. For example, uniform systems of accounts, rate design, cost of service, and load research requirements are based on the utility size. Moreover, in practice, the commission's staff is directed to provide small utilities with assistance to the greatest extent possible. The commission is always sympathetic to waivers of specific statutory or regulatory requirements where the intended public benefits are clearly outweighed by the burdens imposed on small utilities.

The projected expenses reflected in this fiscal note are the estimated costs of public notices and newspaper advertising associated with regulations review. If it is determined that this bill is applicable to public utilities, these direct costs would be incurred. Also necessary would be the annual commitment of approximately five person-months of effort on the part of commissioners and staff in performing the review and analysis required. Although this allocation would not require an addition of new positions, it would be made at the expense of other regulatory responsibilities. Clearly, other statutory time frames would be negatively impacted at the very time when the Legislature is considering proposals to shorten the processing time for most commission proceedings.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: Bill relating to regulations that affect small businesses, etc.
Sponsor: Fahrenkamp
Requester: .
Date of Request: March 17, 1986

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Accounting and Collections
Administration
Components:

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		16.0	5.5	5.5	5.5	5.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		16.0	5.5	5.5	5.5	5.5
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		16.0	5.5	5.5	5.5	5.5
TOTAL		16.0	5.5	5.5	5.5	5.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

See attached.

Prepared by: Margaret I. Hamley, Director
Division: Accounting and Collections
Phone: 465-2555
Date: March 19, 1986

Approved by Commissioner: Lorin L. Hounshell
Agency: Commerce and Economic Development
Date: March 19, 1986

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

10/25/85

3689W31986b

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

The division has regulations in effect relating to the administration of the 13 loan programs in this department.

This fiscal note assumes the minimum additional workload to comply with Periodic Review of Regulations (AS 44.63.070) and promulgation of new or amended regulations (AS 44.63.010-.060). This is foreseen as an effort which can be accommodated by a professional service contract. This approach is believed to be the most efficient, least-cost approach.

CONTRACTUAL SERVICES

FY 87

Professional Service Contract:	3 months @ $5.0	$15.0
Printing and Postage		1.0
		$16.0

The contractor will be required to prepare and implement the overall plan to review the division's current regulations within the time frame specified in the proposed legislation. The contractor will coordinate publishing in the Alaska Administrative Journal, receive public comment, analyze the criteria set out under proposed AS 44.63.070(b)(1-5), and prepare a recommendation supporting continuation, amendment or repeal of the regulations.

FY 88 - FY 91

Professional Service Contract:	1 month @ $5.0	$ 5.0
Printing and Postage		.5
		$ 5.5

The contractor will perform the flexibility analysis as required for promulgating new or amended regulations.

SB 429 (Continued)
FISCAL NOTE

FUNDING SOURCE

NUMBER	FUND NAME	FY 87	EACH YEAR FY 88-FY 91
1035	Veterans RLF	3.7	1.3
1036	Commercial Fishing RLF	3.0	1.0
1057	Small Business RLF	2.0	.7
1058	Tourism RLF	.3	.1
1067	Mining RLF	1.5	.5
1068	Child Care RLF	.4	.1
1069	Historical Districts RLF	.1	.1
1070	Fisheries Enhancement RLF	.3	.1
1071	Alternative Energy RLF	2.4	.8
1072	Residential Energy Conservation RLF	1.8	.6
1073	Power Development RLF	.3	.1
1074	Bulk Fuel RLF	.2	.1
	TOTAL	$16.0	$5.5

3689W31986a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: Regulatory Flexibility Act

Sponsor: Senator Fahrenkamp
Requester: Tom Moyer
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Economic Development Advocates

Components: Office of Enterprise "Small Business Development"

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	147.2	147.2	147.2	147.2	147.2
TRAVEL	-0-	6.9	7.2	7.6	8.0	8.4
CONTRACTUAL	-0-	6.7	7.2	7.6	8.0	8.4
SUPPLIES	-0-	2.3	.8	.8	.9	.9
EQUIPMENT	-0-	11.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	174.6	162.4	163.2	164.1	164.9
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	174.6	162.4	163.2	164.1	164.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	174.6	162.4	163.2	164.1	164.9

POSITIONS:

FULL-TIME	-0-	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

See attached.

Prepared by: Bonnie Jo Borchick
Division: Office of Enterprise
Phone: 465-2018
Date: March 19, 1986

Approved by Commissioner: Lowell H. Thompson
Agency: Commerce and Economic Development
Date: March 19, 1986

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

10/25/85

3688W31986a

SB 429 (Revised)
Fiscal Note

			FY 87 COSTS
71000	PERSONAL SERVICES		
	Economist II	$ 55,500.00	147.2
	Research Analyst III	48,860.00	
	Regulations Specialist II	42,809.00	
	TOTAL	$147,169.00	
72000	TRAVEL		
	7 trips to Anchorage @ $352	$ 2,464.00	6.9
	(per diem 3 days @ $80 x 7)	1,680.00	
	2 trips to Seattle @ $452	904.00	
	(per diem 3 days @ $80 x 2)	480.00	
	2 trips to Fairbanks @ $422	844.00	
	(per diem 3 days @ $80 x 2)	480.00	
	TOTAL	$ 6,852.00	
73000	CONTRACTUAL		
	Telephone $75 x 12	$ 900.00	6.7
	Telephone (L.D.) $150 x 12	1,800.00	
	Subscriptions & membership	1,500.00	
	Postage fees $110 x 12	1,320.00	
	Forms & printing	1,200.00	
	TOTAL	$ 6,720.00	
74000	SUPPLIES		
	Stationery & copier supplies	$ 300.00	2.3
	Desk supplies	750.00	
	Typing supplies	150.00	
	Forms	300.00	
	Three calculators @ $250	750.00	
	TOTAL	$ 2,250.00	
75000	EQUIPMENT		
	3 workstations, 3 chairs (including side chairs, panels, overhead file cabinets @ $3,500 each)	$ 10,500.00	11.5
	3 four-drawer legal files w/locks @ $322.20 each	966.60	
	TOTAL	$ 11,466.60	
	FY 87 GRAND TOTAL		174.6

3688W31986a

		FY 88 COSTS	FY 89 COSTS	FY 90 COSTS	FY 91 COSTS
71000	PERSONAL SERVICES				
	Same as FY 87	147.2	147.2	147.2	147.2
72000	TRAVEL				
	Same as FY 87 x 5%	7.2	7.6	8.0	8.4
73000	CONTRACTUAL				
	Same as FY 87 x 5%	7.2	7.6	8.0	8.4
74000	SUPPLY				
	same as FY 87 x 5% (use desk supplies and calculators)	.8	.8	.9	.9
75000	CAPITAL/EQUIPMENT				
	None	-0-	-0-	-0-	-0-
	GRAND TOTAL	162.4	163.2	164.1	164.9

3688W31986a

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp
Economist II	1	20A	G			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12		Juneau		

Type of Expenditure		Amount
1	2	3
Salary	42.8	
Benefits	12.7	
Premium Pay		
Other		
Total Personal Services		55.5
Travel		-0-
Contractual		2.2
Commodities		.8
Equipment		3.8
Other		
Total Cost		62.3

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	62.3
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

Justification

The Economist II will be responsible for determining the economic consequences of new regulations. This will include obtaining or directing a research analyst to obtain the requisite data for analysis, quantitative analysis of the regulations, economic consequences, and economic policy alternatives and consequences as they impact business statewide.

Request For New Position

Agency: Commerce & Economic Development
BRU: Economic Development Advocates
Component: Small Business Administration

Page of
Revised Date

FY 87

1834M-3

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp
Regulations Specialist II	1	16A	G			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12		Juneau		

Justification

The Regulations Specialist II will represent this agency, Department of Commerce & Economic Development, in interpreting administrative statutes and regulations pursuant to AS 44.63.090. This position will perform technical research and evaluations of statutes, regulations, and amend proposed regulations, act as liaison between regulatory boards and/or commissions and the Department of Law in submitting regulations under the Alaska Administrative Procedure Act.

Type of Expenditure	2	Amount 3
Salary	32.4	
Benefits	10.4	
Premium Pay		
Other		
Total Personal Services		42.8
Travel		6.9
Contractual		2.2
Commodities		.8
Equipment		3.8
Other		
Total Cost		56.5

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	56.5
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

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Key Number ____ - ____ - ____ - ____ - ____

Request For New Position

Agency Commerce & Economic Development
BRU Economic Development Advocates
Component Small Business Administration

Page of
Revised Date

FY 87

1834M-2

Position Title	Research Analyst III							
Time Status: PFT	Staff Months: 12	RP Number:	No. of Positions: 1	Range/Step: 18A	Barg. Unit: G	Govt:	Approve:	Disapp:
			Location: Juneau	Election District:		Leg:		

Type of Expenditure		Amount
1	2	3
Salary	37.3	
Benefits	11.5	
Premium Pay		
Other		
Total Personal Services		48.8
Travel		-0-
Contractual		2.2
Commodities		.8
Equipment		3.8
Other		
Total Cost		55.6

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	55.6
	I/A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ____ - ____ - ____ - ____ - ____

Justification

The Research Analyst III will obtain and analyze information and data on the consequence of new regulations. The analyst will also assist the the Economist II in his analysis and will report directly to the Economist II. This will require an understanding of both economics and regulations.

Request For New Position

Agency: Commerce & Economic Development
BRU: Economic Development Advocates
Component: Small Business Administration

Page ____ of ____
Revised Date

FY 87

1834M-1

Introduced: 2/14/86
Referred: Labor and Commerce
and Judiciary

IN THE SENATE BY FAHRENKAMP

SENATE BILL NO. 429

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to regulations that affect small businesses, small organizations, and small governmental jurisdictions; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) when adopting regulations to protect the health, safety, environment, and economic welfare of the state, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

(7) alternative regulatory approaches that do not conflict with the stated objectives of applicable statutes may be available to minimize the significant economic impact of regulations on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing regulations on the entities, and to review the continued need for existing regulations.

* Sec. 2. AS 44 is amended by adding a new chapter to read:

CHAPTER 63. REGULATIONS AFFECTING SMALL ENTITIES.

Sec. 44.63.010. REGULATORY AGENDA. (a) During the months of January and July of each year, each agency shall publish in the journal a regulatory flexibility agenda

(1) describing briefly the subject area of any regulation that the agency expects to propose or adopt that is likely to have a significant economic impact on a substantial number of small entities;

(2) summarizing the nature of any proposed regulation under each subject area listed under (1) of this subsection, the objectives and legal basis for the proposed regulation, and an approximate schedule for completing action on each regulation for which the agency

has issued a notice of proposed regulation-making; and

(3) containing the name and telephone number of an agency official knowledgeable concerning the items listed in (1) of this subsection.

(b) Each regulatory flexibility agenda shall be transmitted to the office of enterprise, for comment.

(c) Each agency shall endeavor to give notice of the agenda to small entities or their representatives by direct notification or publication of the agenda in publications likely to be obtained by the small entities and shall invite comments upon each subject area on the agenda.

(d) An agency may consider or act on a matter not included in a regulatory flexibility agenda and may decline to consider or act on a matter listed in the agenda.

Sec. 44.63.020. INITIAL FLEXIBILITY ANALYSIS. (a) When an agency is required by AS 44.62.190 or any other law to publish notice of proposed action for a proposed regulation, the agency shall prepare and make available for public comment an initial flexibility analysis. The analysis shall describe the effect of the proposed regulation on small entities. The initial flexibility analysis or a summary shall be published in the journal when the notice of proposed action is published. The agency shall send a copy of the initial flexibility analysis to the office of enterprise.

(b) Each initial flexibility analysis shall

(1) describe the reasons why action by the agency is being considered;

(2) contain a succinct statement of the objectives of, and legal basis for, the proposed regulation;

(3) describe and, if feasible, estimate the number of small

entities to which the proposed regulation will apply;

(4) describe the reporting, record-keeping and other compliance requirements of the proposed regulation, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparing the report or record;

(5) identify, to the extent practicable, relevant regulations that may duplicate, overlap, or conflict with the proposed regulation.

(c) An initial flexibility analysis shall also describe any significant alternatives to the proposed regulation that accomplish the stated objectives of applicable statutes and that minimize the significant economic impact on small entities. The analysis shall discuss significant alternatives including

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the regulation for the small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the regulation, or any part, for the small entities.

(d) An agency head may waive or delay the completion of some or all of the requirements of this section by publishing in the journal, not later than the date of publication of the final regulation, a written finding, with reasons, that the final regulation is being adopted in response to an emergency that makes compliance or timely

compliance with this section unpracticable.

Sec. 44.63.030. FINAL FLEXIBILITY ANALYSIS. (a) When an agency adopts a final regulation after being required by AS 44.62.190 or any other law to publish a notice of proposed action, the agency shall prepare a final flexibility analysis. Each final flexibility analysis shall

(1) state succinctly the need for, and the objectives of, the regulation;

(2) summarize the issues raised by the public comments in response to the initial flexibility analysis and the agency's assessment of the issues, and contain a statement of changes made in the proposed regulation as a result of the comments; and

(3) describe each significant alternative to the regulation that was consistent with the stated objectives of applicable statutes and was designed to minimize significant economic impact of the regulation on small entities that the agency considered, and state the reasons that the agency rejected the alternative.

(b) The agency shall make copies of the final flexibility analysis available to members of the public and shall publish in the journal at the time of publication of the final regulation under AS 44.62.180 a statement describing how the public may obtain copies.

(c) Except as provided in AS 44.63.040(b), an agency head may not waive the requirements of this section. An agency head may delay the completion of the requirements of this section for not more than 180 days after the date of publication in the journal of a final regulation by publishing in the journal, not later than the date of publication of the final regulation, a written finding, with reasons, that the final regulation is being adopted in response to an emergency that makes timely compliance with this section impracticable. If the

agency does not prepare a final regulatory analysis under this section within 180 days from the date of publication of the final regulation, the regulation lapses and has no effect. The agency may not adopt the substance of the regulation in a second emergency regulation until it has completed a final flexibility analysis.

Sec. 44.63.040. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALYSES. (a) An agency may perform the analyses required by AS 44.63.010 - 44.63.030 in conjunction with or as a part of another agenda or analysis required by law if the other analysis satisfies these sections.

(b) If the head of the agency certifies that a regulation will not have a significant economic impact on a substantial number of small entities, the agency is not required to comply with AS 44.63.020 and 44.63.030. The agency shall publish the certification and a succinct statement explaining the reasons for the certification in the journal when the notice of proposed action for the regulation is published or when the final regulation is published. The agency shall provide the certification and statement to the office of enterprise.

(c) An agency may consider a series of closely related regulations as one regulation for the purposes of AS 44.63.010 - 44.63.030 and 44.63.070.

Sec. 44.63.050. PREPARATION OF ANALYSIS. In complying with AS 44.63.020 and 44.63.030, an agency may provide either a quantifiable or numerical description of the effects of a proposed regulation or alternatives to the proposed regulation, or more general descriptive statements if quantification is not practicable or reliable.

Sec. 44.63.060. PROCEDURES FOR GATHERING COMMENTS. When a regulation is adopted that will have a significant economic impact on a substantial number of small entities, the head of the agency

adopting the regulations or the official of the agency responsible for adoption of the regulation shall assure that small entities have been given an opportunity to participate in the process through techniques including

(1) inclusion in an advanced notice of proposed adoption of regulation, if issued, of a statement that the proposed regulation may have a significant economic effect on a substantial number of small entities;

(2) publication of general notice of the proposed regulation in publications likely to be obtained by small entities;

(3) direct notification of interested small entities;

(4) open conferences or public hearings concerning the regulation for small entities; and

(5) adoption or modification of agency procedural regulations to reduce the cost or complexity of participation in the process by small entities.

Sec. 44.63.070. PERIODIC REVIEW OF REGULATIONS. (a) Before January 1, 1987, each agency shall publish in the journal a plan for the periodic review of the regulations issued by the agency that have or will have a significant economic impact upon a substantial number of small entities. The agency may amend the plan by publishing the revision in the journal. The purpose of the review is to determine whether the regulations should be continued without change, or should be amended or rescinded to minimize significant economic impact on a substantial number of the small entities. The plan must provide for the review by July 1, 1991, of all the agency regulations existing on July 1, 1986, and for the review of a regulation adopted after July 1, 1986, within five years of the effective date of the regulation. If the head of the agency determines that completion of the review of

existing regulations is not feasible by the established date, the agency head shall certify that fact in a statement published in the journal and may extend the completion date by one year at a time for a total of not more that five years.

(b) In reviewing regulations under (a) of this section, the agency shall consider the

(1) continued need for the regulation;

(2) nature of complaints or comments received concerning the regulation from the public;

(3) complexity of the regulation;

(4) extent to which the regulation overlaps, duplicates or conflicts with other state regulations, and, to the extent feasible, with federal and local governmental regulations; and

(5) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

(c) Each agency shall annually publish in the journal a list of the regulations to be reviewed under this section during the succeeding 12 months. The list shall include a brief description of each regulation and the need for and legal basis of the regulation and shall invite public comment on the regulation.

Sec. 44.63.080. JUDICIAL REVIEW. (a) Except as provided in (b) of this section,

(1) a determination by an agency concerning the applicability of this chapter to an action of the agency is not subject to judicial review;

(2) a flexibility analysis prepared under AS 44.63.020 or 44.63.030 and agency compliance or noncompliance with this chapter is not subject to judicial review.

(b) When an action for judicial review of a regulation is instituted, the flexibility analysis for the regulation shall constitute part of the whole record of agency action in connection with the review.

Sec. 44.63.090. REPORTS AND INTERVENTION RIGHTS. (a) The office of enterprise shall monitor agency compliance with this chapter and shall report at least annually to the governor and the legislature.

(b) The office may appear as amicus curiae in an action brought in a court to review a regulation and may present views on the effect of the regulation on small entities.

(c) A court shall grant the application of the office to appear in an action under (b) of this section.

Sec. 44.63.200. AGENCY AMENDMENT OF DEFINITIONS. (a) An agency may amend, by regulation, the definition of "small business" or "small organization" if the amended definition is appropriate to the activities of the agency. An agency shall consult with the office of enterprise before amending "small business." An amendment to "small business" may establish a maximum number of employees or dollar volume of business for an enterprise in an industry.

(b) An agency may amend, by regulation, the definition of "small governmental jurisdiction" if the amendment is appropriate to the activity of the agency and is based on factors including location in rural or sparsely populated areas or an area with limited revenue due to the population of the jurisdiction.

(c) An agency that is not subject to AS 44.62.010 - 44.62.290 of the Administrative Procedure Act and that intends to amend a definition under (a) or (b) of this section shall provide an opportunity for public comment before adopting the amendment and shall publish the

amended definition in the journal.

Sec. 44.63.210. DEFINITIONS. In this chapter

(1) "agency" means an agency in the executive branch of state government;

(2) "journal" means the Alaska Administrative Journal under AS 44.62.175;

(3) "office of enterprise" means the office of enterprise in the Department of Commerce and Economic Development;

(4) "regulation" means a regulation adopted under AS 44.62 or any other law, except a regulation of particular applicability relating to rates, wages, corporate or financial structures or reorganizations, prices, facilities, appliances, services or allowances or to valuations, costs, or accounting, or practices relating to the rates, wages, structures, prices, appliances, services, or allowances;

(5) "small business" means a small business that is independently owned and operated and is not dominant in its field; "ONLY"

(6) "small entity" means a "small business," small organization, or small governmental jurisdiction;

(7) "small governmental jurisdiction" means a municipality, school district, or special district, with a population of less than 50,000;

(8) "small organization" means a not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

* Sec. 2. Notwithstanding AS 44.63.010(a), as enacted by sec. 1 of this Act, the first publication of regulatory agendas must occur by January 31, 1987.

* Sec. 3. AS 44.63.020 and 44.63.030 as enacted by sec. 2 of this Act do not apply to regulations for which a notice of proposed action is issued

before July 1, 1986.

* Sec. 4. This Act takes effect July 1, 1986.

Cramer
4/-86

Original sponsor: Fahrenkamp

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 429 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to regulations that affect small businesses and small municipalities; and providing for an effective date."

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

* Section 1. AS 24.20.460 is amended to read:

Sec. 24.20.460. POWERS. The Administrative Regulation Review Committee has the following powers:

(1) to organize and adopt rules for the conduct of its business;

(2) to hold public hearings;

(3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) to examine all administrative regulations to determine if they properly implement legislative intent;

(5) to make recommendations for legislative annulment of administrative regulations under AS 44.62.320;

(6) to prepare and distribute reports, memoranda, or other materials;

(7) to promote needed revision or repeal of regulations that have been adopted by state departments and agencies and, when the committee determines a regulation should be repealed or amended, to introduce a bill that would enact a statute that would supersede or nullify the regulation;

(8) to investigate findings that are transmitted to the committee by a standing committee in accordance with AS 24.05.182 and, as appropriate, to either introduce a bill annulling the regulation or exercise the committee's power to suspend the effectiveness of the regulation in accordance with AS 24.20.445;

(9) to monitor agency compliance with the requirements of AS 44.62.197, and make recommendations to an agency regarding the adequacy of its analyses and of its responses to public testimony.

* Sec. 2. AS 44.62 is amended by adding a new section to article 3 to read:

Sec. 44.62.177. REGULATORY AGENDA. (a) During the months of January and July of each year, each agency shall publish in the Administrative Law Journal a regulatory flexibility agenda that

(1) describes briefly the subject area of any regulation that the agency expects to propose or adopt that is likely to have a significant economic impact on a substantial number of small entities;

(2) summarizes the nature of any proposed regulation under each subject area listed under (1) of this subsection, the objectives and legal basis for the proposed regulation, and an approximate schedule for completing action on each regulation for which the agency has issued a notice of proposed regulation-making; and

(3) contains the name and telephone number of an agency official knowledgeable concerning the items listed in (1) of this subsection.

(b) An agency may consider or act on a matter not included in a regulatory flexibility agenda and may decline to consider or act on a matter listed in the agenda.

(c) In this section, "small entity" has the meaning given in AS 44.62.197.

* Sec. 3. AS 44.62 is amended by adding a new section to read:

Sec. 44.62.197. ECONOMIC ANALYSIS; SMALL ENTITIES. (a) Before publishing notice under AS 44.62.190, an agency planning to adopt, amend, or repeal a regulation shall analyze the probable economic effect of the proposed action on small businesses and small municipalities. The analysis must

(1) consider the types and numbers of small entities that will probably be affected by the proposed action, including the types that will bear the costs of the proposed action and those that will benefit from it;

(2) consider the probable economic effect of the proposed action, both as to kind and amount, upon the affected entities;

(3) review the reasons for the proposed action, in light of the probable economic effect on small entities;

(4) identify whether there are less costly or less intrusive means of achieving the purpose of the proposed action;

(5) identify, to the extent practicable, relevant regulations that may duplicate, overlap, or conflict with the proposed regulations.

(b) After the close of public proceedings under AS 44.62.210, the agency shall prepare, as a final analysis for a regulation-adoption project, a brief summary from the analysis required by (a) of this section and the agency's comment on public testimony, whether that testimony was written or oral. The agency's comment on the testimony must identify changes made in response to the testimony and must include a brief statement of the reason for rejecting a proposal, if any, that was not adopted by the agency. The agency's statement under this subsection may summarize the reasons and the testimony in aggregate form so as to avoid duplication and unnecessary detail.

(c) If the head of the agency certifies in writing that a regulation will not have a significant economic effect on a substantial number of small entities, the agency shall make a succinct statement as to why it is not required to comply with this section. The certification must be submitted to the lieutenant governor for filing with the regulation.

(d) An agency may consider a series of closely related regulations as one regulation for the purposes of this section.

(e) Analyses under this section are not subject to judicial review. Action taken may not be invalidated on the ground that the contents of an analysis are insufficient or inaccurate.

(f) In this section

(1) "small business" means a business corporation or a nonprofit corporation, a partnership, or a sole proprietorship, that is licensed in the state and transacts business in the state, and

(A) employs 50 or fewer employees in the state, excluding seasonal employees; or

(B) has annual gross sales, or value of services provided, of $1,000,000 or less;

(2) "small entity" means a small business or small municipality;

(3) "small municipality" means a municipality with a population of 10,000 or fewer persons.

* Sec. 4. AS 44.62.200(a) is amended to read:

(a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation

is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;

(5) a summary of the fiscal information required to be prepared under AS 44.62.195;

(6) a summary of the analysis required by AS 44.62.195(a) and the address from which a complete copy of the analysis may be obtained.

* Sec. 5. REVIEW OF EXISTING REGULATIONS. (a) Before January 1, 1991, each agency shall review the regulations adopted by that agency and in effect as of July 1, 1986, that have or will have a significant economic effect upon a substantial number of small entities. The purpose of the review is to determine whether the regulations should be continued without change, or should be amended or repealed to minimize a significant economic effect on a substantial number of the small entities. If the head of the agency determines that completion of the review of existing regulations is not feasible by January 1, 1991, the agency head shall certify that fact in writing and may extend the completion date by one year.

(b) In reviewing regulations under (a) of this section, the agency shall consider the

(1) continued need for the regulation;

(2) nature of complaints or comments received concerning the regulation from the public;

(3) complexity of the regulation;

(4) extent to which the regulation overlaps, duplicates, or conflicts with other state regulations, and, to the extent feasible, with federal and local governmental regulations; and

(5) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

(c) In this section

(1) "agency" has the meaning given "state agency" in AS 44.62.-640(a);

(2) "small entity" has the meaning given in AS 44.62.197.

* Sec. 6. AS 44.62.197, enacted by sec. 3 of this Act, does not apply to regulations for which a notice of proposed action is issued before July 1, 1986.

* Sec. 7. This Act takes effect July 1, 1986.

WORK DRAFT WORK DRAFT WORK DRAFT

Cramer 4/29/86

Original sponsor: Fahrenkamp

BY THE LABOR AND COMMERCE COMMITTEE

IN THE SENATE

CS FOR SENATE BILL NO. 429 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to regulations that affect small businesses and small municipalities; and providing for an effective date."

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

* Section 1. AS 24.20.460 is amended to read:

Sec. 24.20.460. POWERS. The Administrative Regulation Review Committee has the following powers:

(1) to organize and adopt rules for the conduct of its business;

(2) to hold public hearings;

(3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) to examine all administrative regulations to determine if they properly implement legislative intent;

(5) to make recommendations for legislative annulment of administrative regulations under AS 44.62.320;

(6) to prepare and distribute reports, memoranda, or other materials;

(7) to promote needed revision or repeal of regulations that have been adopted by state departments and agencies and, when the committee determines a regulation should be repealed or amended, to introduce a bill that would enact a statute that would supersede or nullify the regulation;

(8) to investigate findings that are transmitted to the committee by a standing committee in accordance with AS 24.05.182 and, as appropriate, to either introduce a bill annulling the regulation or exercise the committee's power to suspend the effectiveness of the regulation in accordance with AS 24.[illegible].445;

(9) to monitor agency compliance with the requirements of AS 44.62.197, and make recommendations to an agency regarding the adequacy of its analyses and of its responses to public testimony.

* Sec. 2. AS 44.62 is amended by adding a new section to article 3 to read:

Sec. 44.62.177. REGULATORY AGENDA. (a) During the months of January and July of each year, each agency shall publish in the Administrative Law Journal a regulatory flexibility agenda that

(1) describes briefly the subject area of any regulation that the agency expects to propose or adopt that is likely to have a significant economic impact on a substantial number of small entities;

(2) summarizes the natur of any proposed regulation under each subject area listed under (1) of this subsection, the objectives and legal basis for the proposed regulation, and an approximate schedule for completing action on each regulation for which the agency has issued a notice of proposed regulation-making; and

(3) contains the name and telephone number of an agency official knowledgeable concerning the items listed in (1) of this subsection.

(b) An agency may consider or act on a matter not included in a regulatory flexibility agenda. An agency may decline to consider or act on a matter listed in the agenda. The agency shall state why it is declining to act on the matter. An agency may not refuse to consider or adopt a regulation solely because the proposed regulation

was not included in the agency's regulatory agenda.

(c) In this section, "small entity" has the meaning given in AS 44.62.197.

* Sec. 3. AS 44.62 is amended by adding a new section to read:

Sec. 44.62.197. ECONOMIC ANALYSIS; SMALL ENTITIES. (a) Before publishing notice under AS 44.62.190, an agency planning to adopt, amend, or repeal a regulation shall analyze the probable economic effect of the proposed action on small businesses and small municipalities. The analysis must

(1) consider the types and numbers of small entities that will probably be affected by the proposed action, including the types that will bear the costs of the proposed action and those that will benefit from it;

(2) consider the probable economic effect of the proposed action, both as to kind and amount, upon the affected entities;

(3) review the reasons for the proposed action, in light of the probable economic effect on small entities;

(4) identify whether there are less costly or less intrusive means of achieving the purpose of the proposed action;

(5) identify, to the extent practicable, relevant regulations that may duplicate, overlap, or conflict with the proposed regulations.

(b) After the close of public proceedings under AS 44.62.210, the agency shall prepare, as a final analysis for a regulation-adoption project, a brief summary from the analysis required by (a) of this section and the agency's comment on public testimony, whether that testimony was written or oral. The agency's comment on the testimony must identify changes made in response to the testimony and must include a brief statement of the reason for rejecting a proposal,

if any, that was not adopted by the agency. The agency's statement under this subsection may summarize the reasons and the testimony in aggregate form so as to avoid duplication and unnecessary detail.

(c) If the head of the agency certifies in writing that a regulation will not have a significant economic effect on a substantial number of small entities, the agency shall make a succinct statement explaining the reasons for the certification and why it is not required to comply with this section. The certification must be submitted to the lieutenant governor for filing with the regulation.

(d) An agency may consider a series of closely related regulations as one regulation for the purposes of this section.

(e) Analyses under this section are not subject to judicial review. Action taken may not be invalidated on the ground that the contents of an analysis are insufficient or inaccurate.

(f) In this section

(1) "small business" means a business corporation or a nonprofit corporation, a partnership, or a sole proprietorship, that is licensed in the state and transacts business in the state, and

(A) employs 50 or fewer employees in the state, excluding seasonal employees; or

(B) has annual gross sales, or value of services provided, of $1,000,000 or less;

(2) "small entity" means a small business or small municipality;

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(a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;

(5) a summary of the fiscal information required to be prepared under AS 44.62.195;

(6) a summary of the analysis required by AS 44.62.197(a) and the address from which a complete copy of the analysis may be obtained.

* Sec. 5. REVIEW OF EXISTING REGULATIONS. (a) Before January 1, 1991, each agency shall review the regulations adopted by that agency and in effect as of July 1, 1986, that have or will have a significant economic effect upon a substantial number of small entities. The purpose of the review is to determine whether the regulations should be continued without change, or should be amended or repealed to minimize a significant economic effect on a substantial number of the small entities. If the head of the agency determines that completion of the review of existing regulations is not feasible by January 1, 1991, the agency head shall certify that fact in writing and may extend the completion date by one year.

(b) In reviewing regulations under (a) of this section, the agency shall consider the

(1) continued need for the regulation;

(2) nature of complaints or comments received concerning the regulation from the public;

(3) complexity of the regulation;

(4) extent to which the regulation overlaps, duplicates, or conflicts with other state regulations, and, to the extent feasible, with federal and local governmental regulations; and

(5) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

(c) In this section

(1) "agency" has the meaning given "state agency" in AS 44.62.-640(a);

(2) "small entity" has the meaning given in AS 44.62.197.

* Sec. 6. AS 44.62.197, enacted by sec. 3 of this Act, does not apply to regulations for which a notice of proposed action is issued before July 1, 1986.

* Sec. 7. This Act takes effect July 1, 1986.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4196 SLAB SB 429 1076

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/8/86

REQUEST

Bill/Resolution No. : SB 429
Title : An Act relating to regulations

Sponsor : Senator Fahrenkamp
Requestor : Senate Labor and Commerce
Date of Request : 4/3/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Management and Administration

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		44.4	44.4	44.4	44.4	44.4
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		44.4	44.4	44.4	44.4	44.4
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		44.4	44.4	44.4	44.4	44.4
FEDERAL FUNDS						
OTHER						
TOTAL		44.4	44.4	44.4	44.4	44.4

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

An Administrative Assistant III position would be established to coordinate the regulation adoption requirements.

Prepared by : David Creekman
Phone : 561-2020
Division : Office of the Commissioner
Date : 4/8/86

Approved by Commissioner : Norman D Arnold, Deputy
Date : 4/9/86
Agency : Natural Resources

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

10/25/85

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 7, 1986

Honorable Fred Zharoff, Chairman
Senate Labor & Commerce Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: SB 429 (regulations affecting small businesses, etc.)
Our file: 66-3-86-0414

Dear Senator Zharoff:

You will find attached copies of fiscal notes by the following departments:

Department of Administration,
Department of Commerce & Economic Development,
Department of Community & Regional Affairs,
Department of Corrections,
Department of Education,
Department of Environmental Conservation,
Department of Health & Social Services,
Department of Labor,
Department of Law,
Department of Military & Veterans' Affairs,
Department of Public Safety, and
Department of Transportation & Public Facilities.

These fiscal notes are based on the original SB 429. I did not receive the draft committee substitute until Friday, April 4, and I believe that the various state agencies directly affected by this bill have not yet seen that draft. I am forwarding these fiscal notes to you so that your committee will have everything available as it considers the bill. The draft should substantially reduce the costs.

On March 24, following your committee's last hearing on this bill, Senator Fahrenkamp, the bill's sponsor, and I met with her staff, your staff, and David Dougherty (from the federal Small Business Administration) to discuss the bill. On the following day, I prepared for Senator Fahrenkamp a draft revision. It was understood that, although I was trying to help the senator address some of the problems identified as being in the original version of the bill, my efforts did not mean that the

Administration or the Department of Law endorsed either the original version or the draft substitute. It was also understood that the senator would send a copy to Mr. Dougherty for his comments.

I believe that your committee has been furnished copies of my March 25 letter to Senator Fahrenkamp and of the draft substitute. So I will not repeat the content of that letter here.

It appears that the April 4 draft CS prepared in the Legislative Affairs Agency is very similar to my draft, with, however, some significant changes.

The gist of the attached fiscal notes is that the bill is unnecessary, too burdensome, costly, and without sufficient (if any) benefit to the public. The draft substitute bill, which the various agencies have not yet seen and have not commented upon, will substantially reduce those costs and burdens, but it is not clear that it will produce anything of great value to the public. This time of severe fiscal constraints and reduced staffs is not the best one for imposing new functions and duties on a broad range of state agencies.

Here are some general and specific comments:

1. While commending Senator Fahrenkamp's long-standing interest in regulatory reform, I have not been able to identify a particular problem for which this bill is the solution. I have read the senator's written statement which she presented to your committee on March 24, 1986, and I have no quarrel with her objective of making state agencies more "sensitive to new regulatory burdens." However, most agencies are indeed aware of that now, and the duties imposed by the bill seem unnecessary to achieve any greater sensitivity.

2. A bill such as this appears to be inspired by a particular problem pertaining to a particular function of the state government, implemented, in part, by administrative regulations. But the bill speaks in broad terms, thus affecting all agencies and all functions.

3. If there is a particular function of the state government, being performed by some identified state agency, a simple amendment to the statutes specifically affecting that function would be a better way to achieve the senator's objective.

4. Some agencies, such as the Department of Environmental Conservation and the Department of Health and Social Services, administer programs closely associated with federal agencies and subject to federal requirements. For many of these, it is simply not feasible to undertake some special "flexibility analysis" for small businesses when preparing and adopting regulations.

5. Some agencies, such as the Department of Corrections and the Department of Military and Veterans' Affairs, do not adopt regulations affecting small businesses and a broadly sweeping statute such as in this bill and the draft committee substitute) is simply unnecessary.

6. Section 1 of the draft committee substitute merely adds to the duties of the legislature's Administrative Regulation Review Committee. In doing so, it relies on the new requirement in the proposed AS 44.62.197 (economic analysis for small entities). While we do not support the new statutory requirement in the proposed AS 44.62.197, we do not object to the committee performing an oversight function. The current standard for regulation validity is "reasonable necessity." AS 44.62.030. The language of the amendment proposed in sec. 1 could be made to refer simply to the existing standard.

7. Section 2 of the draft committee substitute will require each agency to prepare a "regulatory agenda" twice a year. The need for this is certainly questionable, especially since an agency is not bound by it (see the proposed AS 44.62.177(b)). Under the current AS 44.62.190, an agency is required to give a broad distribution to the notice of proposed regulation adoption, at least 30 days before the adoption. It is not clear that, in addition to the currently required saturation notice, this regulatory agenda would provide anything more than a time-consuming irritant to each regulation-adopting agency.

8. Section 2 also relies on the terms "significant economic impact," "substantial number," and "small entities." Although the last of these three terms is defined, the first two are not. This leaves a great deal of vagueness which would make accurate compliance with the requirement very difficult.

9. Section 3 of the draft committee substitute is, of course, the heart of the bill. Although this version would be much more administratively feasible than the version in

the original bill, it still imposes requirements that select one kind of member of the public -- "small entities" -- for special treatment. It thus imposes a burden on all agencies that will produce little benefit, if any, to the general public.

10. The definitions of "small business" and "small municipality," in the proposed subsec. (f) (page 4 of the draft CS), raise some questions. Although the approach taken is that offered in the draft that I did for Senator Fahrenkamp on March 25, the numbers of employees and the amount of annual gross sales, in the definition of "small business," and the size of the population of "small municipalities," have been made much larger. Although I am not qualified to state firmly just what those numbers should be, it appears that the draft CS uses numbers that are far too large for the Alaska context.

Thank you for this opportunity to comment, and I would be happy to continue working with Senator Fahrenkamp and her and your staff on this matter.

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc w/enc.: Hon. Bettye Fahrenkamp
Alaska State Senate

Jim Ayers, Director
Legislative Relations
Governor's Office

cc w/o enc.: Department Heads

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: SB 429
Title: An act relating to regulations that affect small businesses, small organizations, and small governmental. . . ."
Sponsor: Fahrenkamp
Requestor:
Date of Request: February 14, 1986

FISCAL DETAIL
Agency Affected: Dept. of Administration
BRU: Administrative Services
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	Ø	7.4	7.6	7.8	8.0	8.2
TRAVEL	Ø	Ø	Ø	Ø	Ø	Ø
CONTRACTUAL	Ø	10.7	11.0	11.3	11.6	12.0
SUPPLIES	Ø	.6	.6	.6	.7	.7
EQUIPMENT	Ø	Ø	Ø	Ø	Ø	Ø
LAND & STRUCTURES	Ø	Ø	Ø	Ø	Ø	Ø
GRANTS, CLAIMS	Ø	Ø	Ø	Ø	Ø	Ø
MISCELLANEOUS	Ø	Ø	Ø	Ø	Ø	Ø
TOTAL OPERATING	Ø	18.7	19.2	19.7	20.3	20.9
CAPITAL	Ø	Ø	Ø	Ø	Ø	Ø
REVENUE	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING: (Thousands of Dollars)

GENERAL FUND	Ø	18.7	19.2	19.7	20.3	20.9
FEDERAL FUNDS	Ø	Ø	Ø	Ø	Ø	Ø
OTHER	Ø	Ø	Ø	Ø	Ø	Ø
TOTAL	Ø	18.7	19.2	19.7	20.3	20.9

POSITIONS:

FULL-TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART-TIME	1	1	1	1	1	1
TEMPORARY	Ø	Ø	Ø	Ø	Ø	Ø

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Gary M. Bader Phone: 465-2277
Division: Administrative Services Date: 3/28/86
Approved by Commissioner: Eleanor Andrews Date: 3/28/86
Agency: Department of Administration

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

Rev. 11/8/85

14/1D1/0326-02/2

CONTINUATION OF FISCAL NOTE ANALYSIS
FOR SENATE BILL 429

ANALYSIS:

A. Assumptions

1. Enactment of Senate Bill No. 429 would add a new chapter to AS 44. This new chapter pertains to small entities and the possible impact upon them by regulation changes. This bill increases the number of tasks required for notification of possible changes as well as requires a periodic review of all regulations. The estimates which follow are based on the existence of fourteen chapters of regulations of the Department of Administration in the Alaska Administrative Code and the assumption of at least two proposed changes per year per chapter.

B. Listing Of Activities

1. Section	Task Description	Per Proposed Regulation Change
44.63.010	Prepare and publish regulatory flexibility agenda (based upon required six tasks)	6 hours
44.63.020	Prepare initial flexibility analysis (based upon required six tasks)	6 hours
44.63.030	Prepare final flexibility analysis (based upon required three tasks)	5 hours
	TOTAL	17 hours

2. Section	Task Description	Required On Annual Basis
44.63070	Periodic review plan (based upon required five considerations)	10 hours
44.63.070(c)	Prepare and publish current years' review schedule	4 hours
	TOTAL	14 hours

3. Inflation is estimated at 3 percent per year.

B. Staff Requirement

1. Each proposed regulation change is estimated to require 17 hours per year. If two changes are proposed for each chapter of the Department of Administration's regulations which impact small entities, then 2 x 14 x 17 = 476 hours per year of additional processing are required by Senate Bill 429. Additionally, on an annual basis, the periodic review plan and current year's review schedule must be prepared and published requiring 10 + 4 = 14 hours per year.

2. 476 + 14 = 490 employee hours ÷ 47 weeks = 10.43 employee hours/week

COMPUTATION APPENDAGE of FISCAL NOTE ANALYSIS
FOR SENATE BILL 429

1. Additional Staff Requirements Analysis

a. General Government Unit (GGU)

Hours per Year	=	1,950 hours per year
Annual Leave	=	(75)
Five Days Sick Leave	=	(37.5)
Holidays (ten days)	=	(75)
Employee Annual Hours Worked	=	1,762.5 hours per year

1,762.5 hours per year ÷ 37.5 hours per week = 47 weeks per year

b. Staff--one part-time Administrative Assistant I, Range 12

$12.75 per hour x 10 hours per week x 52 weeks	= $6,630.00
Benefits for less than 15 hours per week: 11.16%	= $ 739.1
TOTAL:	$7,369.91

2. Other Costs Analysis

Contractual Total: $10,696

Duplicating--$196

Assume 28 Initial Flexibility Analyses and 28 Final Flexibility Analyses to be published at four pages each to meet criteria as established by AS 44.63, mailed to 25 interested/impacted small entities:

2 analyses x 28 regulations x 4 pages x 25 parties x $.035 = $196

Advertising--$10,500

Sec. 44.63.010(3)(c) requires publication of the regulatory agenda in "publications likely to be obtained by small entities." Each of the assumed twenty-eight proposed regulatory changes flexibility agendas printed in the newspaper in Fairbanks, Anchorage, and Juneau would cost:

28 agendas x 3 papers x $125 = $10,500

Supplies: $600

1 employee x $50 month x 12 months = $600

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disappr.
Administrative Assistant I	1	12A	G			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
Part-time	3.2		Juneau	4	

Type of Expenditure		Amount
1	2	3
Salary	6,630	
Benefits	739	
Premium Pay	Ø	
Other	Ø	
Total Personal Services		7,369
Travel		Ø
Contractual		3,094
Commodities		Ø
Equipment		Ø
Other		Ø
Total Cost		10,463

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	10,436
	General Funds	1004	
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

Duties would include, but not be limited to:

1. Review regulation and determine if a significant impact exists.
2. Prepare regulatory agenda.
3. Prepare flexibility analyses.
4. Prepare final flexibility analyses.
5. Determine duplicative analyses.
6. Oversee the gathering of comments.
7. Periodic review of regulations.

14/1D1/0326-02/8

Request For New Position

Agency Administration

BRU Administrative Services

Component

Revised Date

FY 87

POSITION PAPER
SB 429

This bill would establish the requirement to publish semiannually a "Flexibility Agenda" in which the department is required to publish a list of regulations they may pursue within the next six months and send a separate notice to any and all small businesses, small government entities, or small organizations which may be impacted, as well as sending a copy to the Office of Enterprise. Prior to commencing public hearings or a period of public input, the department must publish an "initial flexibility analysis" which includes the impact on small entities, identifies which small entities will be impacted, how they will be impacted, what skills will be necessary to comply with the regulations, as well as any alternatives such as different compliance standards for small entities.

Once a regulation is adopted, a final flexibility analysis is required incorporating all factors stated above.

There are two primary regulatory areas that would be impacted by the bill. The area of competitive bidding for State contracts for the purchase of goods, services, and professional services which would impact small businesses; and the regulations governing municipal grants which would impact small government entities. This department has the responsibility of assuring that municipalities for which the monies were appropriated have spent the monies consistent with the stated purposes and in conformance with the grant agreement.

As stated earlier, the vast majority of regulations promulgated by this department does not warrant a distinction between large and small entities, and to be required to comply with the provisions of this bill would be burdensome beyond any benefits derived, as well as create a double standard which would not be in keeping with the best interests of the State.

The Department of Administration opposes passage of this bill.

Gary M. Bader — 3/28/86

Gary Bader
Director
Division of Administrative Services
Department of Administration

Eleanor Andrews — 3/28/86

Commissioner Eleanor Andrews
Department of Administration

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: Bill relating to regulations that affect small businesses, etc.
Sponsor: Fahrenkamp
Requester: _____
Date of Request: March 17, 1986

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Accounting and Collections
Administration
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		16.0	5.5	5.5	5.5	5.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		16.0	5.5	5.5	5.5	5.5
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		16.0	5.5	5.5	5.5	5.5
TOTAL		16.0	5.5	5.5	5.5	5.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

See attached.

Prepared by: Margaret I. Hamley, Director
Division: Accounting and Collections
Phone: 465-2555
Date: March 19, 1986

Approved by Commissioner: Lorin L. Hounshell
Agency: Commerce and Economic Development
Date: March 19, 1986

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

10/25/85

3689W31986b

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

The division has regulations in effect relating to the administration of the 13 loan programs in this department.

This fiscal note assumes the minimum additional workload to comply with Periodic Review of Regulations (AS 44.63.070) and promulgation of new or amended regulations (AS 44.63.010-.060). This is foreseen as an effort which can be accommodated by a professional service contract. This approach is believed to be the most efficient, least-cost approach.

CONTRACTUAL SERVICES

FY 87

Professional Service Contract:	3 months @ $5.0	$15.0
Printing and Postage		1.0
		$16.0

The contractor will be required to prepare and implement the overall plan to review the division's current regulations within the time frame specified in the proposed legislation. The contractor will coordinate publishing in the Alaska Administrative Journal, receive public comment, analyze the criteria set out under proposed AS 44.63.070(b)(1-5), and prepare a recommendation supporting continuation, amendment or repeal of the regulations.

FY 88 - FY 91

Professional Service Contract:	1 month @ $5.0	$ 5.0
Printing and Postage		.5
		$ 5.5

The contractor will perform the flexibility analysis as required for promulgating new or amended regulations.

SB 429 (Continued)
FISCAL NOTE

FUNDING SOURCE

NUMBER	FUND NAME	FY 87	EACH YEAR FY 88-FY 91
1035	Veterans RLF	3.7	1.3
1036	Commercial Fishing RLF	3.0	1.0
1057	Small Business RLF	2.0	.7
1058	Tourism RLF	.3	.1
1067	Mining RLF	1.5	.5
1068	Child Care RLF	.4	.1
1069	Historical Districts RLF	.1	.1
1070	Fisheries Enhancement RLF	.3	.1
1071	Alternative Energy RLF	2.4	.8
1072	Residential Energy Conservation RLF	1.8	.6
1073	Power Development RLF	.3	.1
1074	Bulk Fuel RLF	.2	.1
	TOTAL	$16.0	$5.5

3689W31986a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: ____

REQUEST

Bill/Resolution No.: SB 429
Title: Reg. that affects small business, small org. and small gov. jurisdictions
Sponsor: Fahrenkamp
Requester:
Date of Request:

FISCAL DETAIL

Agency Affected: APUC
BRU: APUC
Components:

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		5.0	5.0	5.0	5.0	5.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		5.0	5.0	5.0	5.0	5.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of dollars)

GENERAL FUND		5.0	5.0	5.0	5.0	5.0
FEDERAL FUNDS						
OTHER						
TOTAL		5.0	5.0	5.0	5.0	5.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

Public utilities are, in essence, given an exclusive franchise by the commission to operate in their defined service areas, which would constitute them as dominant entities in their field. Thus, it is arguable whether the provisions of the legislation would be applicable to the regulations of the commission.

Prepared by: T. S. Moninski, Deputy Director
Phone: 276-6222
Division: APUC
Date: 3/19/86
Approved by Commissioner: Louis H. Lounsbury
Date: 3/21/86
Agency:

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

10/25/85

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

Moreover, the commission notes that it has geared its regulations in several respects to consider the size of the utilities covered by them. For example, uniform systems of accounts, rate design, cost of service, and load research requirements are based on the utility size. Moreover, in practice, the commission's staff is directed to provide small utilities with assistance to the greatest extent possible. The commission is always sympathetic to waivers of specific statutory or regulatory requirements where the intended public benefits are clearly outweighed by the burdens imposed on small utilities.

The projected expenses reflected in this fiscal note are the estimated costs of public notices and newspaper advertising associated with regulations review. If it is determined that this bill is applicable to public utilities, these direct costs would be incurred. Also necessary would be the annual commitment of approximately five person-months of effort on the part of commissioners and staff in performing the review and analysis required. Although this allocation would not require an addition of new positions, it would be made at the expense of other regulatory responsibilities. Clearly, other statutory time frames would be negatively impacted at the very time when the Legislature is considering proposals to shorten the processing time for most commission proceedings.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: "An Act relating to regulations that effect small businesses."

Sponsor: Senator Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Real Estate Commission

Components: Economic Development

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		42.0	43.5	22.5	23.5	23.5
TRAVEL		4.0	4.0	3.0	3.0	3.0
CONTRACTUAL		3.0	3.0	1.5	1.5	1.5
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		5.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		55.0	51.5	28.0	29.0	29.0
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		55.0	51.5	28.0	29.0	29.0
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER		-0-	-0-	-0-	-0-	-0-
TOTAL		55.0	51.5	28.0	29.0	29.0

POSITIONS:

FULL-TIME		1	1	-0-	-0-	-0-
PART-TIME		-0-	-0-	1	1	1
TEMPORARY		-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary.

To comply with this act and enact the regulations needed, the commission would require a full-time regulations specialist for the first two years and then at least a half-time regulations specialist for the years after that. The act would add enormously to the paperwork burden in producing regulations.

Prepared by: James L. Magowan
Division: Real Estate Commission
Phone: 563-2169
Date: March 19, 1986

Approved by Commissioner: Louis S. Lounsbury
Agency: _____
Date: March 19, 1986

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

10/25/85

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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: An Act relating to regulations that effect small businesses

Sponsor: Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
BRU: Banking and Securities

Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: Willis Kirkpatrick
Division: Division of Banking, Securities and Corporations
Phone: 465-2521
Date: March 21, 1986

Approved by Commissioner: Louis L. Lounsbury
Agency: Commerce and Economic Development
Date: March 21, 1986

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: Relating to regulations that affect small business, small organizations and small governmental, etc.
Sponsor: Senator Fahrenkamp
Requester: Fahrenkamp
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		25.0	25.0	25.0	25.0	25.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		25.0	25.0	25.0	25.0	25.0
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		25.0	25.0	25.0	25.0	25.0
FEDERAL FUNDS						
OTHER						
TOTAL		25.0	25.0	25.0	25.0	25.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill requires the acquisition and use of data concerning cost impact of regulation components of the overall group regulated by the division. We do not have in-house exp tise in this area, so it will be necessary to contract for these needs. The amount shc is an estimate. Based on the size of the group regulated, we feel it is conservative.

Prepared by: John George, Director P.R. Trodick Phone: 465-2515
Division: Division of Insurance Date: March 21, 1986

Approved by Commissioner: Lowell Lounsbury Date: March 21, 1986
Agency: Commerce and Economic Development

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

10/25/85

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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: "An Act relating to regulations ..... providing for an effective date."

Sponsor: Senator Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Division of Investments

Components: Economic Development

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		7.0	0.5	0.5	0.5	0.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		7.0	0.5	0.5	0.5	0.5
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		7.0	0.5	0.5	0.5	0.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

To satisfy the requirement that all existing regulations (12 loan programs) be reviewed and analyzed, a one-month professional services contract at $5,000 will be let in FY 87. Advertising, printing, and mailing costs are estimated at $2,000 for the initial review in FY 87 and $500 for new regulations and changes in succeeding years.

Prepared by: Paul B. Arnoldt — Phone: 465-2510
Division: Division of Investments — Date: March 19, 1986

Approved by Commissioner: Lowell S. Thomas — Date: March 19, 1986
Agency: Commerce and Economic Development

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

10/25/85

3693W31986b

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: Regulatory Flexibility Act

Sponsor: Senator Fahrenkamp
Requestor: Tom Moyer
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Economic Development Advocates

Components: Office of Enterprise "Small Business Development"

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	147.2	147.2	147.2	147.2	147.2
TRAVEL	-0-	6.9	7.2	7.6	8.0	8.4
CONTRACTUAL	-0-	6.7	7.2	7.6	8.0	8.4
SUPPLIES	-0-	2.3	.8	.8	.9	.9
EQUIPMENT	-0-	11.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	174.6	162.4	163.2	164.1	164.9
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	174.6	162.4	163.2	164.1	164.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	174.6	162.4	163.2	164.1	164.9

POSITIONS:

FULL-TIME	-0-	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

See attached.

Prepared by: Bonnie Jo Borchick
Division: Office of Enterprise
Phone: 465-2018
Date: March 19, 1986

Approved by Commissioner: Lowell Thomas
Agency: Commerce and Economic Development
Date: March 19, 1986

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

10/25/85

3688W31986a

SB 429 (Revised)
Fiscal Note

			FY 87 COSTS
71000	PERSONAL SERVICES		
	Economist II	$ 55,500.00	147.2
	Research Analyst III	48,860.00	
	Regulations Specialist II	42,809.00	
	TOTAL	$147,169.00	
72000	TRAVEL		
	7 trips to Anchorage @ $352	$ 2,464.00	6.9
	(per diem 3 days @ $80 x 7)	1,680.00	
	2 trips to Seattle @ $452	904.00	
	(per diem 3 days @ $80 x 2)	480.00	
	2 trips to Fairbanks @ $422	844.00	
	(per diem 3 days @ $80 x 2)	480.00	
	TOTAL	$ 6,852.00	
73000	CONTRACTUAL		
	Telephone $75 x 12	$ 900.00	6.7
	Telephone (L.D.) $150 x 12	1,800.00	
	Subscriptions & membership	1,500.00	
	Postage fees $110 x 12	1,320.00	
	Forms & printing	1,200.00	
	TOTAL	$ 6,720.00	
74000	SUPPLIES		
	Stationery & copier supplies	$ 300.00	2.3
	Desk supplies	750.00	
	Typing supplies	150.00	
	Forms	300.00	
	Three calculators @ $250	750.00	
	TOTAL	$ 2,250.00	
75000	EQUIPMENT		
	3 workstations, 3 chairs (including side chairs, panels, overhead file cabinets @ $3,500 each)	$ 10,500.00	11.5
	3 four-drawer legal files w/locks @ $322.20 each	966.60	
	TOTAL	$ 11,466.60	
	FY 87 GRAND TOTAL		174.6

3688W31986a

		FY 88 COSTS	FY 89 COSTS	FY 90 COSTS	FY 91 COSTS
71000	PERSONAL SERVICES				
	Same as FY 87	147.2	147.2	147.2	147.2
72000	TRAVEL				
	Same as FY 87 x 5%	7.2	7.6	8.0	8.4
73000	CONTRACTUAL				
	Same as FY 87 x 5%	7.2	7.6	8.0	8.4
74000	SUPPLY				
	same as FY 87 x 5% (use desk supplies and calculators)	.8	.8	.9	.9
75000	CAPITAL/EQUIPMENT				
	None	-0-	-0-	-0-	-0-
	GRAND TOTAL	162.4	163.2	164.1	164.9

3688W31986a

Position Title		No. of Positions	Range/Step	Barg. Unit	Govt.	Approv.	Disapp
Research Analyst III		1	18A	G			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**	**Leg.**		
PFT	12		Juneau				

Justification

The Research Analyst III will obtain and analyze information and data on the consequence of new regulations. The analyst will also assist the the Economist II in his analysis and will report directly to the Economist II. This will require an understanding of both economics and regulations.

Type of Expenditure		Annual
1	2	3
Salary	37.3	
Benefits	11.5	
Premium Pay		
Other		
Total Personal Services		48.8
Travel		-0-
Contractual		2.2
Commodities		.8
Equipment		3.8
Other		
Total Cost		55.6

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	55.6
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ____ - ____ - ____ - ____ - ____

Request For New Position

Agency: Commerce & Economic Development
BRU: Economic Development Advocates
Component: Small Business Administration

Page ____ of ____
Revised Date

FY 87

1834M-1

Position Title			No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp
Regulations Specialist II			1	16A	G			
Time Status	Staff Months	RP Number	Location	Election District		Leg.		
PFT	12		Juneau					

Type of Expenditure		Amount
1	2	3
Salary	32.4	
Benefits	10.4	
Premium Pay		
Other		
Total Personal Services		42.8
Travel		6.9
Contractual		2.2
Commodities		.8
Equipment		3.8
Other		
Total Cost		56.5

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	56.5
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number _____

Justification

The Regulations Specialist II will represent this agency, Department of Commerce & Economic Development, in interpreting administrative statutes and regulations pursuant to AS 44.63.090. This position will perform technical research and evaluations of statutes, regulations, and amend proposed regulations, act as liaison between regulatory boards and/or commissions and the Department of Law in submitting regulations under the Alaska Administrative Procedure Act.

Request For New Position

Agency: Commerce & Economic Development
BRU: Economic Development Advocates
Component: Small Business Administration

Page ____ of ____
Revised Date

FY 87

1834M-2

Position Title	No. of Positions	Range/Step	Bargaining Unit	Gov.	Approv.	Disapp
Economist II	1	20A	G			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12		Juneau		

Type of Expenditure		Amount
1	2	3
Salary	42.8	
Benefits	12.7	
Premium Pay		
Other		
Total Personal Services		55.5
Travel		-0-
Contractual		2.2
Commodities		.8
Equipment		3.8
Other		
Total Cost		62.3

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	62.3
	I/A Receipts	1007	
	Program Receipts	1026	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number _____

Justification

The Economist II will be responsible for determining the economic consequences of new regulations. This will include obtaining or directing a research analyst to obtain the requisite data for analysis, quantitative analysis of the regulations, economic consequences, and economic policy alternatives and consequences as they impact business statewide.

Request For New Position

Agency: Commerce & Economic Development
BRU: Economic Development Advocates
Component: Small Business Administration

Page ____ of ____
Revised Date

FY 87

1834M-3

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429
Title: An Act relating to regulations that affect small businesses, small organizations, and small gov. juris.
Sponsor: Senator Fahrenkamp
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		20.9	20.9*	20.9*	20.9*	20.9*
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		20.9	20.9*	20.9*	20.9*	20.9*
CAPITAL						
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		20.9	20.9	20.9	20.9	20.9
FEDERAL FUNDS						
OTHER						
TOTAL		20.9	20.9	20.9	20.9	20.9

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill adds four new requirements to the process of adopting regulations to ensure special consideration that notices and public hearings are given to small entities.

Although Section 44.63.200(a) of the bill provides each agency with the flexibility to amend the definition of "small business" or "small organization" as appropriate (see attached)

Prepared by: Jennifer Strickler/Management Analyst — Phone: 465-2144
Division: Occupational Licensing — Date: 3-19-86

Approved by Commissioner: Lowell S. Sounsbury — Date: 3-20-86
Agency: Commerce and Economic Development

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

to the activities of the agency, Occupational Licensing has no method to differentiate small versus large businesses currently licensed.

Contractual expenditures will result from printing, postage and hearing costs of providing direct notification to all licensees within each professional occupation which has the potential of including "small entities".

*Costs have been repeated in subsequent years since, without actually experiencing the impact of this bill, it is extremely difficult to predict future charges for the variables involved.

It is expected that this legislation will delay the length of processing time currently required for each individual regulation project from approximately six months to nine months.

In addition, to comply with provisions to be included in each notice, much of the attention of the Regulations Specialist would be devoted to satisfying these new requirements.

The Division assists in the regulatory process of 23 licensing areas including regulations promulgated under the Centralized Licensing Act. During each year, approximately 20 regulation topics are handled within each licensing occupation.

Therefore, having to prepare an initial flexibility analysis, final flexibility analysis and conduct periodic review of regulations, in addition to the initial review of all existing regulations before 1991, may require a new Regulations Specialist position in the future to keep up with the increased workload.

Contractual costs were based on:

1. Printing costs at .36¢ per document multiplied by the number of affected licensees within each occupation;	$ 8.7
2. Postage costs of .22¢ multiplied by the number of affected licensees;	5.3
3. Public Notice costs printed in three newspapers of general circulation, which is standard practice within this agency;	2.1
4. Public Hearing costs using the teleconference network based on the standard two hour hearing at $50 per site, per hour, and assuming that the sites of Anchorage, Fairbanks and Juneau are on the network;	4.8*
	$20.9

*Note: Hearing costs for 4 licensing areas were based on a one hour teleconference because of the small number of licensees affected.

The above calculation is a summary of more detailed calculations on file with this agency.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 429

Title: An Act relating to regulations that affect small businesses, small organizations, and small governmental jurisdictions

Sponsor: Senator Fahrenkamp

Requester: .

Date of Request: March 17, 1986

FISCAL DETAIL

Agency Affected: Oil & Gas Conservation Comm.

BRU: Oil & Gas Conservation

Components: Operations

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: C.V. Chatterton
Division: Oil & Gas Conservation Commission

Phone: 279-1433
Date: March 19, 1986

Approved by Commissioner: Lonnie L. Lounsbury
Agency: _____

Date: 3/21/86

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

10/25/85

3694W31986a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : An Act relating to regulations that affect small businesses, small organizations and small government jurisdictions.
Sponsor : Senator Fahrenkamp
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		6.8	7.1	7.4	7.7	8.0
CONTRACTUAL		40.75	42.6	44.6	46.6	48.7
SUPPLIES		2.5	2.6	2.8	2.9	2.9
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		50.1	52.3	54.8	57.2	59.6
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		50.1	52.3	54.8	57.2	59.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached fiscal note analysis for the Divisions of Municipal and Regional Assistance and Community Development.

Prepared by : Jennifer Fate
Division : Commissioner's Office
Phone : 465-4700
Date : 4/4/86

Approved by Commissioner : Emil Notti
Agency : Community and Regional Affairs
Date : 4/4/86

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429
Municipal and Regional Assistance Division

EXPLANATION

The requirements of this bill will add a substantial amount of time, cost and effort to the regulation drafting and implementaton process. The language of the bill is somewhat vague so it is difficult to determine with a great deal of precision what the exact costs of this measure will be on this Division. The preparation and distribution of regulatory agendas, initial and final flexibility analyses, and more extensive notification and comment gathering procedures are additional tasks that will be costly. Quantifying the effects of proposed regulations and alternatives will also consume resources for which this agency does not presently budget.

This fiscal note reflects a desire to avoid hiring new staff as the costs of complying with this bill would occur on an intermittent basis. Much of the regulation drafting now done by the Division is performed by program staff. Much of this actual drafting would be contracted out to attorneys to allow staff to perform the new agenda, analysis, and notification duties.

ASSUMPTIONS

It is assumed that the Division will annually undertake three major regulation efforts related to new programs, or substantially revise regulations of existing programs. An annual inflation rate of 5% is applied to fiscal years after FY 87.

FISCAL ANALYSIS

Travel		1,800
3 additional trips per year for program managers to conduct open conferences or public hearings as required under AS 44.63.060. 3 trips @ $600 per (includes per diem)	1,800	
Contractual		22,000
Professional Services - attorney fees for regulation drafting 120 hours @ $125 per	15,000	
Contractual (cont'd)		
Communications -		
Toll call for teleconference public hearings and open conference	5,000	
Postage for additional notification	1,000	
Advertising and printing	1,000	
Supplies		500
Office Supplies for Notification	500	

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

Division of Community Development

Explanation:

The implementation of this bill would substantially increase the cost of regulation drafting and implementation. Since regulations are drafted and updated on an irregular basis, it is difficult to estimate the actual increased cost for any given year. However, we can say with certainty that for each set of regulations drafted or updated, the cost would increase by at least one third. The additional expense can be attributed to the preparation and distribution of regulatory agendas, initial and final flexibility analyses, and the increased notification and comment solicitation procedures.

Assumptions:

For purposes of responding to this request we are assuming that DCD will be involved with three separate regulation draftings or updates during each of the coming five (5) years. Under the present system we would estimate that this activity would require the equivalent of one staff person's full time attention for ninety (90) days. We would also estimate that the new requirements included in SB 429 would increase the activity by one third, or the equivalent of one person's full time attention for thirty (30) days. Because the increased activity has legal implications we would want to budget for 150 hours of contractual legal services.

We estimate that each of the three separate legal activities would require at least three and a half (3 ½) trips, so we have included a total of ten (10). We also estimate that the combined cost of supplies itemized in the fiscal note would cost $2,000.00. The cost increase for each year reflects a 4% increment. We believe our estimates are probably conservative.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : "An Act relating to regulations that affect small businesses, organizations, and governmental jurisdictions"
Sponsor : Senator Fahrenkamp
Requestor : _____
Date of Request : March 28, 1986

FISCAL DETAIL

Agency Affected : Department of Corrections
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Nadine Winters
Division : Special Assistant
Phone : 465-3376
Date : March 28, 1986

Approved by Commissioner : N. Winters
Agency : Department of Corrections
Date : March 28, 1986

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB - 429
Title : ...regulations that affect... small governmental jurisdictions...

Sponsor : Fahrenkamp
Requestor : Senate Labor and Commerce
Date of Request : March 25, 1986

FISCAL DETAIL

Agency Affected : Department of Education
BRU : Executive Administration

Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		33.6	33.6	33.6	33.6	33.6
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL		5.0	5.0	5.0	5.0	5.0
SUPPLIES		5.0	5.0	5.0	5.0	5.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		46.6	46.6	46.6	46.6	46.6
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		46.6	46.6	46.6	46.6	46.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Personnel costs are a result of administrative activities required by first section 2. These will require the addition of an administrative assistant. Nonpersonnel costs are a result of increased number of publications and public hearings.

Prepared by : Steve Hole — Phone : 465-2800
Division : Commissioner's Office — Date : March 27, 1986

Approved by Commissioner : Marshall L. Lind — Date : March 27, 1986
Agency : Department of Education

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : Regulations affecting small businesses, et al.

Sponsor : Senator Fahrenkamp
Requestor : Senators Fahrenkamp & Zharoff
Date of Request : 3/24/86

FISCAL DETAIL

Agency Affected : ADEC
BRU : Environmental Quality

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		72.7	73.0	73.3	73.6	73.9
TRAVEL		1.5	1.5	1.5	1.5	1.5
CONTRACTUAL		5.0	3.0	3.0	3.0	3.0
SUPPLIES		1.5	1.6	1.7	1.8	1.9
EQUIPMENT		3.6	.5	.5	.5	.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		84.3	79.6	80.0	80.4	80.8
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		84.3	79.6	80.0	80.4	80.8
FEDERAL FUNDS						
OTHER						
TOTAL		84.3	79.6	80.0	80.4	80.8

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached

Prepared by : Billie Trent
Division : Office of the Commissioner
Phone : 465-2600
Date : 3/27/86

Approved by Commissioner : Bill Ross
Agency : Environmental Conservation
Date : 3/28/86

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 420

While the Department of Environmental Conservation certainly supports and encourages the concept of responsiveness of government to the public it serves, the ability to do so will (for this legislation, at least) require the hiring of a Research Analyst III and a half-time Clerk Typist III. We also envision the need for minimal contractual services when proposed regulatory changes involve complex matters affecting a diverse population.

We would point out that many of our regulations have federal mandates behind them, requiring federal approval before promulgation. If such regulations were excluded from the requirements of AS 44.63.020 and AS 44.63.030 (although AS 44.63.030(a)(1) and (2) represent theories of responsible rule-making which we support), we could reduce our fiscal note to a half-time Research Analyst III with minimal contractual services.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Research Analyst III	1	18A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	37,596	
Benefits	12,324	
Premium Pay		
Other		
Total Personal Services		49,920
Travel		1,500
Contractual		2,000
Commodities		1,000
Equipment		2,000
Other		
Total Cost		56,420

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	56,420
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

Because of the complex nature of this agency's programs, and the wide variety of entities and individuals served and affected, this position's expertise would be required to provide the various analyses and reports and summaries required by the legislation.

This position would coordinate data from staff who write regulations, from affected entities, and from other appropriate sources, analyzing impace and making recommendations to staff; preparing required analyses, documents, and notices, with staff input and evaluation as to correlation between data, federal requirements, and the like.

For more complex matters, this position would work closely with an economics-type contractor to achieve the provisions of the law.

Costs associated with this position include average per-employee costs for contractual and commodities. Equipment expense for a desk, chair, etc. are a one-time expenditure.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component:

Revised Date

FY 87

Position Title	Clerk Typist III			No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
				1	8A	GGU			
Time Status	Staff Months	RP Number		Location	Election District				
Half-time	6			Juneau					

Type of Expenditure		Amount
1	2	3
Salary	10,153	
Benefits	3,851	
Premium Pay		
Other		
Total Personal Services		14,004
Travel		
Contractual		2,000
Commodities		1,000
Equipment		1,600
Other		
Total Cost		18,604

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	18,604
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position would provide clerical support to the Research Analyst III and regulations-writing staff in handling the clerical duties imposed by this legislation, including maintenance of the records accumulated.

Costs associated with this position are average per-employee costs. The equipment expense for a desk, chair, etc. is a one-time expenditure.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component:

Revised Date

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : An Act relating to regulations that affect small businesses, small organizations, & small gov. jurisdictions
Sponsor : Senator Fahrenkamp
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Health & Social Services
BRU : DHSS Administrative Services
Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		100.2	103.7	107.3	111.1	115.0
TRAVEL		9.5	9.8	10.1	10.5	10.9
CONTRACTUAL		9.3	9.6	9.9	10.2	10.6
SUPPLIES		.5	.6	.7	.8	.9
EQUIPMENT		14.9				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		134.4	123.7	128.0	132.6	137.4
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		134.4	123.7	128.0	132.6	137.4
FEDERAL FUNDS						
OTHER						
TOTAL		134.4	123.7	128.0	132.6	137.4

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by : Joanne C. Clark JCC
Division : Budget & Finance
Phone : 465-3082
Date : 4/4/86

Approved by Commissioner : Jan R. Orr
Agency : Dept. of Health & Social Services
Date : 4/4/86

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

10/25/85

SB 429

An assumption is made that the Department has an average of 10 major new regulations or regulations amendment projects yearly and 20 smaller or emergency regulations projects yearly.

A team of three new staff persons would be needed to work with the Special Assistant to the Commissioner for Legal Affairs. This team would aid staff of the divisions promulgating regulations in preparing the flexibility analyses required in the bill and setting up the plans for regulations review.

Summary of Costs -- FY87

Personal Services - salary, benefits, overtime for 3 staff	100.2
Travel - for hearings, meeting with affected public	9.5
Contractual - communications, risk management, equipment maintainence, advertising	9.3
Supplies - office supplies	.5
Equipment - 3 desks, 3 chairs, 3 calculators, 1 IBM Displaywriter, 1 bookcase, 1 file cabinet	14.9
TOTAL	134.4

Costs for years beyond FY87 are adjusted by 3.5% yearly. Equipment costs are one time only.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Regulations Specialist II	1	16A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PET	12		AWA		

Type of Expenditure		Amount
1	2	3
Salary	32.424	
Benefits	8.002	
Premium Pay		
Other		
Total Personal Services		40.4
Travel		2.5
Contractual		3.5
Commodities		0.2
Equipment		1.8
Other		
Total Cost		48.4

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	48.4
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position would work with the Special Assistant and division staff to review existing regulations, prepare flexibility analysis, participate in hearings, and revise regulations as necessary. This position would be responsible for determining which entities would be affected by a regulation and assuring that those entities had adequate notice.

Request For New Position

Agency: Health & Social Services
BRU: DHSS Admin. Services
Component: Commissioner's Office

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Management Analyst III	1	18A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PPT	12		AWA		

Type of Expenditure		Amount
1	2	3
Salary	37.356	
Benefits	9.182	
Premium Pay		
Other		
Total Personal Services		46.5
Travel		7.0
Contractual		3.5
Commodities		0.2
Equipment		1.6
Other		
Total Cost		58.8

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	58.8
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ . __ __ . __ __ . __ __ . __ __

Justification

This position would work with the Special Assistant and division staff to determine effect of regulations on small businesses, small organizations, and small governments. This person would have to attend hearings, talk to persons potentially affected by regulations, and work with the Regulations Specialist to determine impacts. This person would also work on preparation of initial and final flexibility analysis.

Request For New Position

Agency: Health & Social Services
BRU: DHSS Admin. Services
Component: Commissioner's Office

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	1	8A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PPT	6		AWA		

Type of Expenditure		Amount
1	2	3
Salary	9,786	
Benefits	2,681	
Premium Pay	800	
Other		
Total Personal Services		13.3
Travel		
Contractual		2.3
Commodities		0.1
Equipment		11.5
Other		
Total Cost		27.2

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	27.2
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position would provide typing, filing, and document tracking support for the regulations team. The position would prepare required notices and assure that they were filed properly.

Request For New Position

Agency Health & Social Services
BRU DHSS Admin. Services
Component Commissioner's Office

FY 87

Page of
Revised Date

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revisic ate : _____

REQUEST

Bill/R lution No. : SB 429
Title : An act relating to regulations that effect small businesses; small organizations, etc.
Sponsor : Fahrenkamp
Requestor : Senate Labor & Commerce
Date of Request : 2/18/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Commissioner's Office

Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		72.4	72.4	72.4	72.4	72.4
TRAVEL						
CONTRACTUAL		34.0	34.2	34.3	34.5	34.7
SUPPLIES		1.5	1.6	1.6	1.7	1.8
EQUIPMENT		3.2	-	-	-	-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		111.1	108.2	108.3	108.6	108.9
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		111.1	108.2	108.3	108.6	108.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

(See Attached)

Prepared by : Eileen Plate
Division : Commissioner's Office
Phone : 465-2700
Date : 3/28/86

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 3/28/86

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

In order for the department to comply with the provisions of SB 429, the addition of two staff members would be necessary. A Regulations Specialist II and a Clerk Typist III, both located in Juneau, would be necessary for the additional research, analyses and documentation required by the bill. (See attached New Position Justification Forms for detail).

More specifically, the Regulation Specialist would be responsible for developing the Department's agenda of proposed regulations twice yearly, and for the review of departmental regulations before July 1, 1991. Also, this position would be responsible for coordinating with consulting firms to prepare the initial "flexibility analysis" on all proposed regulations. Expertise does not currently exist in the department to complete this type of analysis. We estimate $30,000 in contracts would be required each year. The Regulations Specialist would be able to prepare the final analysis.

Also required is additional published information when notices of regulations are placed in newspapers. We estimate an addition of $5,000 in advertising expenses each year to meet these requirements.

Assumptions:

1. The department would have 10 regulation proceedings a year that would fall under the requirements of this bill.

2. Effective date of July 1, 1986.

3. Annual inflation of 4% on non-personal service items.

Position Title			No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Regulations Specialist II			1	16A	GGU			
Time Status	Staff Months	RP Number	Location	Election District		Leg.		
PFT	12		Juneau					

Type of Expenditure		Amount
1	2	3
Salary	33,660	
Benefits	10,775	
Premium Pay		
Other		
Total Personal Services		44,436
Travel		0
Contractual		2,000
Commodities		500
Equipment		1,600
Other		
Total Cost		48,535

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	48,535
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position would be responsible for coordinating the department's activity in meeting the requirements of this bill. The person would review all proposed regulations to determine if they are justified and develop 1) the agenda of proposed regulations twice yearly and 2) a plan for periodic review of the Department's regulation as required under this bill. The position would contract with consulting firms for the completion of the initial "flexibility analysis". This position would complete the final "flexibility analysis".

Costs associated with this position would include average per-employee costs for contractual and commodities. The equipment expense for a desk, chair, etc. would be a one-time cost.

Request For New Position

Agency Labor
BRU Commissioner's Office
Component Commissioner's Office

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	1	8A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12		Juneau		

Type of Expenditure		Amount
1	2	3
Salary	20,316	
Benefits	7,702	
Premium Pay		
Other		
Total Personal Services		28,018
Travel		0
Contractual		2,000
Commodities		1,000
Equipment		1,600
Other		
Total Cost		32,618

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	32,618
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position would handle the clerical duties associated with this bill. The position would keep records of all proposed actions on all regulations in the department and assure the additional documentation requirements of this bill are met. This person would make sure all correspondence was properly handled and type the justifications, file logs and other required documents.

Costs associated with this position are average per employee costs. The equipment expense for a desk, chair, cabinets, etc. would be a one-time cost.

Request For New Position

Agency: Labor
BRU: Commissioner's Office
Component: Commissioner's Office

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : "An Act relating to regulations that affect small businesses..."

Sponsor : Sen. Farenkamp
Requestor : Governor's Office/OMB
Date of Request : April 3, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Legal Services

Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis. -

Richard I. Pegues

Prepared by : Richard I. Pegues, Director — Phone : 465-3672
Division : Administrative\Services Division — Date : 4/4/86

Richard I. Pegues /For/

Approved by Commissioner : Harold M. Brown — Date : 4/4/86
Agency : Department of Law

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

This bill adds new sections to the Administrative Procedure Act that require that agencies adopting regulations, under the Act, consider the probable economic effect of the proposed action on small businesses and small municipalities. Although these changes may cause a fiscal impact for several departments, the Department of Law adopts few regulations of its own, and the bill will probably not have a direct fiscal impact on the department. The department does, however, review all regulations prior to their adoption, and it sometimes assists other departments in drafting their regulations. To the extent that we are requested to advise other agencies about the sufficiency of their efforts to conform to the economic analysis provisions in this bill, we can expect innumerable requests for advice. These requests will probably result in our regulations and legislative drafting staff becoming more swamped than they already are.

Because we cannot accurately predict the additional workload that will occur if this bill becomes law, we are not requesting fiscal note funds at this time. Such a request may become necessary in the future, and the potential for this additional cost should be noted while the bill is being considered.

MEMORANDUM State of Alaska

TO: Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

DATE: 27 March 1986

FILE NO:

TELEPHONE NO: 269-1565

FROM: MG Edward G. Pagano
The Adjutant General

SUBJECT: SB 429 ("flexibility analysis" for small businesses)

The Department of Military and Veterans Affairs has had virtually no occasion to publish regulations which affect businesses; large or small. Accordingly, the Department does not feel it would be appropriate to take a position either favorable or contrary to this bill. Although there are undoubtedly indirect costs associated with the regulatory process which impact upon the Department, there is no direct fiscal impact and accordingly a "zero" fiscal note is appropriate from the Department of Military and Veterans Affairs.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill 429
Title : "An Act relating to regulations that affect small businesses, small organizations, etc."
Sponsor : Fahrenkamp
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Military & Vets Affairs
BRU : Alaska National Guard

Components : Office of the Adjutant General

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No fiscal impact.

Prepared by : Richard L. Rountree, Director
Phone : 465-4600
Division : Administrative & Support Services
Date : 3/28/86

Approved by Commissioner : For Richard L. Rountree Edward G. Pagano
Date : 3/28/86
Agency : Dept. of Military & Veterans Affairs

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : "An Act relating to regulations that affect small businesses, small organizations, and small governmental jurisdictions..."
Sponsor : Senator Fahrenkamp
Requestor :
Date of Request : 3/28/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : DPS Administration

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		62.0	65.1	68.4	71.8	75.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		62.0	65.1	68.4	71.8	75.4
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		62.0	65.1	68.4	71.8	75.4
FEDERAL FUNDS						
OTHER						
TOTAL		62.0	65.1	68.4	71.8	75.4

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This Department's Divisions of Motor Vehicles, Fire Prevention and Alaska State Troopers are affected by this bill. The Alaska Police Standards Council and the Council on Domestic Violence and Sexual Assault would also be affected.

(continued on page 2)

Prepared by : Frank N. Gorham — Phone : 465-4322
Division : Commissionr's Office — Date : 3/27/86

Approved by Commissioner : [signature] — Date : 3/27/86
Agency : Public Safety

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

The Department's approach to the requirements of the Act would be to contract research/analytical expertise to develop impact statements as well as flexibility analysis as related to small entities, and to make periodic review assessments of regulations as would be indicated by the Department's plan published in the Alaska Administrative Journal. The contractual expertise time necessary to meet the requirements found in this piece of legislation would be estimated at 90 days per year.

Since the costs would be spread out amongst the various entities of the Department, the contractual costs would be placed in the Commissioner's Office and dispersed as necessary.

A 5% inflation factor is added beginning FY88.

300 Contractual		$62.0
Research/analysis		
90 days @ $100/day for 6 hours per day	$54.0	
Incidental computer use	5.0	
Incidental travel related to above	3.0	

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 429
Title : Relating to Regulations Affecting Small Businesses, Organizations and Governments
Sponsor : Lanreman
Requestor : Attorney General
Date of Request : _____

FISCAL DETAIL

Agency Affected : DOT&PF
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		10.0	10.0	10.0	10.0	10.0
TRAVEL		5.0	5.0	5.0	5.0	5.0
CONTRACTUAL		6.0	6.0	6.0	6.0	6.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		21.0	21.0	21.0	21.0	21.0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		21.0	21.0	21.0	21.0	21.0
FEDERAL FUNDS						
OTHER						
TOTAL		21.0	21.0	21.0	21.0	21.0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attachment -

Edward B. Thompson, Director 3/27/86

Prepared by : Harry Keller — Phone : 465-2951
Division : Engineering & Operations Standards — Date : 3/27/86

Approved by Commissioner : _____ — Date : 3/31/86
Agency : DOT/PF

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 429

This proposed legislation is apparently an attempt to require those agencies with regulation adoption authority to be more responsive to small businesses, small organizations and small governmental jurisdictions.

The additional costs involving the regulation adoption process is based on the assumption that the Department would propose three regulation changes per year and review two existing regulations per year as required under Sec. 44.63.070 of the bill.

Expenditure Detail

1. Personal Services for review of existing regulations, attendance at additional hearings and analysis of hearing comments and testimony. (10.0)

2. Travel for holding additional hearings and meetings. (5.0)

3. Contractural: additional advertising, mailouts and telephone to notify affected entities of reviews, hearings and meetings. (6.0)

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: SB 429

APPROVED: R. J. Knapp
Commissioner

TITLE: Relating to Regulations Affecting Small Businesses, Organizations and Governments

DATE: 3/28/86

SB 429 apparently is an attempt to require those agencies with regulation adoption authority to be more responsive to small businesses, small organizations and small governmental jurisdictions during the adoption process.

The bill would make the regulation adoption process unnecessarily cumbersome and burdensome and is superfluous as the existing Administrative Procedures Act has sufficient language to require proper notification of all affected parties and require that affected parties be given adequate opportunity to present statements, arguments or contentions either orally or in writing on proposed regulations.

This Department feels that existing statutes are adequate to properly control the regulation adoption process and opposes SB 429.

For further information call Susan Fleischhauer at 465-3900.

CHAIRMAN'S INFORMATION: CSSB 429(L&C)

1) BILL TITLE: "An act relating to regulations that affect small businesses and small municipalities; and providing for an effective date."

a) Introduced: Sen Fahrenkamp

b) Co-sponsors:

2) INTENT: This measure concerns the promulgation of regulations under the Administrative Procedures Act and imposes duties on agencies before adopting, amending, or repealing regulations. These duties include an economic analysis on the impact of regs on "small entities", "small businesses" and "small municipalities".

N.B. With the projected budget axe to the Administrative Journal, the bill will have a major flaw.

FISCAL NOTE: We currently have 12 fiscal notes from some of the affected agencies, however the agencies have not had a chance to prepare F/N's on the new CS.

3) ADDITIONAL REFERRALS: Judiciary, ~~Finance~~ and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to move for the adoption of the L&C CS.

REGULATORY FLEXIBILITY

States are requiring their agencies to perform an analysis of the impact any proposed regulation would have on small business and adopt administrative rules which minimize the negative impact and reflect the special needs and problems of small business.

Discussion: Regulatory flexibility legislation seeks to make state agencies sensitive to new regulatory burdens which may have a crippling impact on the ability of small businesses to create jobs.

Regulatory Flexibility legislation requires the state regulating agency to consider the following measures for reducing impact on small business:

(1) establish less stringent compliance or reporting requirements;
(2) establish less stringent schedules or deadlines for compliance or reporting requirements;
(3) consolidate or simplify compliance with the rule and regulation or reporting requirements;
(4) establish performance standards to replace design or operational standards; or
(5) exempt small businesses from any or all requirements of the rule and regulation.

Often small businesses have insights into the situations being regulated which affect them, and the regulators should make every effort to involve them in the deliberations on the regulation.

The Regulatory Flexibility Act of 1980 imposes this requirement on federal regulators. According to a 1983 study by the U.S. Small Business Administration's Office of Advocacy, twenty-one states have adopted legislation which would require this regulatory review, and six states currently have it under consideration.

Regulations imposed by government agencies may have a greater impact on small business than on their larger competitors. For example, while regulatory controls are necessary and appropriate in many areas, regulators must be sensitive to the needs of small business in devising regulations and the cumulative affect of regulations on a small business. This is particularly important since small business is the primary generator of new jobs -- a trend that is projected to continue according to most economists.

U.S. Small Business Administration
Office of the Chief Counsel for Advocacy

March 1985

SBA

Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act

Executive Summary

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) (RFA or the Act) was enacted to ensure that Federal regulators consider the impact of government regulations upon small business. The Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration is charged by Congress to oversee implementation of the RFA. In the four years since the law's enactment, the Office of Advocacy has been instrumental in increasing decisionmakers' awareness of the regulatory problems confronting small business.

Significant strides were made in 1984 by the Office of Advocacy and business community to promote small business interests before regulatory agencies, the Congress and the courts. The 98th Congress expanded the opportunity for small business regulatory analysis by enacting the "Small Business and Federal Procurement Competition Enhancement Act of 1984" (P.L. 98-577). This law expands notice and comment rulemaking procedures to include procurement rules issued by Federal agencies. Because the RFA applies to all rulemakings that must follow notice and comment procedures, the procurement regulations of agencies such as the General Services Administration and Department of Defense will be subject to the RFA. At the same time, the Office of Management and Budget has targetted small business procurement-related paperwork for special scrutiny.

The U.S. Court of Appeals for the D.C. Circuit reaffirmed the reviewability of agency compliance with the RFA. In Thompson v. Clark, 741 F.2d 401 (D.C. Cir. 1984), the court affirmed its decision in Small Refiner Lead Phase-Down Task Force v. Environmental Protection Agency, 705 F.2d 506 (D.C. Cir. 1983), which held that a court may review the content of any regulatory flexibility analysis in determining the reasonableness of a rule and may overturn a rule due to a defect in such analysis. Thompson v. Clark provides another step in the evolving line of cases defining the scope of judicial review of compliance with the Act.

This report reviews agency compliance with the RFA in 1984. In general, agencies have become increasingly aware of the effects that government regulations may exert upon small business. Agencies have improved regulatory flexibility analyses by using better economic data, by engaging in more extensive outreach efforts, by devising internal agency regulatory procedures for complying with the Act, and by increasing communication with the Office of Advocacy. This report details agency reliance on the above-mentioned analytic and regulatory tools to achieve

APPENDIX I

State Efforts to Reduce Small Business Regulatory Burdens

Following the lead of the Federal Government, many states have enacted legislation and initiated programs to promote small business competition. Recognizing the need to reduce regulatory burdens and increase small business' participation in the rulemaking process, many states have enacted Regulatory Flexibility Acts (RFAs) and Paperwork Reduction Acts (PRAs). In 1984, 26 states had RFAs and 16 states had PRAs (see list that follows). Such legislation is currently under consideration in several states.

In 1984, the following states had regulatory flexibility measures in effect, either by legislation or executive order:

Arizona
California
Colorado
Delaware
Indiana
Iowa
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Montana
New Hampshire
New York
Ohio
Oregon
Pennsylvania
Rhode Island
Texas
Utah
Virginia*
Washington
West Virginia
Wisconsin

The following states had paperwork reduction legislation or executive orders in effect in 1984:

Kentucky
Louisiana
Massachusetts
Michigan
Minnesota
Missouri
New Jersey*
New York
North Dakota
Ohio
Oregon
Pennsylvania
Tennessee
Virginia*
West Virginia
Wisconsin

*By executive order.

To help achieve the goal of lessening regulatory hardships on small business, an increasing number of states have established state small business offices, government advisory councils, task forces, and state small business conferences. More and more states are publishing reports on small business and are even developing state small business data bases.

These programs, in conjunction with the significant number of state programs that provide small businesses with financial and management assistance, should strengthen small business' position in the economy and its ability to create an increasing number of our nation's new jobs.

APR 4 1986

FAIRBANKS NATIVE ASSOCIATION, INC.
310½ First Avenue
Fairbanks, Alaska 99701
Phone: (907) 452-1648 / 456-5151

4/2/86

Honorable Bettye Fahrenkamp
Alaska Senate
Pouch V Juneau 99811

Dear Senator Fahrenkamp:

On behalf of FNA's Economic Development program, I would like to commend you and extend our appreciation for your bill #429, to require consideration of alternative regulatory approaches in light of the impact of proposed regulations on small businesses. This bill is a good example of the wise and helpful leadership you have long provided.

I spoke with Mr. David Dougherty, the federal representative (SBA Seattle) who handles the federal bill; he feels such laws work well and achieve important benefits. Mr. Dougherty was my first supervisor many years ago (1970); he is an insightful and productive person, who has done many things to make government more efficient and productive. His insights and positive work have earned him a good respect and regard.

With so many areas where our businesses are hurting to survive, and so many adverse impacts of regulations, this bill can be an important benefit. Thank you for your attention to this need.

Sincerely,

Bob Keller

Robert Lee Keller
Director, Business & Manpower Development Dept.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSSB 429(L&C): Sectional Analysis

Section 1) Expands the duties of the Admin Reg Review Committee to include monitoring compliance with economic analysis requirements. Additionally, the committee would make recommendations on the adequacy of analyses developed by agencies, and the agencies response to public testimony.

Section 2) Adds a new section to the Admin Procedures Act. During January and July of each year, agencies shall publish a "regulatory flexibility agenda" in the Administrative Journal. This agenda shall describe the subject of regs likely to have economic impact on small entities, summarize the objective of the reg, and provide the name and phone number of an official who has knowledge of these items.

Agency may act on a matter not included in the agenda, or may decline to consider or act on a matter in the agenda.

Section 3) Adds a new section on ECONOMIC ANALYSIS FOR SMALL ENTITIES.

Before publishing a notice to adopt, amend, or repeal a reg, the agency shall analyze the probable economic impact on small businesses and small municipalities.

The analysis must consider the type and number of small entities affected as well as the cost and benefit to those types. Also requires consideration of the probable economic effects, and a review of the reasons for the reg, in light of the economic effects. Analysis shall also identify less costly means of achieving the goal, and identify current regs that may duplicate, overlap, or conflict with the proposed regs.

After the close of public proceedings the agency shall prepare a final analysis. Final analysis to contain a brief summary of the economic analysis, and the agency's comments on oral or written public testimony. Comments on testimony must identify changes made in response to the testimony, and the reasons for rejecting a proposal which was not adopted by the agency. Agency may summarize these comments to avoid duplication and unnecessary detail.

If an agency certifies in writing that a reg will not have a significant economic impact on small entities, the agency shall make a brief statement of noncompliance with these requirements. The written certification must be filed with the Lt. Governor.

Agency may consider closely related regs as one reg for the purposes of this section.

Analyses are not subject to judicial review, and actions on regs may not be invalidated by the contents of these analyses.

Defines "small business", "small entity", and "small municipality".

Section 4) Amends the Admin Procedures Act by requiring a summary of the economic analysis and the address where a complete copy of the analysis may be obtained.

Section 5) Prior to January 1, 1991, agency shall review regs in effect on 7/1/86 which have significant economic impact on a substantial number of small entities. Purpose of the review will be to determine the effect of the regs and whether they should be continued, amended, or repealed.

If the head of an agency determines they can not complete the review by 7/1/91, he may certify in writing and recieve an additional year for said review.

In reviewing the regulations, the agency shall consider the need for the reg, public complaints about the reg, and the complexity of the reg. Review shall also consider whether the reg duplicates, overlaps, or conflicts with other regs, and the length of time since the reg has been evaluated.

Section 6) Applicability of section 3

Section 7) 7/1/86 effective date.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4197 SLAB SB 437 - SB 455

1077

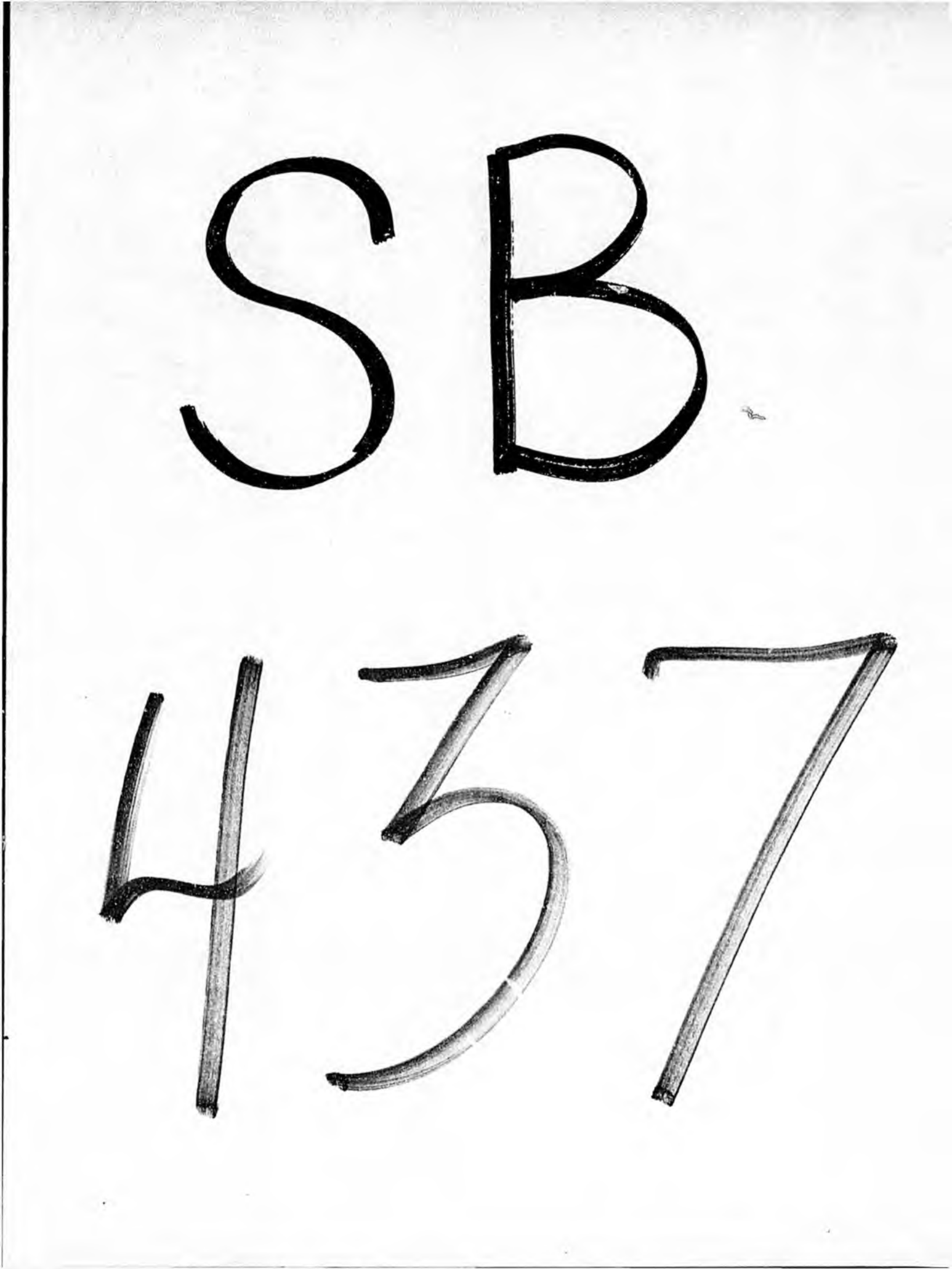
RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)


SB
437

Department of Commerce & Economic Development / POSITION PAPER

SB 437: "An Act relating to the practice of denturity."

This legislation provides for the licensing of denturists.

Sections 7, 8, and 9 of this bill amend the Insurance Code to reflect the licensing of denturists. The sections impacted are primarily designed to prevent unfair discrimination against specified health care providers which, with this bill, would include denturists. We have no objection to this legislation.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 3/24/86

John L. George, Director of Insurance

Date: 3/27/86

1t0262K

Department of Commerce & Economic Development / POSITION PAPER

SB 437: An Act relating to the practice of denturitry.

The bill specifies criteria for licensure and charges the department with the responsibility to administer the licensing function.

The Department of Commerce and Economic Development, Division of Occupational Licensing is opposed to this bill. The department feels the bill is premature and the department is opposed to accepting responsibility for licensing a health profession without a board. If the bill were to be enacted, we would recommend that the licensing of denturists and denturitry interns be the responsibility of the Board of Dental Examiners, with the staff support of the Division of Occupational Licensing. Attached are technical amendments which would make the language of the bill conform to that of current licensing statutes.

Discussions with dentists, one of who is a member of the Board of Dental Examiners, indicate that licensing of denturists might not be the best interest of the public as the bill is written. Information received indicates that the practice of denturitry requires minimal education in many aspects of the provision of dental care. For example, denturitry programs not provide training in biological and physiological aspects of patient care, including life saving devices and techniques. Therefore, according to the dentists, a denturist may be proficient in the making of dentures; however, if dentures are prepared without taking into consideration the results of a dental examination patient care could be at a sub-standard level and could result in oral cancer, jaw problems and other complications.

The services of denturitry may appeal to the general public as a cost-savings measure. However, the public is unlikely to be aware of the differing standard of dental care being provided by denturists as opposed to dentists. One means for overcoming these objections and potential public protection problems would be to require a complete dental examination by a dentist prior to providing denturitry services. This has been suggested to the Division by members of the dental community.

Information received from an out-of-state denturist in support of licensing legislation stated that at the present time there are no practicing denturists in the State of Alaska. However, passage of licensing legislation would attract interest of at least two out-of-state practitioners. Because of the small number of practitioners involved, costs to administer the licensing are low, although a denturitry examination would need to be developed or procured. However, the absence of public demand for licensing of this occupation indicates that government regulation is not required at this time.

Nancy Dunn, Director 465-2534
Division of Occupational Licensing
Date: 4/29/86

Loren H. Lounsbury, Commissioner
Department of Commerce and
Economic Development
Date: 4/a7/86

JS/cw3072c
42886b

PROPOSED AMENDMENTS TO SB 437
An Act relating to the practice of denturitry.

Throughout the bill, the terms certificate, license and registration are used interchangeably. To be consistent with the intent of the legislation in establishing licensure, and given that each individual term is a separate method of regulation, the terms licensing or licensure should be used.

Page 3, line 27: Delete "certificate of registration" and insert "License"

Page 4, lines 5 and 6: Delete "or will have graduated by the date of the examination". Arrangements for examinations must be made in advance to order the exams, arrange for exam sites and public notice the examinations. It is administratively difficult to verify graduation credentials at the last minute and particularly on the day of the examination.

Page 5, line 17: Delete "and a certificate of registration"

Page 5, line 18: Add "...applicant who meets the requirements of 08.87.020(a)(3) and pays..."

Page 5, line 19: Delete "and certificate"

Page 5, lines 27 and 28: Delete "certificate of registration" and insert "license".

Page 5 line 29: Delete "licensee's registration certificate" and insert "license".

Page 6, lines 1 - 7: Amend to read:

> "occupational licensing shall mail a form for renewal [OF THE CERTIFICATE] to each licensed denturist. Failure to receive the renewal [REGISTRATION] form does not exempt a licensee from renewing the license [CERTIFICATE].
>
> (b) A licensee who practices in an established office with an address other than the address shown on the license [FOR WHICH THE LICENSEE'S REGISTRATION CERTIFICATE IS ISSUED] shall obtain a branch office registration [CERTIFICATE] for each office.

Page 6, lines 8 - 11: Amend to read:

> (c) The department may not renew a branch office registration [CERTIFICATE] and shall revoke the license of a denturist who fails to renew the registration and license prior to the expiration date [APPLY FOR RENEWAL OF CERTIFICATION WITHIN ONE YEAR OF EXPIRATION].

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 437
Title: Relating to the practice of denturity
Sponsor: Kerttula
Requester:
Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: March 19, 1986

Approved by Commissioner: Frank H. Murkowski
Agency: Commerce and Economic Development
Date: March 19, 1986

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

10/25/85

APR 3 1986

ARTHUR R. RORAFF, D.D.S., M.S.
DIPLOMATE, AMERICAN BOARD OF PROSTHODONTICS
FELLOW, AMERICAN COLLEGE OF PROSTHODONTISTS

March 25, 1986

Senator Fred Zharoff:
Senate Labor and Commerce Committee
Room 121 Capitol
Juneau, Alaska 99811

RE: Senate Bill #437, "An Act relating to the practice of denturity"

Dear Senator Zharoff:

I believe this bill will cause irreversible harm to the health of many Alaskans. Some of this harm will occur over a period of years, caused by people with insufficient knowledge and skill to evaluate, plan, and provide an adequate health care service.

As the only Diplomate of the American Board of Prosthodontics in private practice in Alaska, a specialist in denture services for over 25 years, and a dentist for over 30 years, I am strongly opposed to this bill for the following reasons:

1. Excellent denture service is already being provided by an abundance of available, fully qualified, well-trained, licensed dentists practicing in Alaska.

2. Senior citizens requiring denture services almost always present complicating geriatric problems which necessitate special care and treatment.

In conjunction with my position as an Associate Director, Dental Programs, at Anchorage Community College, it is my privilege to examine patients who request care through Mabel T. Caverly Senior Citizen Center. I estimate about 80% of these patients require prosthodontic care; most of this prosthodontic care is so difficult and complicated it would challenge advanced graduate students in leading dental colleges. Much of this required care that I observe needs to be accomplished in a team with other specialists, including physicians, and all other dental specialists. Many require corrective surgery for problems caused by old dentures. These patients have special problems which cannot be treated by laboratoy technicians, or anyone with minimal training. Incidently, my time for these services at Anchorage Community College is being provided free.

3. The courses to provide denture service taken by dentists during dental school are the mimumum considered necessary.

The long dental school curriculum is designed to provide sufficient education so a doctor can safely and reliably treat routine patients. This curriculum not only includes many intense pre-dental school basic science requirements, but also two years of preclinical physiologic sciences in dental school, many times in the same classes with medical students. And only then, with this understanding and knowledge, do dental students begin treating patients under supervision.

2550 SPENARD ROAD, SUITE 206 ANCHORAGE, ALASKA 99503
TELEPHONES: OFFICE: (907) 272-4143 HOME: (907) 345-6905

ARTHUR R. RORAFF, D.D.S., M.S.
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FELLOW, AMERICAN COLLEGE OF PROSTHODONTISTS

4. The clinical care of prosthodontic patients is far different and exceedingly more complex than the laboratory procedures; the relatively routine laboratory phase of denture construction must not be confused with the far more complex clinical phases.

Each prosthodontic patient has a great variation in individual problems, and there are many scientific methods and concepts from which the dentist selects to address them. Not only must this evaluation and treatment plan be accomplished, but each step of treatment must be precisely executed with skill, care, and judgment. Even dental specialists, with ten or more years of college education, realize this on a daily basis. People who believe that complete dentures are constructed by making a simple impression, then forwarding it to a laboratory for the remaining procedures of construction, have not been told the truth. Anyone attempting to convey the concept that a laboratory technician, or "denturist," is adequately trained to provide clinical prosthodontic care is guilty of a cruel hoax.

5. My experience in clinical prosthodontics strongly indicates that we do not need more providers with even less experience than dentists, but more dentists with more advanced training and experience.

The passage of this bill would be a big step backwards in this age of rapid scientific and high-tech progress. It would not uptdate anything, but rather eliminate the requirement to utilize basic medical knowledge.

6. Certified Dental Technicians, and other dental laboratory technicians, have for years provided an excellent service to all Alaskans through and under the authorizations of licensed dentists.

Nearly all dental laboratory technicians serve dental health very conscientiously, but recognize they are not qualified to safely and competently treat patients. The laboratory technician works with a knowledge of dental materials, laboratory instruments, and artistic concepts in support of a prescription and authorization of a dentist.

The American Dental Association approves of the program of education, experience, and testing necessary to become a Certified Dental Technician. However, these technicians are not qualified to evaluate, diagnose, treat, or directly provide care for patients. In general, this group opposes "denturism." Actually, anyone can become a non-certified dental laboratory technician without any course, training, or license at all. Not even a high school diploma is required!

7. "Denturist," "denturism," and "denturity" are words fabricated by a small group of dental laboratory technicians without a dental degree or license, who desire to independently and directly treat patients without the supervision of established laws, or proven professional dental standards.

Some "denturists" have gained trial-and-error, on-the-job training somewhere, sometimes by illegally practicing dentistry. This is an obsolete professional education system similar to the preceptorships utilized a hundred or more years ago to train dentists. Courses that some "denturists" profess to have taken are short, elementary, and academically inferior to nursing school programs.

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FELLOW, AMERICAN COLLEGE OF PROSTHODONTISTS

8. Neither the American Dental Association, nor any of it's affiliated societies, recognize, approve, examine, or accredit any "denturist" organization, group, school, or individual.

No one is "board certified by the American Dental Association" because the Association does not issue any such certificates.

The American Academy of Denturity is of questionable credentials because I have yet to find anyone who has heard of it.

Any schools of "denturity," if any exist, are of questionable nature because there is no one to examine their credentials, or certify their programs.

9. "Denturity" and "denturism" are being promoted purely under the innuendo and mirage of economic advantage for the people of Alaska.

Consumer and access-advocacy groups sometimes comment "We can't afford dentists because they charge so much." Most likely this attitude occurs because many patients are not aware of the complexities of modern dental care, not aware of what happens "behind the scenes," and not aware of the great overhead expense. The fact is that anyone providing prosthodontic services will have the same overhead --- utilities, rent, salaries, supplies, etc.--- which consume the major portion of a gross income. Therefore, it is not likely that consumer cost can be any different under "denturism," unless the proponents of this bill advocate either providing substandard care, or donating services with minimal net income.

Despite denture service fees that are considered high by many lay people, there are numerous general dentists, even with all their excellent education, who prefer not to treat edentulous patients in their practices. This is soley because the challenges and complexities of complete denture care and treatment frequently make it financially unrewarding, or at least unpredictable. With that as a fact, it makes no sense whatsoever to delegate denture treatment problems to a person with pathetically little education in patient health care.

10. A removable partial denture can rarely be properly designed and constructed without altering the shape of soft tissue or tooth structure.

"Denturists" must not and cannot alter or cut teeth or soft tissue. Therefore, it can only be concluded "denturists" intend to routinely provide removable partial dentures which are inadequately designed and prepared.

The above views are my own opinions, gained from experience in the practice of prosthdontics. I believe they are essentially correct information, and serve as a guide to help retain good dental and general health for Alaskans.

Thank you.

Sincerely,

Arthur R. Roraff, D.D.S., M.S.

2550 SPENARD ROAD, SUITE 206 ANCHORAGE, ALASKA 99503
TELEPHONES: OFFICE: (907) 272-4143 HOME: (907) 345-6905

MAR 1 0 1986

DELIVER TO: JPOM

4

ORIGINAL
SENT: 03/07/86 TIME: 14:30
FROM: JEAN MILLER
SUBJECT: POM
PRINT DATE: 03/07/86 TIME: 14:30

TO: SENATORS KERTTULA, Z'HAROFF AND FAHRENKAMP

FROM: DR. BELTON S. STEPHENS
1020 WEST FIREWEED
ANCHORAGE, AK 99503 PHONE: 279-5481

SUBJECT: SB 437 - DENTURISM

I WISH TO EMPHATICALLY PROTEST THE PASSAGE OF SB 437 WHICH DEALS WITH DENTURIST LICENSING. EVEN THOUGH I, AS A MEMBER OF THE DENTAL COMMUNITY, AM AN ORAL SURGEON AND DO NOT MAKE DENTURES, I FEEL THAT TO PERMIT POORLY TRAINED LABORATORY TECHNICIANS WOULD BE VERY HARMFUL TO THE POPULATION AS A WHOLE.

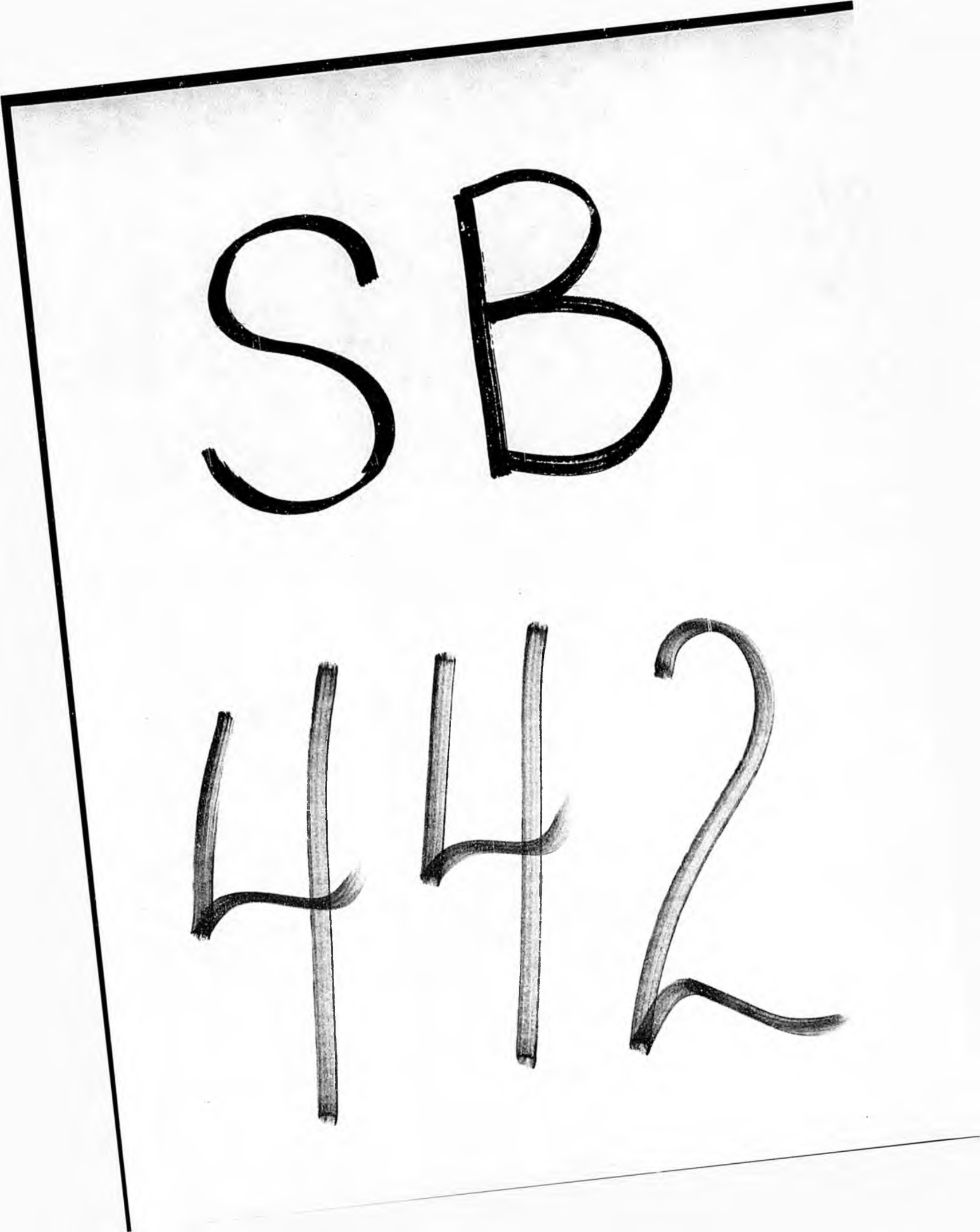
RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)


SB
442

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 442
Title: "An Act relating to . . . marine insurance
Sponsor: Senator Eliason
Requester: Senator Zharoff
Date of Request: 3/6/86

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Operations

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		4.0	0.0	0.0	0.0	0.0
CONTRACTUAL		100.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		104.0	0.0	0.0	0.0	0.0
CAPITAL		0.0	0.0	0.0	0.0	0.0
REVENUE		0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of dollars)

GENERAL FUND		104.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL		104.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME		0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

The role of the division in this marine insurance "creation" bill is to advise, verify and act as a clearinghouse; coordinating agency for those charting reciprocal insurance companies. Professional services contracts to insurance service providers and specialist-attorneys will be essential to establish these reciprocals properly

Prepared by: Paul Troeh, Deputy Director
Division: Insurance
Phone: 465-2515
Date: 3/7/86

Approved by Commissioner: G. Gregory Baka
Agency: Commerce and Economic Development
Date: 3/7/86

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

3649W23786a

and legally. Estimated service company fees of $50,000 and attorney fees of $50,000 are minimum figures. Four thousand travel expense would be utilized by the division director and financial examiner to attend the division-sponsored organizational meetings envisioned as necessary to bring the reciprocals into existence, and educate the clientele. These meetings would be nearly identical to the two meetings in 1985 sponsored and fostered by this division which were attended by legislators (and staff), financiers, brokers, agents, fishing industry organizations, marine surveyors, marine safety experts, adjusters and attorneys. Creation of these reciprocals will, in turn, create an even greater need for these meetings.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Econ. Dev.	Insurance	SB 442	Senator Eliason

DEPARTMENT POSITION

In favor (with funding)

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Paul Troeh, Deputy Director		G.D. Duka, Deputy Commissioner	3/07/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
(Business Loan, Accounting and Collections)	Fishing Industry
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Commercial Fishing Industry Financial Institutions	None known

FISCAL IMPACT: ☐ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Hull and P&I insurance for commercial fishing boats has increased many fold in cost and is simply not available from time to time. This bill facilitates formation of reciprocal marine insurance companies which "pool" risks, and are a proven form of dealing with this crisis.

ANALYSIS OF BILL/PROGRAM EFFECTS

Section 1: Financial and technical assistance for formation of reciprocals;
Section 2: Takes marine reciprocals out of worker's comp. pools;
Section 3: House cleaning changes to Section 4;
Section 4: Types of marine in reciprocals by reg.;
Section 5: Surplus set by reg. on marine recip.;
Section 6: (d) financial and technical assistance, (e)(1) documents, (2) reinsurance, (3) subscriber rules and mgmt., (4) financing expenses, (5) assists in managing;
Section 7: May issue nonassessable policies;
Section 8: Marine reciprocals out of Guaranty Act;
Section 9: Clean up of Guarantee Act language.

AMENDMENTS PROPOSED

None.

3649W3786a

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Introduced: 2/18/86
Referred: Labor and Commerce
and Resources

IN THE SENATE BY ELIASON

SENATE BILL NO. 442

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to reciprocal insurers that provide marine insurance; and providing for an effective date."

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

* Section 1. FINDINGS. A crisis exists in the marine insurance market that is seriously affecting persons who fish commercially in the state. The development of insurance reciprocals to provide marine insurance would help alleviate this crisis. Persons who fish commercially in the state are generally unable to bear the cost of developing reciprocal insurers to provide marine insurance, particularly in light of the depressed condition of certain segments of the fishing industry. The Department of Commerce and Economic Development should provide financial and technical assistance to persons who wish to form reciprocal insurers to provide marine insurance.

* Sec. 2. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a reciprocal insurer formed under AS 21.75 to provide marine insurance, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 3. AS 21.75.020(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] reciprocal

insurer may, upon qualifying as provided for by this title, transact any kind or kinds of insurance defined by this title, other than life or title insurances.

* Sec. 4. AS 21.75.020 is amended by adding a new subsection to read:

(c) The director shall establish by regulation the type of marine insurance that a reciprocal insurer may provide.

* Sec. 5. AS 21.75.050 is amended by adding a new subsection to read:

(e) Notwithstanding (a) - (c) of this section, the director shall establish by regulation the level of surplus to be maintained by a reciprocal insurer providing marine insurance.

* Sec. 6. AS 21.75.060 is amended by adding new subsections to read:

(d) The director may provide financial and technical assistance to persons who wish to establish a reciprocal insurer to provide marine insurance under this chapter.

(e) The areas the director may assist the person with under (d) of this section include

(1) preparing the documentation necessary to form the reciprocal insurer;

(2) obtaining reinsurers for the reciprocal insurer;

(3) preparing subscriber rules and management procedures for the reciprocal insurer;

(4) financing the formation expenses of the reciprocal insurer;

(5) managing the reciprocal insurer.

* Sec. 7. AS 21.75.230 is amended by adding a new subsection to read:

(d) Notwithstanding (a) - (c) of this section, a reciprocal insurer that provides marine insurance may issue policies that are nonassessable.

* Sec. 8. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a reciprocal insurer formed under AS 21.75 to provide marine insurance, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 9. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a reciprocal insurer formed under AS 21.75 to provide marine insurance, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes [ANY KIND OF] insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in the [THIS] state;

* Sec. 10. This Act takes effect immediately in accordance with AS 01.-10.070(c).

North Pacific Fisheries Association, Inc.

HEADQUARTERS:
BOX 796 • HOMER ALASKA 99603

March 6, 1986

MAR 12 1986

Senator Fred Zharoff
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Fred:

First, I want to thank you for having Bill Hall come to our annual meeting and explain the reasons behind S.B. 442.

Our association strongly supports passage of this bill, along with a fiscal note to facilitate the Director of Insurance's Office in doing the necessary research to define the regulations needed. As you know, the availability of re-insurance through London is one of the keys to any successful group pool effort.

Again, we appreciate your interest and support on this matter.

Sincerely,

Phil McCrudden

THIS MEASURE FACILITATES THE FORMATION OF MARINE INSURANCE "POOLS", AND ALLOWS THE DIRECTOR OF THE DIVISION OF INSURANCE AUTHORITY TO ESTABLISH SUCH POOLS. THE DIVISION OF INSURANCE WILL ESTABLISH SURPLUS REQUIREMENTS THRU REGULATION, AND MAY PROVIDE TECHNICAL ASSISTANCE TO GROUPS WISHING TO PARTICIPATE IN MARINE RECIPROCALS.

THE LEGISLATION WAS DEVELOPED FROM RECOMMENDATIONS MADE BY THE SENATE ADVISORY COMMITTEE DURING A RESEARCH PROJECT ON MARINE INSURANCE AVAILABILITY, AND HAS THE SUPPORT OF FISHERMAN'S GROUPS AS WELL AS THE DIVISION OF INSURANCE. I URGE FAVORABLE CONSIDERATION OF THIS MEASURE.

CHAIRMAN'S INFORMATION: SB 442

1) BILL TITLE: "An act relating to reciprocal insurers that provide marine insurance; and providing for an effective date."

a) Introduced: By Sen Eliason

b) Co-sponsors:

2) INTENT: This measure facilitates the formation of marine reciprocal insurance "pools", and allows the director of the Division of Insurance authority to establish such pools. The Division of Insurance will establish surplus requirements thru regulation, and may provide technical and financial assistance to groups wishing to participate marine reciprocals.

FISCAL NOTE: 104.0

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SB 442: Sectional Analysis:

Section 1) FINDINGS section describes the current situation in the marine insurance market, and speaks to the development of insurance reciprocals to help alleviate the effects of this crisis. Also requests DCED to provide technical and financial assistance to persons wishing to form such reciprocals.

Section 2) Exempts reciprocal marine insurance groups from the workers comp assigned risk pool which may be mandated by the Div of Insurance.

Section 3) specifies the insuring powers of reciprocals, but limits the powers of marine insurance reciprocals.

Section 4) Director to establish, thru regulation, the type of marine insurance a reciprocal may provide.

Section 5) Director to establish the surplus requirements of marine reciprocals insurers.

Section 6) Director may provide technical and financial assistance for the establishment of marine insurance reciprocals.

Director may assist with the necessary documentation, obtaining reinsurance, preparing rules and management procedures, financing the formation expenses, and management of reciprocals.

Section 7) Policies of a marine insurance reciprocal are non assessable.

Section 8) exempts marine insurance reciprocals from the provisions of the Guarantee Act

Section 9) further clarification of reciprocals exemption from the Guarantee Act

Section 10) Immediate effective date.



Dr. Dennis Nixon is Chairman of the University of Rhode Island's graduate Marine Affairs program.

Safety Conference Pinpoints Problems

Solutions more elusive

by Clark Miller

An impressive array of information was presented at last month's 1984 Fishing Industry Health and Safety Conference. For two days the experts told fishermen the causes, economics and preventives for everything from drug abuse and lower back pain to fires and instability. But when the dust had settled, it was clear that safety information had been of secondary importance. What had really taken place was a summit conference in response to the insurance crisis.

Vessel owners, naval architects, government officials and insurance executives met together December 12-13 at Seattle's Westin Hotel. They faced two questions: Who is responsible and what role can regulation play in a solution? Each group stated its case, questioned the other three and declared what it wanted from them. The value of the conference lay not in what it settled—it settled nothing—but in what it stirred up.

Certain moments stand out as representative of what took place. When panelist Anthony V. Raia, a San Francisco insurance executive, was asked by a marine engineer why the insurance industry won't set design standards for the vessels it insures, Raia said it was because insurance men don't know anything about boat design. (Raia seemed an ironically appropriate choice for the panel; he himself has never insured a fishing boat—he said he can't figure out how to make a profit doing so.)

The insurance industry must rely on marine architects to evaluate vessels, said naval architect Jonathan Parrott. The problem is that no one evaluates the architects. Vessel surveys vary widely, and often the bad news costs more.

This was illustrated by naval architect George Nickum. He recalled that when his office used to survey tuna boats, one in four was found unsafe. Approval, for instance, might hinge on removing one or two tanks. Instead of following the advice, the owner would go south for a new survey and a new insurance company.

And so, as the day wore on, the big red ball—responsibility—bounced around the ballroom, from fishermen to architects to insurance men to the Coast Guard and back to fishermen. Somehow it always bounced back to the fishermen, to their chagrin and fury. Bart Eaton, captain of the F/V *Amatuli*, wondered who is responsible when the Alaska Department of Fish and Game sends boats out of Dutch Harbor in 80 mph winds for a 24-hour opening? Only the fisherman?

And the big blue ball—regulation—bounced along behind the red one. No one noticed it at first, since an axiom of most discussion of the insurance crisis is that "burdensome regulations" must be avoided. And yet fishermen and others were soon heard requesting certification of skippers, mandatory training of crews, regulation of the marine insurance industry, legislative changes in the legal status of fishermen, and insurance industry regulations on vessel design.

Dr. Dennis Nixon set the stage. Chairman of the University of Rhode Island's graduate program of marine affairs, he is author of *A Commercial Fisherman's Guide to Marine Insurance and Law.* Addressing the first day's luncheon, he suggested that the root of the insurance crisis is twofold: a terrible safety record for which the fishing industry must take responsibility, even though it has been forced to take chances by many outside forces; and a legal system that leaves vessel owners unjustly vulnerable to liability.

Regarding safety, Nixon said 44 of 242 vessels lost in 1983 were in Alaska, and that 95% were the result of human error. The pressure factors? Hasty conversions, short seasons, large mortgages and lousy fishing. Two other less obvious factors include the concept of "agreed value" of the vessel, which Nixon said has been handled too casually between owners and surveyors (Is a vessel worth what it cost to build, or what it will now bring on the market?)

The other factor is the insurance industry's traditional indifference to marine safety standards. Since marine insurance is unregulated, any company that tries to set such standards risks being buried by the competition. So the insurance industry has treated all fishermen as equal risks. After all, as Raia pointed out, marine insurance accounts for only 1% of the premiums paid in the U.S. "It's not a serious matter for us," he said.

Regarding the legal system, Nixon flatly stated that the combination of the Jones Act and the unseaworthiness remedy has made it impossible to defend a personal injury case. The Jones Act allows a seaman to sue his employer for compensatory damages if he can prove negligence, *including negligence of other crewmembers.* The doctrine of unseaworthiness enables an injured seaman to recover against the vessel if his injury was caused by an unseaworthy condition of the vessel, its equipment or crew, *whether or not the condition was caused by the negligence of the owner.*

Nixon sees bringing fishermen under workman's compensation laws as the answer. Meanwhile, he thinks the crisis can be alleviated by more insurance pools; higher deductibles and lower agreed value; increased vigilance by owners in picking brokers (ask to see their "errors and omissions" policy) and insurance companies; a new interest in safety by the insurance industry; and a new attitude among insurance companies of suspicion toward every claim.

During the ensuing panel discussion, Raia said his company had taken in $16 million in premiums for hull insurance, while paying out $34 million. He said the mathematics are simple: The West Coast fleet is worth $1 billion, losses are $40 million a year, so the insurance industry needs a minimum of 4% a year to break even. He said the only offer to interest him lately comes from an owner with a wholly-owned fleet; the owner has offered to insure 15% himself, and wants only total loss insurance.

Back-up Information

jackets

level for fishermen is extra-

tion.

Dave Campbell of the Seattle Fire Department observed that fishermen usually respond to a fire by preparing to abandon ship, rather than fighting the fire. Given the technology and

slides to show how the physical tasks in fishing attack the back and how to get relief.

When introducing the conference—what he called a "three-ring circus" of safety subjects—moderator John Sabella, asso-

Seattle attorney Doug Fryer said owners used to consider an accident the broker's problem, but not anymore. The smart owner probes the financial health of the companies behind the broker. Fryer had two pieces of advice: Make sure your broker is aware of the full extent of your operation. Pay the maintenance and cure for an injured seaman on time, up front, regardless of circumstances.

More advice came from San Francisco broker Boyd Crosby: Request the names of your broker's companies, make sure they are rated by *Best's Aggregates and Averages*; an industry rating source (U.S.-based companies only), and get an annual report. Spread your risk by limiting the amount insured by any one company to 5-10%. An insolvent insurance company is like a liferaft that doesn't inflate. If it fails, you're last holding the bag.

Washington state deputy insurance commissioner Bob Higley predicted that many marine insurance companies will soon go under. He said they got rid of their "true underwriters" a few years ago, when high interest rates made it smart to insure anyone with cash. The insurers could invest and reap rich rewards despite the inevitable claims. Now that rates are down, it is once again a matter of measuring risk. Furthermore, Higley warned that there is no protection against illegitimate companies in an unregulated industry. He feels it is time to set minimum standards.

Seattle attorney Paul Pollak and Rod Moore of Representative Don Young's staff both took shots at Nixon's proposal to get fishermen under some sort of federal compensation law. Pollak favors licensing and training for masters and crew, as done by many other countries, in order to improve safety, but fears that vessel regulations would change the nature of the business, forcing out the small operator. Fryer added that the Coast Guard does not want more work anyway—its budget is shrinking.

At the end of the day two impressions lingered. First, fishermen need to buy insurance much worse than insurers need to sell it. Second, fisherman would like the insurance industry to impose safety standards, but the insurers have no interest in doing so—they see no way to do so successfully.

The second day, the stresses boiled over between fishermen and another group of professionals—the naval architects. (Best one-liner of the conference, told after a Coast Guard safety expert had reported on recent testing of garment ensembles in rough seas: "Next time," said the fisherman, "test the buoyancy of naval architects in rough seas.")

The morning panel on stability got off to a lively start when moderator Bruce Adee, head of the University of Washington's Fishing Vessel Safety Center, apologized for having failed to locate a fisherman willing to be on the panel. Tom Casey, a fisherman who now represents Wesmar Marine Electronics, manufacturer of the SC44 stability computer, shot to his feet, declared that he had been denied a place on the panel, and then asked why naval architects as a whole have failed to eliminate capsizings. (Later, another fisherman, Barry Fisher, stated that he and other fishermen had also been turned down.)

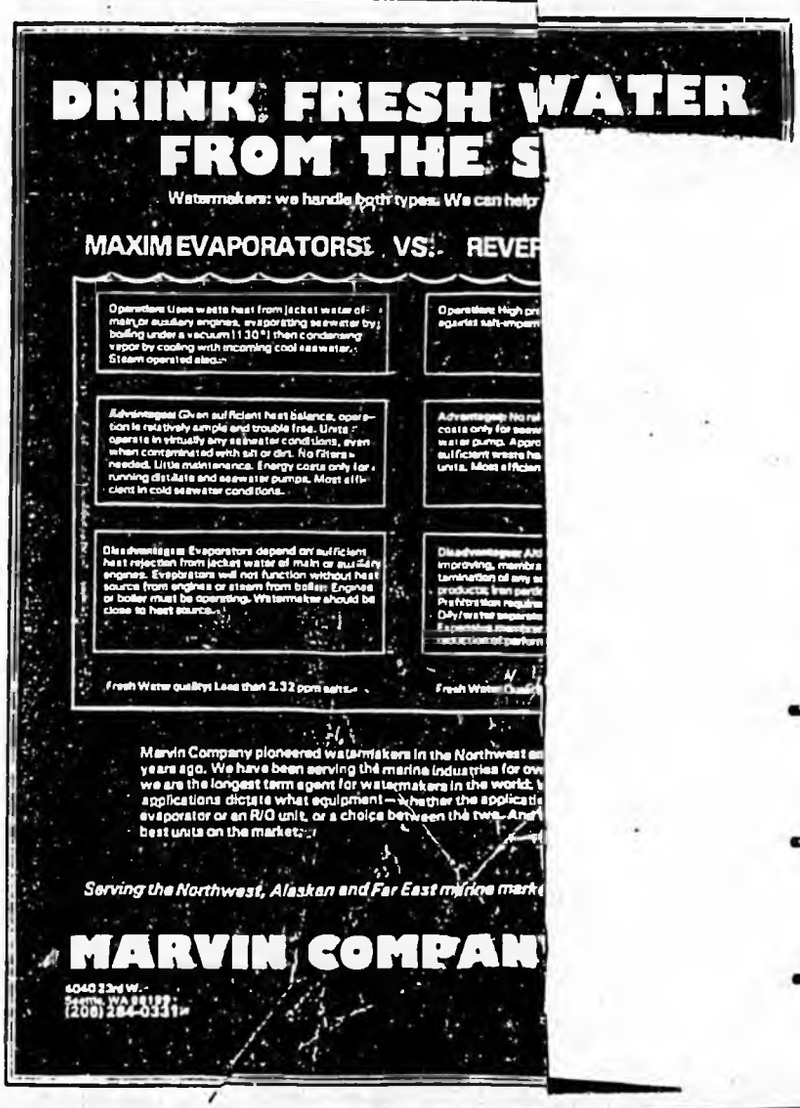
Adee asked Nickum, who played a role in the creation of the widely used International Maritime Organization (IMO) stability guidelines, to explain how they came about. Nickum said that until 1960, when the impetus began for new standards, the "wind heel method" had been used by the Coast Guard to prove intact stability of passenger vessels (the angle of heel could not exceed 14° or 1/2 of freeboard in a 60 knot broadside wind).

Then a Finn named Rahola, working on his doctoral thesis, tracked down data on ten capsized Baltic coasters (all allegedly sunk without operator error) and compared the data with that of successful Baltic coasters. He deduced several parameters for stability, including that the righting arm could not be less than eight inches and that the maximum righting energy should occur at not less than 30°.

Nickum was part of the international effort to substantiate the "Rahola Principle." All the countries involved except the U.S. had data available on their fleets. For three years, eighty vessels were studied, the lion's share of the tabulating being done by hundreds of Russian graduate students at the University of Kaliningrad. (Nickum said the Russian education system



Virtually every manufacturer of safety and survival equipment was represented at the 1984 Fishing Industry Health and Safety Conference.



includes many naval engineering departments, any one of which turns out more naval architects and engineers in a year than does our whole country.)

Thus was born the IMO standards. Nickum knows of only one vessel that capsized after passing them. Adee knows of none. "Most were grossly under," he said. Nickum hastened to add that stability is not enough for true safety. He faulted naval architects for designing vessels that don't have water-tight houses and yet are documented as sound. The threat of downflooding can negate perfect stability.

The problem with IMO standards is that they are designed for large vessels, 79 feet or more. Adee said smaller boats need to have even higher parameters, as well as better operators.

Regarding the "constant trim method," a substitute stability guide, Nickum said it is no good for broad stern vessels.

As for the new generation of large, multi-tanked vessels, Adee said the complex assortment of tanking conditions makes applying any stability standards difficult.

Nickum said he would like to see strict application of IMO standards to all conversions and new boats, and strict concurrence with all conditions by the operators. He has participated twice in failed efforts to get underwriters to set up a small central agency to review the work of naval architects.

Parrott urged the adoption of a uniform standard for the *stability book*, saying that currently there is a wide range of response to any given vessel.

Naval architect Jacob Fisker-Anderson stated flatly that he has never seen a conversion that improved stability—always the reverse.

Someone asked if a stability computer was the solution, but the panel seemed inclined to avoid the question until Casey said Adee only gets cold water when he drinks it, while fishermen are drowning in it. Parrott quipped, "Spoken like a true salesman," and then the panel voiced its concerns about the Wesmar SC44 stability computer.

Fisker-Anderson said the SC44 measures GM, the distance between the center of gravity and the metacentric point (the point where buoyancy meets the vessels center line). The higher the GM, the more stability and less comfort. But GM must be seen in context—the more freeboard you have, the less important GM becomes.

Parrott said the SC44's program includes the vessel's "rolling constant," or normal roll period, but that in reality the rolling constant is not constant. It varies according to the loading condition. Although no one said so, it would appear that the ideal computer would have a different program for each of its basic loading conditions.

Changing the subject, someone asked Fisker-Anderson if the Coast Guard's "simplified stability test," which is used on small passenger vessels, is applicable to fishing vessels. He said no, fishing vessels vary too much from each other; there aren't enough common denominators. Also, there isn't a large enough data base on small vessels to make a simplified test for fishing vessels.

Nickum suggested the use of water-flume stabilizers for crab boats. They decrease roll by constantly transferring water in the opposite direction of the roll.

Regarding weight gain, Parrott said all vessels put on weight, that studies show that the average new vessel gains 10% of its weight in the new first year. Fisker-Anderson said a deadweight survey should be done at the end of the first year ("It's a cheap form of insurance," he said.)

Regarding the role of the seaway in capsizings, Adee said he has not been able to capsize his model in head, quarter-head or beam seas (however, his model doesn't hold water on deck—water on deck with beam seas can be deadly), but that following and quarter-following seas are killers. His advice for operators about to capsize: Cut power completely; then turn *slowly* into the waves; then investigate.

Regarding draft marks, Fisker-Anderson said all ships should have them, no matter how small. Parrott said one fishing vessel in ten has accurate draft marks.

As the sequence of all these remarks suggests, it was difficult to focus on the issue of stability. Understanding and solving the problem involves filling major information gaps. Skipper Bart Eaton drew applause when he asked why the Coast Guard only investigates major fatalities. Why not talk to the survivors of the near misses? He would like to see a sort of no-fault accident report—"Nobody learns anything when the attorneys zip the lips," he said.

Fishermen Eaton, Fisher and Dean Adams (longliner, F/V *Quest*) composed the final panel of the conference. After listening for two days, this was the fisherman's chance to express himself, and the panelists let fly, racing the clock to disburden themselves.

Eaton said he uses a chain of command, a daily checklist of procedures, and informal psychological testing of prospective crewmen to increase safety. ("Time moves pretty fast when the world starts coming apart," he said.) He uses a private detective to investigate suspicious claims; and he signs crewmen on and off, to reduce his liability.

Fisher said he is going to try a new employee contract, something he can use in court if necessary. The prospective crewman will have the chance to inspect the vessel for safety, review the stability book, and question the qualifications of the skipper. He will know what is

See SAFETY on page 23

Fishing Vessels Losses (5 gross tons or larger) in Coast Guard Districts 13 and 17.

Vessel Name	Length	Nature	Cause	Injuries	Deaths
Wildwood	29	Accidental Grounding	Failed to keep proper lookout	0	0
Kingfish	32	Foundering (Sinking)	Adverse Current/Sea Condition	2	0
Mia Dawn	48	Grounding, Intl w/ Damage-Hazard	Adverse weather	0	0
Sea Vamp	56	Matl Failure—Hull, Structural	Unknown	0	0
Proud Mary	54	Foundering (Sinking)	Unknown	1	0
Bonita M	34	Fire, Vessel Structure	Not elsewhere classified	0	0
Stingray	47	Foundering (Sinking)	Failed materials, structural	0	0
Two Brothers	58	Foundering (Sinking)	Failed materials, other	0	0
Kvichak	32	Foundering (Sinking)	Adverse current/Sea Condition	0	0
Lady Card	30	Fire, Not elsewhere classified	Unknown	0	0
JLT	59	Fire, Not elsewhere classified	Unknown	1	0
Petrel	34	Fire, Machinery Space	Improper Maintenance	0	0
Fach Boys	40	Foundering (Sinking)	Unknown	3	0
Moonlight	77	Foundering (Sinking)	Failed materials, structural	0	0
Tres Cher	49	Foundering (Sinking)	Adverse weather	0	0
Lady Darlene	65	Foundering (Sinking)	Failed materials, structural	0	0
April	56	Foundering (Sinking)	Inadequate stability	0	1
Anna	34	Foundering (Sinking)	Inadequate stability	0	0
Sharon D	32	Foundering (Sinking)	Improper securing, rigging	0	0
Rosemary	81	Fire, Machinery Space	Unknown	0	0
Total 1984 (through 12/3)	20			7 /	1
1983	61			2 /	21

IN THE GULF OF ALASKA..... IT'S KODIAK!
IN KODIAK - IT'S...
O KRAFT and SON

ARE YOU MISSING THE MONEY BOAT?
NOT If You Have A HYDRO WATT...
$$SAVE$$ Thousands of fuel



Joe Upton

The author at age 3 before "the test."

IN I jumped. "Oogh!, oogh, oogh, oogh!"

I gasped for breath. The water was so much colder than I thought it would be. I struck out in the fastest dog paddle Southeast has ever seen, making sounds like a sea lion pup.

Half-way through I still had not taken a breath. I knew I couldn't go any farther. I was ready to get out.

"Hey Jasona! What are you doing? You're almost there. Take a deep breath, just relax, there you go, you can finish, come on you can do it." My forever confident father.

I did finish. I climbed onto the float shivering and gasping but completely happy and life-jacketless.

That was two summers ago. This winter I have noticed that my sister and father have been making quite a few mysterious night-time trips to the White Rock swimming pool. All I can say is, "Good luck, Sis." □

SAFETY

continued from page 10

expected from him, and will sign that the vessel is seaworthy.

From now on, Fisher's winter crew in Alaska will be required to wear work suits that provide some buoyancy and warmth. The suits will be purchased new each year by the boat. Also, Fisher would like to see certification of skippers and more participation by the insurance industry in safety.

As the conference ended, a local broker sounded a hopeful note when he said the insurance industry needs the help of fishermen in learning what a good risk is and how to evaluate it. Conference organizer Barry Collier of the Fishing Vessels Owners Association, one of several sponsoring organizations, reminded the audience that this was simply the first step in a major effort to turn things around, and the meeting was adjourned. □



Insurance crisis: Fishing in rough seas

2/14/86

Cancellations increase risks for fishermen

By KIRK McALLISTER
THE JUNEAU EMPIRE

Commercial fishermen Russ Barton got a surprise in the middle of the salmon season last year.

A week before the insurance on his 36-foot boat was supposed to be renewed, the company canceled his policy and he was unable to find another company to provide coverage.

Barton has been fishing out of Juneau for 22 years as a gillnetter, troller and longliner. He also fishes for herring and dungeness crab. He has versatility, experience and has made only two claims on his insurance since he began fishing.

But now he can't get insurance. And he isn't alone.

Jack Cadigan, executive director of the United Fishermen of Alaska, said as many as 50 percent of the commercial fishing vessels operating in Alaska may end up without insurance.

That could cause a variety of problems. It could mean many commercial fishermen will operate in the unpredictable waters off Alaska with no protection against loss. Banks and the state could end up in an odd situation, too, since insurance is a standard requirement for most boat loans and fishermen who operate without insurance are technically not complying with the terms of loan and could be subject to foreclosure.

"It's a dangerous situation," Cadigan said. "It could get to the point where someone could be denied their livelihood and the bank end up with a boat they can't sell. Or the increased cost of insurance could mean his overhead is so high he can't make his boat payments or he has to skip engine maintenance or repairs, which means safety could be affected."

In short, it will make a risky business even riskier. Commercial fishing is the most dangerous occupation in the country, with a death rate seven times the national average, according to a recent U.S. Coast Guard study.

That study revealed that 200 fishing vessels a year were lost in U.S. waters between 1970 and 1983 and an additional 9,500 vessels were damaged at sea. There were 7,000 deaths associated with these accidents.

As a high-risk business, commercial fishing was a natural victim when the insurance industry began experiencing hard times last year. The number of companies writing marine coverage in Alaska dropped from more than 30 to less than five.

Because of financial losses the insurance industry no longer has the capacity to cover the demand for policies. Because of that some commercial fishermen are caught in the squeeze.

"These days if you say commercial fisherman to an insurer they start to wince immediately," Cadigan said. "There's no denying there's a inherent danger in the (fishing) industry and the insurance industry is worried about their exposure to risk. Besides the numbers are small – the whole state of Alaska equates to a suburb of L.A. as far as the insurance companies are concerned."

Difficulties with getting insurance for a commercial fishing vessel, however, depends on the age and kind of boat.

Mike Miller, president of Northern Marine Insurance Inc. of Juneau, the only specialist and largest marine insurer in the state, said there are "problem classes" of boats that are getting tough to insure. These include boats that are over 10 years old, have wooden hulls, or have had previous claims. Large crab boats and trawlers that operate in dangerous areas such as the Bering Sea have also been difficult to insure. Less than half of boats in the problem classes are able to get insurance.

Miller said his company insures between 1,000 and 1,500 commercial fishing vessels. Most are "mom and pop" owner-operated seine, gillnet and troll vessels. Insurance premiums for those boats have increased an average of 30 percent, but rates are expected to level off this year, he said.

"I'd say insurance for fishing vessels is a problem but not a catastrophe," Miller said. "If you're not in one of the problem classes there you should be able to get insurance but if you have a problem boat, you have serious problems."



Fisherman Russ Bartoo: Insurance problems spread through industry.

'These days if you say commercial fisherman to an insurer they start to wince immediately.'

—Jack Cadigan, executive director of the United Fishermen of Alaska

Possible solutions: To ease the insurance crunch, a proposal to allow formation of insurance "pools," in which groups of fishermen band together to insure themselves, has been introduced in the Alaska Legislature.

Pools have been used successfully in Washington state for many years and have included some Alaska boats in their membership. They are not, however, currently allowed under Alaska law.

Sen. Fred Zharoff, D-Kodiak, said something must be done to ease the insurance crunch. He said he was looking into the possibility of allowing pools or other forms of self-insurance and encouraging safety programs for the fishing industry.

"This (the insurance problem) is adding to the operating burden of many fishermen," Zharoff said. "People have got to be able to fish to make their boat payments. These vessels need to get out and work and harvest the resource. If the insurance industry sees an effort by the fishing industry to be safer then it should ease the situation."

John George, director of the state Division of Insurance, said several insurance brokers are interested in managing or administering insurance pools for fishermen.

In addition, there is an insurance company (George declined to reveal the name of the firm) that has recently said it is willing to commit a substantial amount of money to fishing boat insurance in Alaska. The company is not interested in large crab boats or trawlers but wants to specialize in providing insurance to seiners, gillnetters and trollers.

George said the company wants to combine information on the safest kind of boats to insure with information on who are the safe operators among fishermen and therefore the best risks.

"This underwriter is looking for superior risks in terms of boats and people, George said. "Their attitude is that a good guy in a bad boat is better than a bad guy in a good boat. It's a good sign but it may not be the answer for everybody. This company is going to skim the cream in terms of risk leaving the skim milk left over."

In addition to private company interest, the state has been watching the fishing insurance problem closely since commercial fishing is a major industry in Alaska and the state is involved with financing boat loans.

George said one action that could be taken is encouraging the formation of "reciprocal insurance companies" by groups of fishermen. Like pools, reciprocal companies are groups of people that insure each other, but unlike pools, the reciprocals are subject state regulations and oversight.

A Senate Advisory Council report on marine insurance suggests that the director of the Division of Insurance could set up regulations governing reciprocals for fishermen, including deciding how much money would be required to begin and maintain coverage for members.

Other possibilities include state grants or federal and state loan guarantees to help get insurance groups started for fishermen. Currently, reciprocal companies insure workers in the timber industry and rural electrical workers.

While several options are open to ease the problem, just about everyone agrees safety in the fishing industry needs to be improved.

"If someone is forced out of commercial fishing because they can't get insurance, maybe that's not necessarily bad," said insurance director George. "If the bad risks are eliminated, it helps the overall safety situation. It could save a fisherman's or a crewman's life."

The Senate Advisory Council report agrees with that assessment.

"The fundamental problem is not the cost or unavailability of insurance," the report said. "Rather it is the poor safety record of the fishing industry which has produced an unacceptably high loss of human life and financial investment."

9/24/85

Anchorage Dai

Trouble snags fishing industry co

By KEN FRANCKLING
United Press International

GLOUCESTER, Mass. — Nino Brancaleone's 90-foot stern trawler, the Sacred Heart, sat in port one summer day while he made a top-to-bottom crew change that he gambled will keep him in business.

When his $600,000, 5-year-old blue-and-white trawler came in that morning, each crewman had collected $700 for 10 days at sea — about half of the average pay on a "decent" voyage for one of Gloucester's bigger boats. The Sacred Heart lost $400 on the trip, not even meeting its expenses.

That afternoon, Brancaleone laid off his regular Gloucester crew. He brought in a new "go-getter" skipper and crew from Portland, Maine, that took the Sacred Heart out to a different fishing ground, trying different methods they felt might reap a profit from the sea.

"We've got to try something. It's not worth staying in business, but we're hanging in there," Brancaleone said. "Two years ago, it was good here. We were paying the bills."

Brancaleone is known as one of Gloucester's most successful fishermen. As his fellow Sicilians in this historic seaport put it, Brancaleone has been a fisherman for so long — 41 years — he has fish blood coursing through his veins.

And he is worried.

Passage of the 200-mile limit that denied foreign fleets unlimited access to U.S. waters beginning in 1977 did not bring the bonanza that New England fishermen expected.

Catches are down and the industry has been brought to its knees by unprecedented import competition from Canada, an adverse international boundary decision, and a marine insurance crisis.

These woes extend far beyond the once-bountiful waters plied for more than 350 years by the hardy, independent New England fishermen.

From New England's scallopers and groundfishermen to shrimpers in the Gulf of Mexico, from the southern California tuna fleet to Alaska's king crabbers, the commercial fishing industry — America's first industry — is in deep trouble.

• The $488 million shrimp industry, occupying most of the 30,000-man commercial fishing fleet in the Gulf of Mexico and South Atlantic, is hurt by foreign competition that provided 71 percent of U.S. consumption last year.

• On all coasts, the insurance industry has been hit so hard by losses from a rash of sinking and huge crew injury awards that very few companies will write marine insurance any more. Costs have doubled and tripled for boat owners, if and when they can find coverage.

"It's very critical. They've been hit tremendously hard. It's not so much a question of rates; it's a question of whether they can get the insurance or not," said Kell Freeman of the National Marine Fisheries Service in St. Petersburg, Fla.

• In Alaska, the king crab industry is in a state of collapse because of overfishing and environmental factors. Multimillion dollar crab boats, 90-to 120-feet long, sit in port. Six others sank in the Bering Sea within one month early last year.

• Southern California's tuna fleet is in sad shape even though the fish are plentiful. Because three out of the four U.S. canneries have shut down, the 75-boat fleet was forced to unload much of its catch in Guam and Puerto Rico.

• Foreclosures in the salmon industry have hurt the new insurance market in the north Pacific, while the fishery itself has bounced back to what could be a banner season for the fleet off California, Oregon and Washington.

"We do have an industry in trouble," says Allen E. Peterson Jr., director of the National Marine Fisheries Service's Northeast Center in Woods Hole, Mass.

"In all likelihood, it is falling on tough times and will continue to for the near future. The strength of the dollar makes it harder to sell our product overseas, and makes it easier to import.

Ironically, the myriad problems come at a time when Americans are being encouraged by doctors to eat more seafood.

Eating fish has been known to be good for your health ever since Eskimos were found to suffer almost no heart disease, even though they ate large amounts of seal and whale blubber, which is high in saturated fat.

In Gloucester and other New England ports, fishermen are surviving only by fishing harder, taking new financial risks, changing techiques and species they fish for, or by pure luck.

"I don't know how we're going to make it," Brancaleone said. "The Russians are gone. The Germans are gone, but the fish are gone with them."

On top of his mortgage for the Sacred Heart, Brancaleone pays $54,000 a year in marine insurance. Without it, he cannot risk leaving the dock.

Nearly all companies have stopped insuring commercial fishing boats and write no new insurance in Gloucester, where 40 of the fleet's 200 boats have sunk since 1980. Many sank in suspiciously calm waters, without loss of life or serious injury. There was usually a friend or relative fishing nearby who was able to rescue the crew.

"Now, the insurance you can get is twice as expenseive and covers less. You must have hull insurance in order to get loans. It's a pretty tough problem," said Dennis W. Nixon, coordinator of the University of Rhode Island's Marine Affairs Program.

Nixon is an expert on the marine insurance problem and is studying possible options for Congress to overhaul the system.

"I'm not going to say all of the sinkings were deliberate," Nixon said. "Vessel maintenance is often at the bottom of the list of things to do."

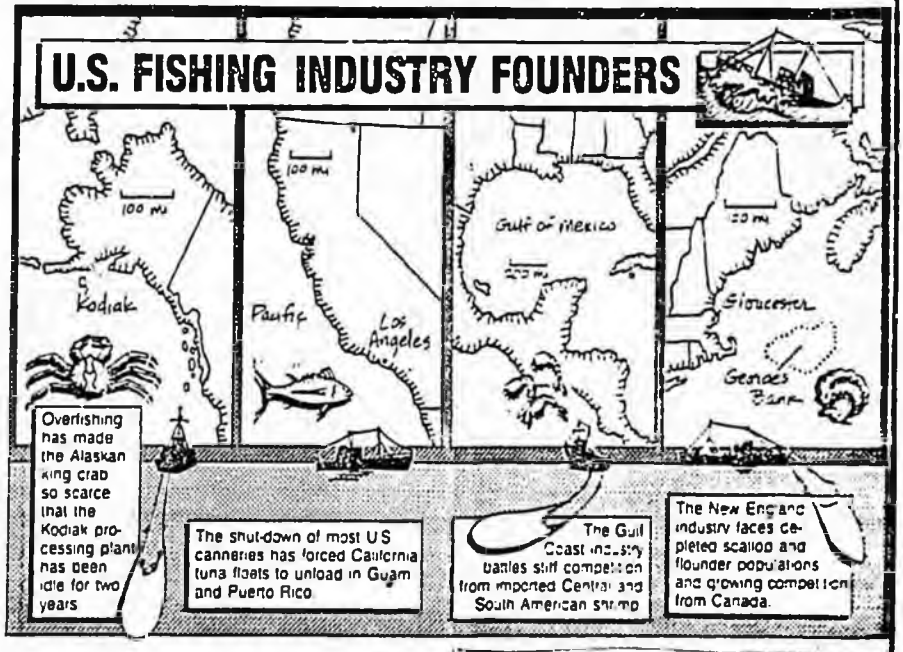
Those who continue to fish are trying to make the best of a bad situation.

"This is a business. It is no longer a romanticism of the ocean. Some pretty damn high investment is going into it," says James Costakes, general manager of the New Bed-



United Press International

Nino Brancaleone says the 200-mile limit has not been the godsend he expected.



ast to coast

ford, Mass., Seafood Producers Association.

A lot of those dollars come from a product known as New Bedford gold — scallops. Scallops and yellowtail flounder are the dominant catches for New Bedford's 250-boat fleet.

Both species are in trouble. There is not enough fish coming in to supply New Bedford's 22 processing plants, so the processors are dependent more and more on fish trucked in from Canada to keep their operations open. Five plants closed in the past year.

"In the bonanza years, a guy on deck could make $50,000 to $60,000 (a year). Now, on an excellent vessel, you'd be lucky to make $30,000 to $35,000, and you're spending a lot more time out to sea to get that," said Costakes, a fisherman himself for 30 years.

When the 200-mile limit took effect eight years ago, the United States made its claim to the offshore fisheries that would no longer be plied helter-skelter by huge foreign factory fleets.

Vessel construction increased 70 percent in one year as old wooden boats were scrapped in favor of larger, steel-hulled trawlers. The New England fleet mushroomed from 590 boats in 1976 to 892 by 1981.

As the foreign catch dropped by roughly 25 percent in the year after the 200-mile limit was imposed, the domestic catch rose by 16 percent. But biologists worried whether the fleet increase and improved technologies would in effect deplete the fishery. Experts now disagree about whether that happened, or whether the current downturn in stocks is just a natural, cyclical event.

New England's fishermen, stung but unable to reverse the decline, are going after what they see as man-made problems — boundary disputes and outside competition for the lucrative fresh fish market they have traditionally supplied.

Last October, the World Court ended a simmering border dispute between the United States and Canada by dividing the North Atlantic fishing grounds on Georges Bank. The Americans wound up with the largest chunk, but Canada got the brass ring — the Northeast Peak, a spawning ground rich with lobster, scallops and haddock.

It was the last straw for U.S. fishermen already bitter about government subsidies that allow their Canadian counterparts to sell for less on the U.S. market. In some cases, Canadian fishermen can sell their fish for less than it costs U.S. boats to catch it.

This August, the North Atlantic Fisheries Task Force petitioned the federal government to impose a 10- to 20-percent tariff on imports of Canadian groundfish — including haddock, hake, cod, flounder, pollock and sole. They claim it will allow them to compete fairly with the Canada's fishermen.

Stephen Greene, assistant trade counselor at the Canadian Consulate in Boston, defends his country's subsidies as comparable to the U.S. bailout of Chrysler. He predicts the two governments will agree to mutual access to the fishing grounds sometime in the future.

Gulf Coast fishermen sympathize with import problems in the Northeast, and are offering financial support. Imports also account for the bulk of U.S. shrimp consumption, with most of it coming from Central and South America. Ecuador ranks No. 1 worldwide in shrimp production.

"A fair comparison might be with the textile or shoe industries in the United States," said Richard Raulerson, of the National Marine Fisheries Service in St. Petersburg, Fla. "You and I would rather buy cheap shoes and clothes instead of expensive shoes and clothes."

The U.S. fishing industry is not yet in the same state of decay as the shoe industry. But none of the fishermen or industry experts sees a short-term solution to the decline — and the long term is even more clouded. As Costakes of the producers' association puts it, "We've always had a 'survival of the fittest' philosophy. But it very hard to work under these conditions."

Anchorage Daily News

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Most dangerous job: Commercial fishing

Death of son drives parents to campaign for safety

By DAVID FOSTER
The Associated Press

Robert and Peggy Barry knew little about the dangers of commercial fishing when their 20-year-old son, Peter, landed a summer job on a salmon boat off Alaska's coast.

Their first lesson was swift and unforgiving. On Aug. 20, word came that Peter's boat had sunk in the frigid waters off Kodiak Island. He and his five crewmates had perished.

The Barrys' grief was deep, but it turned to anger after Robert, a career diplomat based in Washington, D.C., did some research. Peter Barry had been an adventurous Yale student lured by the romance of a fisherman's life; his father was appalled to learn how easy it is to die a fisherman's death.

Coast Guard figures show an average of 250 U.S. fishing boats sink and 75 fishermen die off the nation's coast each year. Commercial fishing is by far the country's most dangerous industry, with a death rate seven times the national average of all industries, and twice that of mining, the second-most hazardous occupation.

Yet, in safety matters, the fishing industry is virtually unregulated.

"It is too late now to help Peter," Barry says. "But publicizing the danger of commercial fishing and imposing minimal regulations on it may help others to avoid his senseless death."

The Barrys have begun a crusade for safer fishing, lobbying congressmen, writing letters and articles. Along the way, they've encountered a government reluctant to impose new rules and an industry that, while opposing regulation, may yet work toward greater safety on the seas for another reason — economic survival in an age of skyrocketing insurance rates.

The stormy Alaska waters that claimed Peter Barry are infamous for dramatic sinkings — since 1981, an

See Back Page, COMMERCIAL

Searchers find no sign of boat or its crewmen

The Associated Press

JUNEAU — In a six-hour flight over the stormy North Pacific, a Coast Guard search plane on Thursday failed to find survivors or debris from a fishing vessel believed to have sunk on Tuesday.

"But search conditions were pretty bad," Petty Officer Allen Sparks said in a telephone interview Thursday night.

The crew of the C-130 search plane spotted the vessel's emergency signal beacon again Thursday, but nothing else, Sparks said. He said the weather had been poor

See Back Page, COAST GUARD

Commercial fishermen earn their livelihood in the nation's most dangerous occupation

Continued from Page A-1

average of 72 boats a year have sunk in P[illegible] Northwest and Alaska waters, with 108 deaths during the same period.

But wherever fishermen work the open ocean, from New England's Georges Bank to the Gulf of Mexico, the death rate is similar.

"In Alaska, they usually lose the whole vessel with everyone aboard," says Capt. Gordon Piche, national chairman of a Coast Guard task force created last year to promote vessel safety. "In the Gulf, they have just as many people dying, but it's usually one at a time — a man may fall overboard or get wound up in a winch."

Despite the dangers, the Coast Guard does not inspect fishing boats for safety. The agency requires fire extinguishers and life preservers, but can only recommend that boats carry survival suits, life rafts, and emergency radio beacons, which help rescuers home in on a foundering ship.

Peter Barry's boat, the Western Sea, had little safety equipment, officials say. The 58-foot, wood-hulled seiner was built in 1915. It carried no life raft, and the crew wore only life preservers, even though survival suits covering the entire body are needed to last more than an hour in northern waters.

"Peter's death was avoidable because the boat he was on should never have been allowed to go to sea," Robert Barry says.

One reason for the lack of safety rules or inspection programs is the lack of enforcement money, Coast Guard officials say. The agency is scrambling just to maintain its current budget, never mind trying to add new programs.

Another reason is the belief that safety regulations create a false sense of security. "They take the responsibility away from the fishermen," Piche says. "We can try to legislate safety, but if fishermen become aware of safety, it will work better."

To that end, Piche's task force recently published a series of guidelines for vessel stability, radio and navigation equipment, fire protection, life-saving equipment, and shipboard wiring and machinery.

The task force is working with a group of Bering Sea fishermen to translate those technical bulletins into more understandable terms. A safety guide to be published next spring will be a model for guides in other fishing areas, Piche says.

Such guidelines, in the hands of insurance companies, may become the biggest lever yet in forcing the safety issue. Until now, insurance companies have had few ways to distinguish between a safe boat and a dangerous one. So all fishermen, prudent and reckless alike, have suffered with soaring insurance rates.

"They've lost a lot of credibility because of their safety record," Piche says.

Fishermen are quick to say it's not their fault the ocean is dangerous.

"So many things can happen out there. It doesn't matter what you know — anything can happen," says George Jones Jr., 21, a third-generation scallop fisherman out of New Bedford, Mass.

The sometimes-marginal economy of fishing often forces fishermen to take risks, says Jack Cadigan, executive director of the United Fishermen of Alaska. In the Bering Sea king crab fishery, he says, "it's an almost absolute necessity to pile up the boat with crab pots, which raises the center of gravity and makes it more likely to turn turtle. That's not going to be simply ended just by the addition of safety equipment."

People like Jones and Cadigan were well represented at congressional field hearings held this year in Seattle, Boston and San Diego. High insurance rates were their main complaint. No legislation has been introduced yet to help fishermen weather the insurance storm, but legislators are predicting some kind of bill by spring.

"We feel like we're getting somewhere," Piche says.

But not far or fast enough, Peggy Barry says. "They all seem to be interested in the insurance end of it, without being sufficiently interested in the safety end of it."

The Barrys still know little about how their son died. Bodies of three crew members have never been found. Only shattered fragments of the Western Sea have been recovered, making it look, as one Coast Guard official put it, "like somebody had just torn it apart."

The Barrys live with that image day and night, determined to help prevent more such tragedies. They say it's not enough to rely on high insurance rates to force compliance with safety guidelines.

"That would be fine if the vessels that didn't comply had a big red sign saying, 'Hey, watch out for us.' It's criminal neglect that a kid from Washington can go out to get a job and there's no way for him to know which boats are safe," Peggy Barry says.

Coast Guard search for boat, crewmen yields no trace

Continued from Page A-1

since the search started Tuesday, with 50-knot winds, 20-foot seas and half-mile visibility.

Coast Guard officials said early Thursday they believed the missing boat could be the Aleutian Harvester from Homer. A radio conversation between the vessel and another boat was broken suddenly Tuesday morning, and the Aleutian Harvester had not been heard from since, said Coast Guard spokesman Glenn Rosenholm.

The Aleutian Harvester, with three men aboard, was fishing in the area where the emergency signal was picked up, about 30 miles south of Unalaska, at the eastern end of the Aleutian Islands.

A C-130 crew Tuesday reported spotting a life raft and what appeared to be two bodies in the water. A nearby fishing boat, the Golden Alaska, recovered the life raft in howling winds and 20-foot seas, but was unable to confirm the report, Coast Guard spokesman Glenn Rosenholm said.

The Coast Guard was first alerted to the vessel's problems Tuesday morning, when a satellite picked up signals from a position-indicating rescue beacon. Searchers have spotted the beacon each day and have left it in the water to get an idea of where currents might have taken crew members or debris from the ship.

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

443

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 443
Title: Concerning the monthly reports of surplus lines insurance brokers.
Sponsor: Halford
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: April 9, 1986

Approved by Commissioner: Louis D. Lounsbury
Agency: Commerce and Economic Development
Date: April 9, 1986

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

10/25/85

FISCAL NOTE

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SB 443: Summary

This measure expands the reporting requirements imposed on surplus lines insurance brokers, and would require monthly submissions of "loss data" as well as the premium information currently required. The monthly statement required shall be available to the public for inspection.

BILL SUMMARY

CHAIRMAN'S INFORMATION: SB 443

1) BILL TITLE: " An act concerning the monthly reports of surplus lines insurance brokers."

   a) Introduced: Sen Halford

   b) Co-sponsors:

2) INTENT: This measure expands the monthly reporting requirements imposed on surplus lines brokers, by requiring submission of "loss data" as well as the premium information currently required. The required monthly report shall also be available to the public for inspection.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public Witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from committee?
   d) Close public hearings?

6) COMMITTEE ACTION?

   a) amendments?
   b) CS adoption?

Department of Commerce & Economic Development / POSITION PAPER

SB 443: "An Act concerning the monthly reports of surplus lines insurance brokers."

This legislation requires that the monthly report required to be filed by surplus lines insurance brokers each month include loss information in addition to the premium information provided.

The surplus lines market is the nonadmitted market which, historically, has represented a substantial part of Alaska's market for a number of lines of insurance. Principal among these are aviation and marine coverages. Because such a large portion of these lines is placed in markets where the information about losses is almost nonexistent, it is difficult to attract markets when the loss data is unavailable. Placements in the surplus markets occur because there is not an admitted market willing or available to write particular coverages.

This market, since it is not subject to direct regulation, is a difficult one from which to draw information concerning underwriting results. What regulation exists is exercised through the licensee placing business in this market. This is true in all states.

While the information sought by this bill is desirable, it will be unverifiable by the division or by the surplus lines broker and, thus, unreliable. The surplus lines broker is at the mercy of the insurer for information about results. Nevertheless, it is better than no information at all. The value of this legislation is that it does send a message to the unregulated market that more data is wanted than is now available, and that attention is focusing on that market. For this reason, we support this legislation.

Loren H. Lounsbury

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 4/10/86

John L. George, Director of Insurance

Date: 4/10/86

AS21.34.170 DOCUMENT
CHAPTER = 21.34
SECTION = 21.34.170
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 34.
Surplus Lines Insurance.
CITATION Sec. 21.34.170.
CATCH LINE
MONTHLY REPORTS, SUMMARY OF EXPORTED BUSINESS.
TEXT On or before the end of each month, each surplus lines broker shall file with the director, on forms prescribed by the director, a verified report in duplicate of all surplus lines insurance transacted during the preceding calendar month showing aggregate gross premiums written and aggregate return premiums by kind of insurance.
HISTORY (Sec. 21 ch 117 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

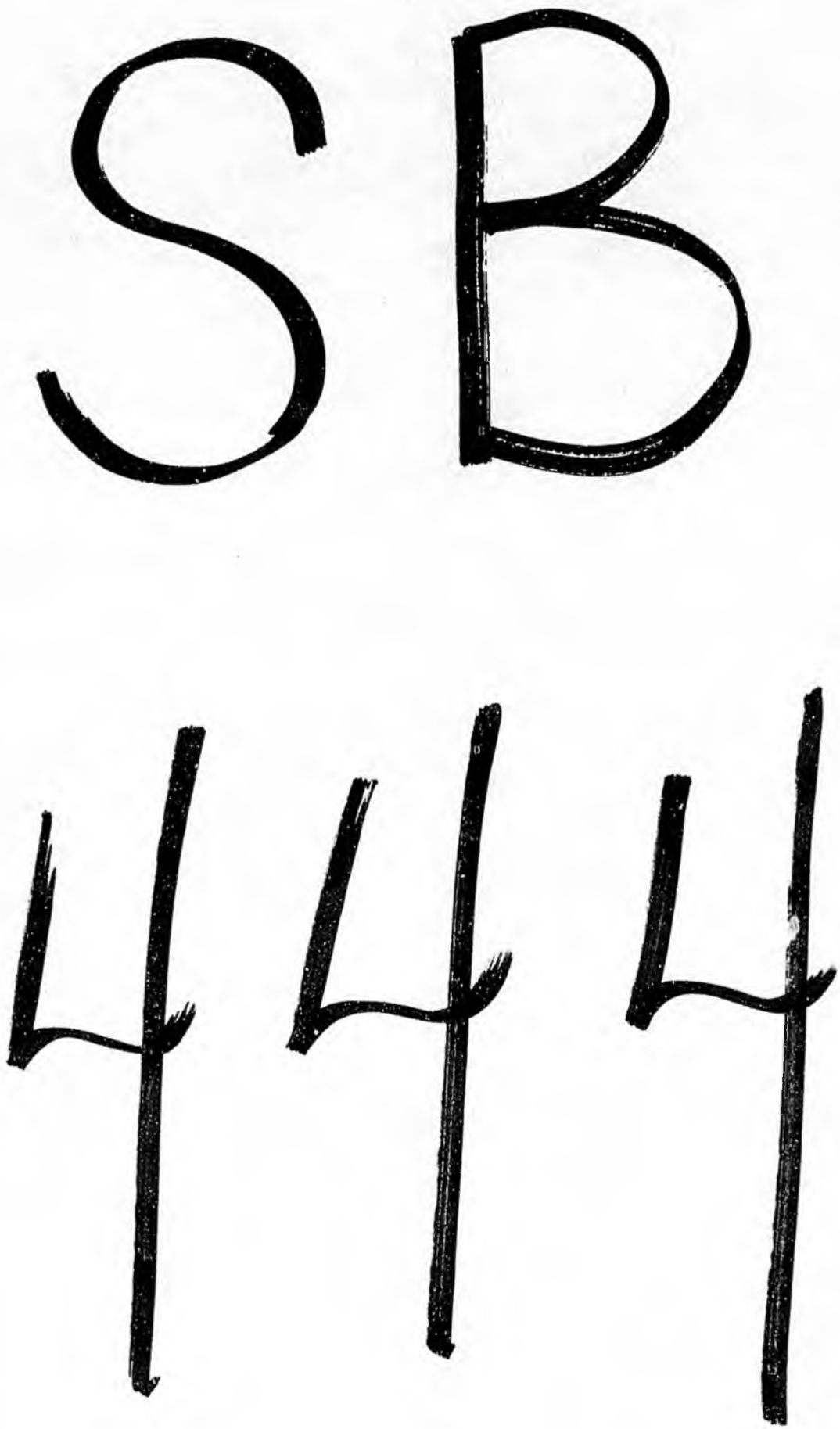
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11/24/89
Date

02-519 (REV 8/78)


SB
444

Department of Commerce & Economic Development / POSITION PAPER

SB 444: "An Act relating to civil actions; and amending Alaska Rules of Civil Procedure 49 and 58; and providing for an effective date."

This bill is focused on a variety of tort reforms. The position of the department on these issues is neutral.

This bill has an impact on the Division of Insurance. The division would be required to adopt regulations under this legislation to determine which insurers, self insurers, plans, or arrangements are financially qualified to provide security under the section dealing with security for payment of annuity, and to designate those entities as qualified insurers. This requires a fiscal impact and places the division in the position of making regulatory judgments concerning entities that it does not regulate. The entire expense can be avoided, as well as the conflict avoided, by using a slightly different approach to Sec. 09.30.480, which changes the fiscal impact to $0.

On Page 7, replace lines 9 - 14 with the following:

> Sec. 09.30.480. ELIGIBLE SECURITIES FOR PAYMENT OF ANNUITY. A governmental entity with taxing authority, or an insurer authorized under AS 21.09 by the Director of Insurance to sell annuities, is qualified to provide the security required under AS 09.30.430.

Loren H. Lounsbury, Commissioner
Department of Commerce and Economic Development

Date: 3/4/86

John L. George, Director of Insurance

Date: 3/2/86

mst0249K

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

445

MAR 1 1 1986

Senator Vic Fischer
Alaska State Legislature • P.O. Box V • Juneau, Alaska 99811 • (907) 465-4954

M E M O R A N D U M

To: Senator Fred Zharoff, Chair
Labor and Commerce Committee

From: Senator Vic Fischer

Re: Request for hearing SB 444, SB 445, and SCR 35

Dt: March 10, 1986

Attached is a file of background information on SB 444, SB 445, and SCR 35 relating to insurance. I'd appreciate your scheduling all three bills for a hearing before the Labor and Commerce Committee at your earliest convenience.

SB 445 proposes changes in requirements of how the insurance industry operates and provides for a multi-state reinsurance compact with other states.

SB 444 proposes three changes in torts, including a cap on non-economic awards, sliding scale for plaintiff's attorney fees and a periodic payment schedule.

SCR 35 is directed at the need for federal oversight of the insurance industry. The resolution requests the Governor to work with other states to get federal action and reconsideration of the current exemption from federal antitrust laws. The resolution also requests that the Governor look into establishing a state or multistate reinsurance pool.

Please contact me or my staff should you have any questions or need additional information.

During Interim: 1024 W. 6th Avenue • Anchorage, Alaska 99501 • (907) 278-3654

Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

TO: Interested Parties

RE: Omnibus Insurance Reform bills; SB 444, SB 445, and SCR 35.

DT: February 18, 1986

Today I introduced two bills and a resolution designed to provide Alaskans relief from the insurance crisis.

Many Alaskans are facing crises in cost and availability of general liability insurance. Municipalities, health care providers, architects, engineers,fishermen, truckers, and others from around the state are appealing to legislators to solve the problem.

There is no single or simple solution to the insurance crisis. That can only come about through a combination of state and federal administrative oversight and regulations, development of alternative insurance mechanisms, and changes in the torts. (A tort is a wrong against a person or thing. It is an injury or damage, for which civil action can be brought). In addition, the basic manner in which the insurance industry manages its resources and investments needs to be improved.

The legislation takes an omnibus approach: The bills offer a combination of proposals covering the rights of the insured, roles and duties of Alaska's Division of Insurance, and operation of the insurance industry in the state. The resolution is directed at broader issues of national concern.

SB 445 proposes a number of changes in the way Alaska regulates the insurance industry:

* The Division of Insurance is to hire an actuary. An actuary uses statistics to calculate risks and premiums for insurance. An Alaska based actuary would provide local data on industry

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needs and fairness of insurance coverage

* A consumer advocate section is established in the Division of Insurance. Currently, the Division of Insurance provides consumer assistance on a time available basis. The advocate's responsiblity would be to represent the rights and interests of the insured during performance of the divisions duties

  The cost of the advocate section would be covered by licenses, fees, and taxes collected by the division from insurance companies operating in the state

* An arms-length relationship is required between the Division of Insurance and the Insurance industry

* Director of the Division of Insurance is to report on tort awards, status of market assistance plans, and data from insurers on their Alaska operations for 1975-1985

* The Division of Insurance is to provide a report by January 1987, on the status of Alaska's insurance problem and list of the division's needs to fulfill its duties

* Cancellation of insurance is prohibited except for nonpayment of premium

* 60 days prenotification is required in case of nonrenewal

* A hearing on rate filing increases of 25% or more must be conducted by the Division of Insurance

SB 444 proposes three changes in torts:

* A $500,000 cap is placed on non-economic awards for general liability cases

* A sliding scale is established for plaintiff's attorney fees

* Periodic payments are to be made to claimants over 10 years and a bond is required to guarantee that if a company goes out of business an award will still be paid

* * *

SCR 35 requests the Governor to work with the US Congress, the federal administration, and other states to:

* Eliminate the current insurance industry exemption from anti-trust laws, and

* Look into national regulation of the insurance industry

* Establish national and multistate reinsurance arrangements

In 1945 the US Congress exempted insurance companies from federal antitrust laws, therefore regulation of the insurance industry is left to the states. National and multinational corportions constitute the insurance industry. These conglomerates operate in a world wide arena. The national and multinational aspects of the insurance crisis need to be addressed by Congress and the federal administration.

This legislation is, of course, only part of the total effort required to resolve the insurance crisis. Bills pending in the Legislature would establish insurance pools for high risk insurance markets. Such pools need to be supplemented by joint efforts with other states for reinsurance. Reinsurance is used by a company to cover capital for policies written beyond its means. The reinsurance companies are backing away from the market and leaving national and local companies without the capital necessary to cover their costs. Multi-state or national reinsurance would provide insurance companies with protection against major losses that cannot be covered by the companies themselves.



Senator Vic Fischer
Alaska State Legislature • P.O. Box V • Juneau, Alaska 99811 • (907) 465-4954

TO: Interested Parties

FR: Senator Vic Fischer

RE: Sponsor Substitute to SB 445; establishing a Multi-state reinsurance compact.

DT: March 7, 1986

The sponsor substitute for SB 445 introduced today adds provisions for a multi-state reinsurance compact to the original bill that deals with the way Alaska regulates the insurance industry.

The compact would:

* establish an Interstate Reinsurance Commission, consisting of three resident members from each compacting state, as an agency and corporate body of each compacting state

* establish a reinsurance fund made up of money contributed to it by compacting states and premiums paid for reinsurance coverage

* require that a study be conducted on the need for insurance and reinsurance in the participating states, the resources for meeting the needs, and the long-range effects of the compact on the availability of insurance rates that are not excessive; study results would be used by the Commisison in determining who to provide reinsurance to.

* provide the Commission with authority to draft uniform legislation dealing with problems of insurance availability in the compacting states

Compacts between Alaska and other states are fairly common. The state is a member of interstate compacts for education, crime, public advocacy, radio active waste management, placement of children, and tax collection

The reinsurance compact would fill a major void in the current insurance situation and would complement other measures being considered by the legislature. Many companies

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operating locally have declined to renew insurance policies because they are unable to get reinsurance -- insurance bought to cover insurance transactions of the insurance companies.

In response to the problem of obtaining reinsurance, a few bills have been introduced in the House that would establish a state reinsurance pool. A problem with an independent Alaska pool is that the state may not have sufficient population and funds to support a reinsurance pool. However, if Alaska were to combine resources with other states, a state reinsurance program might be possible - and one of the major problems insureds are facing might be resolved.

With this addition, SSSB 445 proposes that:

* an actuary be hired by the Division of Insurance to calculate risks and premiums for the Alaska insurance market

* a public advocate section be established in the Division of Insurance to represent the rights and interests of the insuraed during performance of the divisions duties

* the Division of Insurance maintain an arms length relationship with the Industry

* the Division of Insurance report on the Alaska insurance market, the status of the problem, and the division's needs to fulfill its duties

* cancellation of insurance premiums be prohibited except for nonpayment of premiums

* 60 days notice be required before a policy is denied

* the Division of Insurance be required to conduct a hearing for rate filing increases of 25% or more

In February, I also introduced SB 444 that proposes three changes in the torts, and SCR 35 that addresses national and interstate solutions. When combined, these bills provide a comprehensive package directed at the major components of the insurance crisis.

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Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

455

AARP

1985-1986
ALASKA STATE LEGISLATIVE COMMITTEE

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Mr. John E. Dapcevich
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Sitka, AK 99835
(907) 747-8383

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Seward, AK 99664
(907) 224-3090

SECRETARY
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P.O. Box 870797
Wasilla, AK 99687
(907) 376-2092

FEB 25 1986

February 23, 1986

Senator Fred F. Zharoff
Chairman, Senate Labor & Commerce
Committee
Pouch V
Juneau, Ak. 99811

Dear Senator Zharoff:

Senator Eliason's office called and informed me that the "55 and Alive" bill was recently introduced in your committee.

The American Association of Retired Persons, which represents over 20 million members nationally and 20,914 in the State of Alaska, heartily endorse passage of the legislation.

Anything you can do as chairman to pass this out of your committee with a "Do Pass" recommendation will be greatly appreciated.

Sincerely,

John E. Dapcevich
Chairman

cc: Senator Eliason

AARP

RECEIVED
FEB 10 RECD
1986
OLDER ALASKANS COMMISSION

A Bill to be Entitled

An act to provide that any rates, rating schedules, or rating manuals for the liability, personal injury protection, and collision coverages of a motor vehicle insurance policy submitted to or filed with the Insurance Commissioner shall provide for an appropriate reduction in premium charges, determined by the individual insurer, as to such coverages when the principal operator on the covered vehicle is an insured 55 years of age and older for a three year period after successfully completing a motor vehicle accident prevention course approved by the Department of Motor Vehicles.

Be it Enacted by the Legislature of the State of

Section 1. Any rates, rating schedules, or rating manuals for the liability, personal injury protection, and collision coverages of a motor vehicle insurance policy submitted to or filed with the Insurance Commissioner shall provide for an appropriate reduction in premium charges as to such coverages when the principal operator on the covered vehicle is an insured 55 years of age and older for a three year period after successfully completing a motor vehicle accident prevention course approved by the Department of Motor Vehicles. Any discount used by an insurer shall be presumed appropriate unless credible data demonstrates otherwise.

Section 2. The premium reduction required by this section shall be effective for an insured for a three year period after successful completion of the approved course, except that the insurer may require, as a condition of providing and maintaining the discount, that the insured:

(a) Not be involved in an accident for which the insured is at fault;

(b) Not be convicted, plead guilty or nolo contendere to a moving traffic violation, or to a traffic related alcohol or narcotics offense; and

(c) Have maintained a driving record free of violations and liable accidents for a three year period prior to course completion;

Section 3. Upon successfully completing the approved course, each person shall be issued a certificate by the organization offering the course which shall be used to qualify for the premium discount required by this section.

Section 4. This section shall not apply in the event the approved course is taken as punishment specified by a court or other governmental entity resulting from a moving traffic violation.

Section 5, Each participant shall take an approved course every three years to continue to be eligible for the reduction in premiums.

American Association of Retired Persons 1909 K Street, N.W., Washington, D.C. 20049 (202) 872-4700

Vita R. Ostrander *President* Cyril F. Brickfield *Executive Director*

Position Paper

Automobile Insurance Discount

The State Legislative Committee of the American Association of Retired Persons proposes that legislative steps be taken to reduce automobile insurance premiums for motor vehicle operators age 55 and older who complete a state-approved driver education course.

Rationale: Motor vehicle operators age 55 and older are a unique population and have specific physiological considerations and driving problems. How do these individuals compare with age brackets in safe driving practice and incidence of accidents?

In order to obtain an accurate picture it is not enough to consider only age and number of accidents, its necessary to factor in the annual number of miles driven per year. Research shows that the number of annual miles driven by motor vehicle operators begins to decline significantly after age 55. Therefore, an important consideration with regard to the safe driving practices and abilities of older persons is the criteria used to determine accident involvement statistics.

The record of the older driver is good when calculated on the basis of accidents per driver. When the same figures are examined on the basis of miles driven annually, a different picture emerges. This more significant and meaningful statistic highlights the urgent need for corrective measures to re-educate older drivers.

Because older persons drive fewer miles, corrections must be made for driving exposure. When this factor is included in accident involvement rates, and the involvement per exposure is determined, a U-shaped curve of accidents versus age results. Violation and accident rates per mile are higher for the youngest and oldest drivers and lower for those in the middle ranges. Although one can quibble over the exact placement of the curve, a general "U" configuration has emerged in every major study undertaken during the past 10 years.

The National Safety Council reports that when the number of miles driven is taken into account, drivers age 55 and over have a poorer accident record than drivers in their middle years.

The U. S. Department of Transportation identifies the older driver as being age 60 and older and in a group which requires special consideration in the development of driver improvement training procedures. The National Highway Safety Forecast points out that the older driver is adjudged at fault more than middle aged drivers, and due to the population age shifting currently underway in America, is perhaps one of the fastest growing highway safety problem areas.

Older drivers have problems when involved in driving situations requiring quick response, full vision and interaction with other drivers. Typical violations include failure to yield right-of-way, improper turning, incorrect lane changing, passing, and entering and leaving expressways.

The older driver learned to drive during the first forty years of this century, well before the advent of formal driver education programs in the public school systems. The older driver that has completed a formal driver training course is the exception rather than the rule.

These individuals may experience physical changes which affect driving abilities and attitudes. People age at different rates, so age alone is not a fair criterion for determining driving competence. There is no question, however, that driving ability can be affected by the aging process. The gradual failure of sensory acuity associated with aging reduces the quantity and accuracy of information capable of being processed. This reduces the ability of the individual to respond or react to his environment with the speed and judgment current traffic often requires.

Eighty-five to ninety percent of all sensory input needed to drive comes via the eye. Unfortunately, as one ages the need for more illumination increases, glare sensitivity rises, dark adaption lessens, and peripheral vision narrows. Hearing loss also presents problems for older drivers. It is also broadly accepted that as one ages muscles tend to weaken or atrophy.

Primary Objective: By passage of this legislation, will create an economic incentive for older drivers to take a driver improvement course and thereby improve their driving capabilities. This reduces their chances of accident and accident claim filings, and creates a safer driving environment for all . Notably, the proposed legislation brings this about without cost to the state.

The older driver earns the driver improvement discount by taking a positive, preventive step. This incentive discount is given in addition to any other marketing discounts, such as for non-smokers, seat-belt wearers, those reaching a certain age, etc.

The automobile insurance industry writes policies on accidents per age group, and thus considers older drivers to be a reduced risk because of the fewer miles that they drive. In fact, some insurance companies reduce premiums for drivers after age 55 or 65, much the same as they do for drivers after age 25. The issue is not whether some automobile insurance companies may or may not reduce rates for older drivers as a marketing tool. The primary issue is reducing accidents per mile involving drivers age 55 and older.

Action in other states: Legislation has been enacted in 16 states and the District of Columbia which require all automobile insurance companies conducting business in those states to provide a premium reduction to graduates of state-approved driver improvement courses. The list now includes:

State	Discount	Age	Effective Date
AR	Approp. 5-20%	55+	1981
CT	Approp. Min. 5%	62+	1983
DE	10% on liab. & personal injury protection	16+	1982
DC	Approp. 5-10%	55+	1985
FL	Approp. reduction	65+	1986
KY	Approp. reduction	55+	1984

State	Discount	Age	Effective Date
IL	Approp. 5-10%	55+	1982
LA	Approp. 5-10%	55+	1984
MN	Approp. reduction	65+	1985
ND	Approp. 8-10%	55+	1983
NY	Min. 10% on liability	16+	1981
OK	Approp. reduction	55+	1986
RI	Approp. reduction	55+	1984
TN	Approp. 8-10%	55+	1984
TX	10% of premium	16+	1974
VA	Approp. reduction	55+	1985
WY	Not less than 10% of premium	60+	1983

Many other state legislatures are considering this legislation. It is hoped that will add this legislation to its statutes.

CONCERNS AND RESPONSES REGARDING OLDER
DRIVER DISCOUNT LEGISLATION

Prepared by AARP's State Legislative Committee

A. CONCERN: Since statistics seem to show drivers age 55 and older among the safest on the road, what is the rationale for legislation that would encourage participation at a driver improvement course?

RESPONSE: The National Safety Council finds that drivers age 55 and older have a poorer accident record, considering the number of miles driven, than do drivers in their middle years. The U. S. Department of Transportation statistics agree: older drivers are at fault more frequently than middle age drivers in accidents and violations reported by law enforcement officials.

It is not enough to consider only age and the number of accidents. From this limited perspective one sees that drivers 55 and older make up 24% of the driving population, yet are involved in only 18% of the accidents. But when driving exposure is considered, measured by the number of miles driven, older drivers have a higher percentage of accidents than their population warrants. Violation and accident rates per mile is higher for the youngest and oldest drivers, and lower for those in the middle range.

Research shows that the aging processes that affect driving generally become significant when persons reach their fifties. The U. S. Department of Transportation recommends that special consideration be given to older drivers when driver improvement courses are developed.

B. CONCERN: Since a number of driver improvement courses already exist, why aren't older drivers enrolling?

RESPONSE: Older drivers do enroll in driver improvement courses, nationwide and here in . Many more will do so, however, when an economic incentive is available through legislative mandate. Experience in other states that have passed this type of legislation has shown that most people need an economic incentive to actively seek improvement of their driving skills. In of our neighboring states, experience with this legislation and of older drivers are now enrolling there. Should enact this bill, there will be accident claim reductions and fewer injuries and fatalities on our roads as well.

C. CONCERN: It seems that older drivers are being singled out for special consideration. Isn't this age discrimination? Why not allow drivers of all ages to participate in any mandated insurance incentive program?

RESPONSE: The American Association of Retired Persons is interested in resolving problems of older persons. However, if will pass legislation allowing discounts for all drivers attending driver improvement courses, we would not be opposed. We have been informed by numerous insurance companies and insurance trade associations that they are against legislation involving the younger driver. In fact they have fought against including drivers below age 55 in many states where legislation has been enacted for drivers age 55 and over. This legislation does not establish a special category of drivers in any discriminating sense. It simply recognizes an area of need and provides an incentive to help older drivers and the insurance industry reduce accidents and accident claims.

D. CONCERN: Many automobile insurance companies already offer discounts for older drivers based on accidents per age group. Would this legislation jeopardize these discounts?

RESPONSE:

Sixteen states and the District of Columbia have already enacted similar legislation. The discount provided to graduates of approved driver improvement courses is the last discount applied. The automobile insurance industry writes policies on accidents per age group and thus considers older drivers a good risk, due to the fewer miles that they drive. In fact, some insurance companies reduce premiums for drivers after age 55 or 65, much the same as they do for drivers after age 25.

The goal of mandated legislation, however, is to provide an incentive discount on automobile insurance premiums that encourages older drivers to take a driver improvement course and to reduce the chances of accidents and claim filings. The driver earns the discount by taking a positive prevention step, unrelated to any other discount.

The discount given graduates of approved driver education courses is given in addition to any other marketing discounts provided to non smokers, seat belt wearers, those reaching a certain age, etc. None of these marketing discounts was dropped when states mandated this legislation.

E. CONCERN: Would drivers not involved in driver improvement courses have to subsidize the discount provided to those who complete one of the approved courses by paying higher premiums?

RESPONSE: This has not been the case in the other mandated states. In Texas where the insurance discount has been in effect for 10 years, the phrase used by insurance companies is that the discount is "fully earned". Although most states recently enacted this legislation, it is our belief that time will show a accident and violation reduction. The insurance companies will save money due

to fewer accident claim filings. As a consequence drivers not participating in the mandated insurance driver improvement program will not pay a higher premium, but will be encouraged by their insurance companies to enroll in a driver improvement course.

F. CONCERN: Why must the word mandated to be included in the language? Can't the language be changed to allow voluntary participation?

RESPONSE: Any company may provide a voluntary discount at present. Unfortunately, few have chosen to do so. If all are required to participate, insurance companies have said that they would go along.

G. CONCERN: The legislation includes the term "appropriate reduction" and contains a retake feature. What does this mean?

RESPONSE: The term "appropriate reduction" would allow competition within the insurance industry of to set the reduction percentage. In other words, if the bill becomes law, no one would dictate the terms of an "appropriate reduction" to the state's insurance industry. Each company in the state would set its own discount rate and be able to raise or lower the percentage each year based on the accident claims experience of policyholders that graduate from approve driver improvement courses.

Experience in other states with similar legislation has demonstrated the competitiveness of this feature. Companies have selectively increased refresher course discounts as a marketing tool to attract new clients.

The insurance trade associations also feel that any individual graduating from an approved course should retake an approved curriculum every two or three years. This keeps information current, and also refreshes the driver on necessary skills and techniques to remember.

H. CONCERN: What research is available to prove driver improvement courses work?

RESPONSE: Numerous studies have been conducted on the well known courses, and the results demonstrate effectiveness. It is worth noting that no state has rescinded this type of legislation, and to remember the 10 years' experience in Texas that finds discounts to be "fully earned".

The insurance industry, however, considers these evaluations to be limited tests that do not demonstrate 'statistical significance' in their accident or violation reduction findings. In order to

satisfy the insurance industry, and demonstrate 'statistical significance', an older driver course evaluation must involve 20,000-30,000 students, randomly assigned to a control group that doesn't take the course and a treatment group that completes the course. Both groups need to be followed for a period of time via questionnaires and a sample of Department of Motor Vehicle records must be accessed to validate self report forms. Financially and logistically, this has proved impossible for course developers. The insurance industry has not been willing to initiate a study of this size or to work with course developers.

I. CONCERN: Does AARP make money on its driver improvement course?

RESPONSE: No. AARP actually subsidizes approximately two-thirds of overall program costs, and charges each participant a minimal fee to offset the balance of expenses. Sponsors' purpose behind driver improvement courses, at least for the major well-known programs, is education rather than financial reward. But AARP is not in a position to speak conclusively for other organizations.

J. CONCERN: Why is it that several of the states which have passed this legislation have only a small percentage of eligible drivers participating to date?

RESPONSE: Although approved courses are widely publicized, they need help from the insurance companies to notify potential participants. Automobile insurance companies doing business in should be requested to notify their eligible policyholders that the discount can be obtained upon completion of an approved course.

K. CONCERN: How would the legislation be implemented?

RESPONSE: In the proposed legislation, an appropriate state agency is designated to select the courses that will be approved for the mandated insurance discount program. In most states the Department of Motor Vehicles has been selected. Program regulations and guidelines are usually drawn up in consultation with officials of states which have already passed similar legislation.

L. CONCERN: Will this legislation cost the state anything?

RESPONSE: There is no fiscal note for the state.

FOR FURTHER INFORMATION REGARDING THIS PROGRAM WRITE:

AARP
Traffic & Driver Safety Program
1909 K Street, N.W.
Washington, D.C. 20049

Summary Analysis
55 Alive/Mature Driving

	# of 1983 Graduates	# of 1984 Graduates	# of 1985 Graduates	# + or -, 1984-1985	% + or -, 1984-1985	Penetration Rate (% Grads to 50+ Driver Population)	Rank Among 52 Jurisdictions: # Grads	# +/-	% +/-	Penetration
AREA IX	2,208	3,725	6,212	2,487	67%	.112%	7	6	6	9
AZ	871	900	1,461	561	62%	.249%	12	21	37	15
CA	1,212	2,661	4,599	1,938	73%	.099%	6	6	34	26
HI	113	70	76	6	9%	.051%	47	47	47	35
NV	12	94	76	-18	-19%	.043%	48	48	50	39
AREA X	710	1,087	2,973	1,886	174%	.185%	9	9	3	7
AK	-	28	128	100	357%	.272%	44	38	8	13
ID	33	19	70	51	268%	.038%	49	41	10	44
OR	130	390	1,165	775	199%	.209%	15	12	16	17
WA	547	650	1,610	960	148%	.197%	11	10	25	19
TOTAL	61,179	60,177	98,941	38,764	64%	.218%				

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4198 SLAB SB 463 - SB 473

1678

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
463

Bill No. Senate Bill 463

Date March 18, 1986

Title "An Act imposing requirements on employers who hire nonresidents for employment in the state; and providing for an effective date."

Contact: Robert Bacolas
465-4870
Eileen Plate
465-2700

SB 463 would impose a variety of requirements on employers who hire nonresidents to work in Alaska.

Under the bill, employers who hire nonresidents to work in the state are required to certify to the Department of Labor within 20 days after the date of hire each o that the various requirements have been satisfied. The employer would also be required to file a report with the Department every six months, summarizing the information contained in the certifications of individual employees. Civil fines of up to $1,000 and other penalties are authorized for violation of the hiring requirements.

Because this bill raises significant legal and constitutional questions, we strongly recommend that a thorough legal analysis be done on the bill prior to any further consideration. In particular, we believe it is important to establish a factual foundation showing that nonresidents are causing or contributing to significant health and safety problems in the state. We are unaware of the availability of such information at the present time.

From an administrative standpoint, the Department of Labor would be required to monitor and audit the certifications and reports filed by employers. The Department would also be responsible for conducting any necessary enforcement for any violations found. Presumably the Department would also administer the surety bonding requirement contained in proposed Sec. 23.10.500(a)(4); however, the bill should be amended to expressly assign the bonding authority to the Commissioner of Labor. Finally, the Department would be required to adopt regulations to administer the provisions of the bill.

Because of the additional responsibilities which would be assumed by the Department of Labor, a fiscal note is attached.

APPROVED:

for Jim Robison, Commissioner
Department of Labor

_ POSITION PAPER

-APER/Department of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 463
Title : "An Act imposing requirements on employees who hire nonresidents for employment in the state.....
Sponsor : Labor & Commerce
Requestor : Labor & Commerce
Date of Request : 3/14/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Wage & Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		167.6	167.6	167.6	167.6	167.6
TRAVEL		22.5	23.4	24.3	25.3	26.3
CONTRACTUAL		45.0	46.3	48.7	50.6	52.6
SUPPLIES		2.5	2.6	2.7	2.8	2.9
EQUIPMENT		6.4	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	244.0	240.4	243.3	246.3	249.4
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	244.0	240.4	243.3	246.3	249.4
FEDERAL FUNDS						
OTHER						
TOTAL	0	244.0	240.4	243.3	246.3	249.4

POSITIONS :

FULL-TIME		4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert J. Bacolas, Sr. Phone : 465-4870
Division : Labor Standards & Safety Date : 3/18/86

Approved by Commissioner : Jim Robison Date : 3/18/86
Agency : Labor

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

10/25/85

FISCAL NOTE

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 463

In order to implement the provisions of this bill the Department would need three additional Wage and Hour Investigator I's and a Clerk Typist III. The investigators would be located in Anchorage, Juneau, and Fairbanks. Specific duties and costs associated with these positions are on the attached New Position Request forms. Additional costs would be as follows:

$11,000	Communications
8,000	Printing & Advertising
18,000	Legal fees
$37,000	

The communication expense would be for long distance phone calls around the state to verify reports. Printing and advertising expense would be incurred when informing the public via television, radio, and posters of the requirements of the law. Legal fees are for the services of lawyers for hearings and appeals which may occur.

The following assumptions were made when preparing this fiscal note:

1. Employers will file reports for 65,000 to 70,000 nonresidents per year.
2. Extensive travel would be required to verify the accuracy of employer reports.
3. An effective date of 7/1/86.
4. Annual inflation of 4% for non-personal service items.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Wage & Hour Investigator I	3	16A	GGU			
Time Status / **Staff Months** / **RP Number**	**Location** / **Election District**			Leg.		
PFT / 12 /	Anch, Juneau, Fbks /					

Type of Expenditure		Amount
1	2	3
Salary	106,092	
Benefits	33,503	
Premium Pay		
Other		
Total Personal Services		139,595
Travel		22,500
Contractual		6,000
Commodities		1,500
Equipment		4,800
Other		
Total Cost		174,395

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	174,395
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

These investigators would be responsible for enforcing the provisions of this bill. Specifically, they would verify that surety bonds were posted, audit certification reports to verify their accuracy, level fines when violations are found, and ensure the public has knowledge of the bill. Travel would be required to various employers for auditing and verification purposes. Contractual and commodity costs are average per-employee expenses. The equipment cost would be for desk, chairs, cabinets, etc., and would be a one-time item.

Request For New Position

Agency Labor
BRU Labor Standards & Safety
Component Wage and Hour

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	1	8A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	20316	
Benefits	7702	
Premium Pay		
Other		
Total Personal Services		28,018
Travel		0
Contractual		2,000
Commodities		1,000
Equipment		1,600
Other		
Total Cost		32,618

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	32,618
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This position would handle the clerical functions as required in the bill. The position would process and maintain records of the certificates and the reports when received from employers. A log of surety bonds would be kept by this person. Typing of regulations and distribution of informational posters would also be duties. Contractual and commodity costs are average per-employee expenses. The equipment expense would be for a desk, chair, etc., and would be a one-time item.

Request For New Position

Agency Labor
BRU Labor Standards & Safety
Component Wage & Hour

Revised Date

FY 87

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SB 463: Sectional Analysis

Section 1) Adds new sections to AS23.10

23.10.500 DUTIES OF EMPLOYERS

When an employer hires a nonresident, the employer shall insure the following:

1) provide the employee with paid transportation from the work site in Alaska to his place of residence, and clothing and supplies adequate for protection of the employee.

2) provide troopers and police with a list of felony convictions of the employee for the last 20 years.

3) require the employee to have a certificate of good health prior to commencing work;

4) post a surety bond of $10,000 to be forfeited to the state if an employee brings a serious infectious or communicable disease or an employee with a prior felony conviction commits a felony in this state, while an employee of an employee of an employer.

5) require an employee to register his motor vehicle in the state;

6) require the employee to have an Alaskan Drivers license.

b) Employer to provide the employee with an orientation program to acquaint the employee with Alaska culture and environment.

c) An employer shall certify to DOL within 20 days after hiring a nonresident, that the requirements of this section have been met. Employer shall file a report with DOL every 6 months summarizing information from the certifications.

d) employer who forfeits bond may not be licensed in an occupation or perform work in the state for 5 years.

e) Employer liable for a civil fine of $1,000 for each violation.

23.10.510 Department of Labor to adopt regs for this chapter

23.10.520: Dept of H&SS shall establish by regs the requirements for a certificate of good health. Before issuance of this certificate, the department shall require the employee to submit evidence that he is free from serious and infectious communicable disease.

23.10.600 Definitions

Section 2) Immediate effective date.

Introduced: 3/14/86
Referred: Labor and Commerce

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE BILL NO. 463

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act imposing requirements on employers who hire nonresidents for employment in the state; and providing for an effective date."

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

* Section 1. AS 23.10 is amended by adding new sections to read:

ARTICLE 7. NONRESIDENT HIRE.

Sec. 23.10.500. DUTIES OF EMPLOYERS. (a) When an employer hires a person who is not a resident of this state, the employer shall

(1) provide the person, on the first day of employment, with fully paid transportation from the work site in this state to the person's place of residence and with clothing and other personal supplies adequate to protect the employee from the effects of the climate and environment of the work site;

(2) provide the police department or state troopers' office nearest to the work site a list that includes the date and place of each felony conviction of the employee within the past 20 years;

(3) require the employee to secure a certificate of good health under AS 23.10.530 before the employee begins work for the employer in this state;

(4) post a surety bond in the amount of $10,000 to be forfeited to the state if a nonresident employee brings a serious infectious or communicable disease into the state or if a nonresident employee with a prior felony conviction required to be reported under (a)(2) of this section commits a felony in this state while an

employee of the employer;

(5) require the employee, if the employee owns a motor vehicle located in this state, to register the vehicle in this state under AS 28.10; and

(6) require the employee, if the employee has a driver's license issued by a licensing jurisdiction other than this state, to secure an operator's license under AS 28.15.

(b) An employer who hires a nonresident for work in this state shall provide the employee with an orientation program to acquaint the employee with Alaskan culture and environmental concerns, to make the employee sensitive to the ecosystem and habitat of the area or areas of the state in which the employee will work, and to minimize the negative impact of the nonresident on the prevailing culture and environment.

(c) An employer who employs a person who is not a resident of this state shall certify within 20 days after the date of hire to the Department of Labor that the requirements of this section have been met. The employer shall file a report with the Department of Labor every six months summarizing the information from the certifications and containing other information required by the department.

(d) An employer who forfeits a bond under (a)(4) of this section may not be licensed in an occupation or to perform work in this state for five years after the date of forfeiture.

(e) An employer who violates this section is liable for a civil fine of $1,000 for each violation.

Sec. 23.10.510. REGULATIONS. The Department of Labor shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

Sec. 23.10.520. CERTIFICATES OF HEALTH. The Department of

Health and Social Services shall establish by regulation the requirements for issuing certificates of good health. Before issuing a certificate, the department shall require an applicant to submit evidence that the applicant is free from serious infectious or communicable disease.

Sec. 23.10.600. DEFINITIONS. In AS 23.10.500 - 23.10.600,

(1) "employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied and includes a person employed by the state or a political subdivision of the state;

(2) "employer" means a person who has at least one employee and includes an agent of an employer.

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

CHAIRMAN'S INFORMATION: SB 463

1) BILL TITLE: "An act imposing requirements on employers who hire nonresidents for employment in the state; and providing for an effective date"

a) Introduced: Senate Labor and Commerce Committee

b) Co-sponsors:

2) INTENT: This measure imposes certain duties on employers who hire nonresidents, and approaches the problem of Alaska Hire from a health and safety perspective.

N.B. Technical change necessary on page 1, line 23: need to change a "typo" on statutory cite.

FISCAL NOTE: Department of Labor $244.0 + 4 PFT's We will also need a H&SS F/N

3) ADDITIONAL REFERRALS: Rules

N.B. NEEDS A FINANCE REFERRAL

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

BILL SHEFFIELD, GOVERNOR

POUCH H-06
JUNEAU, ALASKA 99811-5976
PHONE: (907)465-3090

February 10, 1986

FEB 12 1986

The Honorable Fred Zharoff
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Zharoff:

Thank you for the opportunity to share a "Rationale for Public Health Nurse Involvement in Communicable Disease Control Activities" with you.

In spite of preventive efforts, incidents involving communicable disease are predictably going to occur, we just don't know where and when. With a state the size of Alaska the major network to maintain surveillance and control is through the public health nurse because of her educational background and status as a local public health representative.

If you have further questions related to the enclosed document or other public health related activities, do not hesitate to contact me again.

Sincerely,

Elizabeth Ward

Elizabeth Ward, M.N.
Director

Enclosure

Rationale for Public Health Nurse Involvement in Communicable Disease Control Activities

The long range goal of any communicable disease program is eradication of disease. To date, in history, only one communicable disease has been eradicated; in May 1980, the World Health Assembly declared smallpox eradicated worldwide. Smallpox was successfully eradicated because it was vaccine preventable, highly infectious, had a relatively short incubation period, man was the only reservoir, and mortality and morbidity was very high. Communicable disease control is a global issue, which exceeds national, state and local boundaries.

In Alaska, communicable disease control is a public health issue governed by various statutes. Article VII, Section 4 of the Alaska Constitution states "the legislature shall provide for the promotion and protection of public health". AS 44.29.020 states "the Department of Health & Social Services shall administer the state's program of public health and social services, including public health nursing services." Since the establishment of the Territorial Health Department in 1936, public health nurses have been the field agents carrying out the purposes and functions of the Division of Public Health, Department of Health & Social Services. AS 18.050.030 states "the Department (Health & Social Services) shall cooperate with the federal government in matters of mutual concern pertaining to public health, the control of communicable disease, ---."

The first step in the control of communicable disease is its rapid identification followed by notification to the local health authority that the disease exists within a particular area. Regulations for the control of diseases of public health significance in Alaska is found in 7AAC 27.005 (see Attachment 1).

The following incident exemplifies a real life situation in Kodiak. In September 1984, a crew member from a Taiwanese fish processing ship was hospitalized at Kodiak hospital with active tuberculosis which was reported to the Section of Communicable Disease Control. As a local representative of the Health Department the public health nurse became the coordinator among the private medical community, Communicable Disease Control and port and immunization officials. Although the person with active disease was promptly returned to his own country, a lot of follow-up was necessary. The public health nurse provided the tuberculin screening and follow-up of the 36 Taiwanese crew members and 20 American fishermen who had direct contact with the active case. The PHN's activities were not completed until 9 months later when the ship left Alaskan waters. One to two years of surveillance is common in follow-up of any active tuberculosis case when all goes well.

The public health nurse as official representative of the Department of Health and Social Services initiates tuberculin testing to meet requirements of mandated programs or as a diagnostic tool. The public health nurse then initiates referral for diagnosis and instructs the client, family and community as needed. The public health nurse provides follow-up of contacts to active tuberculosis cases and is a patient advocate through the complex and often confusing health care delivery system. The public health nurse maintains liaison between the client, the community health aide, the physician and tuberculosis control unit of Communicable Disease Control. The public health nurse with the assistance of the tuberculosis unit of Communicable Disease Control is delegated the responsiblity of managing the follow-up of the TB case in the community regardless of who follows the medical management of the case. Successful management of tuberculosis requires knowledge of epidemiology and community organization in addition to in-depth knowledge of the disease process and the drugs used. Getting the client fully treated often involves ingenuity, perserverance, skill and time. The public health nurse is the health care provider with the requisite skills and status to carry out the multiple long-term aspects of tuberculosis management.

Since March 1, 1977 "No Shots - No School" requirements in Alaska have been strictly enforced. Public health nurses have the responsibility for ensuring that parents of infants and children are instructed on the value of immunizations, for obtaining the vaccines, giving them and documenting the individuals' immunization status. As with childhood immunizations, the giving of influenza and pneumococcal vaccine to targeted high risk populations has also been delegated to public health nursing.

Sexually transmitted diseases are most often managed by the public health nurse. Skill in interviewing and the assurance of confidentiality enable the public health nurse to elicit the contact information needed to break the chain of infectivity.

Communicable disease control activities in Alaska continue to be essential as reflected in the 25% more cases of TB in 1985 than 1984, the whooping cough cases in Southeast and other parts of the State in Spring 1985 and the new public health issues associated with AIDS. It is only in the last couple years that Alaska has not had the dubious distinction of the highest gonorrhea rate in the country. In spite of other pressing health related issues, communicable disease prevention must continue to be a priority for public health nurses.

Attachment

EN:kmg

ALASKA ADMINISTRATIVE CODE

CHAPTER 27: PREVENTIVE MEDICAL SERVICES

ARTICLE 1.
CONTROL OF DISEASES OF PUBLIC HEALTH SIGNIFICANCE

7 AAC 27.005. REPORTING BY HEALTH CARE PROVIDERS

(a) The following common diseases of public health significance must be reported by the physician, nurse, or other health care professional who prescribes for or attends a person with these diseases or suspected diseases: amebiasis, botulism, brucellosis, campylobacter, diphtheria, giardia, gonorrhea, hepatitis (type A or B, or non A - non B), legionnaire's disease, meningitis, mumps, paralytic shellfish poisoning, pertussis, psittacosis, Reye's Syndrome, rheumatic fever, rubella, rubeola, salmonella, shigella, syphilis, trichinosis, tuberculosis, tularemia, typhoid, yersinia, severe reactions to any vaccination, and epidemic outbreaks or unusual incidences of communicable disease.

(b) The following rare diseases of public health significance must be reported by the physician, nurse, or other health care professional who prescribes for or attends a person with these diseases or suspected diseases: acquired immune deficiency syndrome (AIDS), cholera, echinococcus, encephalitis, leprosy, malaria, poliomyelitis, plague, rabies, smallpox, tetanus, and yellow fever.

(c) Reports must be submitted to the Department of Health and Social Services, division of public health, orally or on a form provided by the division of public health promptly after first discovering or suspecting the existence of the disease or disease outbreak. Each report must give the name, address, age, sex, and race of the person diagnosed as having the reported disease and the name and address of the health care provider reporting the disease.

(d) Outbreaks or unusual incidences of diseases which are known or suspected to be related to exposure to environmental toxic or hazardous material must be reported by the physician, nurse, or other health care professional who prescribes for or attends those affected. (Eff. 8/21/74, Reg. 51; am 9/20/75, reg. 55; am / / , Reg.).

Authority: AS 18.05.040(1)

7 AAC 27.007. REPORTING BY LABORATORIES:

(a) Public, private, military, hospital, or other laboratories performing serologic, immunologic, microscopic, biochemical or cultural tests within the State of Alaska must report evidence of the following diseases of public health significance at the time of identification or suspected identification: amebiasis, anthrax, botulism, brucellosis, campylobacter, cholera, diphtheria, echinococcus, enteropathogenic Escherichia coli, giardia, gonorrhea, hepatitis (Type A or B), influenza, Legionella pneumophilia, leprosy, leptospirosis, malaria, meningitis, meningococcal disease, mumps, pertussis, plague, poliomyelitis, psittacosis, rabies (human or animal), rubella, rubeola, salmonella, shigella, smallpox, syphilis, tetanus, trichinosis, tuberculosis, tularemia, typhus, yellow fever, and Yersinia enterocolitica.

(b) Reports must be submitted to the Department of Health and Social Services, division of public health, orally or on a form provided by the division of public health, or on a legible copy of the original laboratory report form promptly after the examination or test is performed. Each notification must give the date and result of the test performed, the name or identification code sufficient to identify the patient to the health care provider, and, when available, the age of the person from whom the specimen was obtained, and the name and address of the health care provider for whom the examination or test was performed.

(c) When acting on the basis of information received from laboratory notification, the division of public health will not, except in instances of overriding public health considerations, contact the patient without first requesting and obtaining the permission of the physician or other health care provider.

(d) All laboratory notifications required by this section are confidential and are not open to public inspection. (Eff. 8/21/74, Reg. 51; am 9/20/75, Reg. 55; am / / , Reg.).

Authority: AS 18.05.040(1)

Attachment 1

7 AAC 27.008. REPORTING BY HOSPITALS.

To maintain accurate incidence rates of cancer, and to assist planning and evaluation of cancer control programs, all hospitals licensed in the State of Alaska shall report newly diagnosed cancer cases, with the exception of noninvasive skin cancers, to the Division of Public Health. Reports shall be submitted at least once a year on forms provided by the department, and shall include as a minimum the name, age, sex, race, community of residence, date of diagnosis, and primary site. (Eff.9/20/75, Reg.55)

Authority: AS 18.05.040(1)

7 AAC 27.010. CONTROL OF COMMUNICABLE DISEASES IN MAN

(a) The provision on methods of control of communicable diseases outlined in the Control of Communicable Diseases in Man, American Public Health Association, Thirteenth Edition, 1981, are adopted by reference as the regulations governing 'Preventive Measures,' 'Control of Patients, Contacts and the Immediate Environment,' and 'Epidemic Measures.' (Eff. 6/10/62, Reg. 6; am 8/21/74, Reg. 51; am / / ,Reg.)

(b) The provisions of (a) of this section are not applicable to the control of rabies in animals or on the reporting of diseases of public health significance. (Eff. 6/10/62, Reg. 6; am 8/21/74,Reg. 51)

Authority AS 18.05.040(1)

7 AAC 27.015. OCCUPATIONAL HEALTH DUTIES.

The division of public health may investigate places of employment and study conditions which might be responsible for ill health of industrial workers or their families. (Eff. / / , Reg)

Authority: AS 18.05.040

7 AAC 27.016. RIGHT OF INSPECTION

The division of public health may have access to any establishment and records of any establishment in the discharge of its official duties in accordance with law. (Eff. / / , Reg.)

Authority: AS 18.05.040

7 AAC 27.017. REPORTING OF DISEASE

Diseases which are known or suspected to be a result of a worker's occupation must be reported to the division of public health by the physician, nurse, or other health care professional who prescribes for or attends the person with the disease. (Eff. / / ,Reg.)

Authority: AS 18.05.040

7 AAC 27.020. CONTROL OF ANIMAL DISEASES TRANSMISSIBLE TO HUMANS.

(a) Quarantine. The standards for quarantine are:

(1) Whenever any case of rabies or other animal disease dangerous to the health of human beings is reported as existing in any area, the Department of Health and Social Services will make an investigation as to whether the disease exists and as to the probable area of the state in which man or animal is endangered by it. If the Department of Health and Social Services, in conjunction with the Department of Natural Resources, finds that any such disease exists, a quarantine will be declared against all of those animals which are designated in the quarantine order within the area specified in the order. If the quarantine is for the purpose of preventing the spread of rabies, the order will contain a warning to the owners of animals within the quarantined area to confine on the owner's premises or tie down all animals so as to prevent biting. After such an order is issued, any animal found running at large in the quarantined area or known to have been removed from or to have escaped from the area may be destroyed by a peace officer or by a person designated by the Department of Health and Social Services.

AS28.10.010 DOCUMENT
CHAPTER = 28.10
SECTION = 28.10.010
TITLE = 28
HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 10.
Vehicle Registration and Title.
ARTICLE 1.
Registration.
CITATION Sec. 28.10.010.
CATCH LINE
ADMINISTRATION.
TEXT _Repealed, sec. 7 ch 178 SLA 1978._

END OF DOCUMENT

AS28.15.010 DOCUMENT
CHAPTER = 28.15
SECTION = 28.15.010
TITLE = 28
HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 15.
Drivers' Licenses.
ARTICLE 1.
Issuance, Expiration and Renewal of Licenses.
CITATION Sec. 28.15.010.
CATCH LINE
LICENSE REQUIRED.
TEXT _Repealed, sec. 19 ch 178 SLA 1978._

END OF DOCUMENT

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

465

Department of Commerce & Economic Development / POSITION PAPER

SB 465: "An Act relating to dishonored checks and providing an effective date."

We have reviewed Senate Bill 465 and find that it is legislation that carries our support. Senate Bill 465 further defines actions that can be taken in situations where checks are dishonored, a situation that occurs all too often in Alaska.

This bill has no direct effect on our responsibility to regulate the financial institutions for safety and soundness. It would, therefore, be no expense to our agency if this legislation should pass.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date 4/1/86

Willis F. Kirkpatrick, Director
Division of Banking & Securities

Date 3/28/86

lt5007t

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 465
Title: An Act relating to dishonored checks and providing an effective date
Sponsor: _____
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Dept. Comm. & Econ. Dev.
BRU: Banking & Securities
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: Willis F. Kirkpatrick Phone: 465-2521
Division: Banking & Securities Date: 4/1/86

Approved by Commissioner: Lorenzo Lounsbury Date: 4/1/86
Agency: Department of Commerce & Economic Development

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

10/25/85

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

469

BILL HISTORY

HOUSE CALENDAR: [illegible]

BILL	SB0469
PAGE	02196
DATE	04/01/86
CHAMBER	SENATE
TEXT	SENATE BILL NO. 469 by the Labor and Commerce Committee, entitled: "An Act exempting commercial fishermen from workers's compensation coverage." was read the first time and referred to the Labor and Commerce Committee.

BILL	SB0469
PAGE	02297
DATE	04/10/86
CHAMBER	SENATE
TEXT	The Labor and Commerce Committee considered SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) and a majority of the committee recommended do pass. The report was signed by Senator Zharoff, Chairman and concurred in by Senators Sackett and Ray. Fiscal note is zero. SENATE BILL NO. 469 was referred to the Rules Committee.

BILL	SB0469
PAGE	02314
DATE	04/11/86
CHAMBER	SENATE
TEXT	The Rules Committee considered SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) and recommended calendar April 14. The report was signed by Senator Kelly, Chairman and concurred in by Senators Bennett, Coghill, Josephson and Faiks. SENATE BILL NO. 469 will be on the April 14 calendar.

BILL	SB0469
PAGE	02339
DATE	04/14/86
CHAMBER	SENATE
TEXT	Senator Halford moved and asked unanimous consent that SENATE BILL NO. 469 be held to the April 15 calendar. Without objection, the bill will be on the April 15 calendar. SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) which was held from April 14 was read the second time. Senator Halford moved and asked unanimous consent that SENATE BILL NO. 469 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered. SENATE BILL NO. 469 was read the third time. The question being: "Shall SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) pass the Senate?" The roll was taken with the following result:

BILL SB0469
PAGE 02353
DATE 04/15/86
CHAMBER SENATE
TEXT SB 469 3RD

Yeas:	17	Abood, Bennett, DeVries, Eliason, Fahrenkamp, Faiks, Ferguson, Fischer Pau., Fischer Vic, Halford, Josephson, Kelly, Ray, Rodey, Sturgulewski, Zharoff, Ziegler
Nays:	0	
Excused:	1	Coghill
Absent:	2	Kerttula, Sackett

and so, SENATE BILL NO. 469 passed the Senate and was referred to the Secretary for engrossment.
SENATE BILL NO. 469 was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

BILL SB0469
PAGE 02737
DATE 04/16/86
CHAMBER HOUSE
TEXT SENATE BILL NO. 469, by the Labor & Commerce Committee, entitled:

"An Act exempting commercial fishermen from workers' compensation coverage."

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

BILL SB0469
PAGE 02820
DATE 04/22/86
CHAMBER HOUSE
TEXT The Labor and Commerce Committee has considered SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) and reports it back as follows: Navarre (Chairman), Koponen, Davis, Boucher, Collins and Hanley recommend do pass.
A letter of intent, signed by Navarre (Chairman), appears below:

House Labor & Commerce Committee
Letter of Intent
for
SB 469

"It is the intent of the Legislature that SB 469, An Act exempting commercial fishermen from workers' compensation coverage, be used to clarify potential issues, not to imply that fishermen may have been covered by workers' compensation prior to the enactment of the legislation."
SB 469 was referred to the Finance Committee.

Workers' Comp (exempting fishermen)

SENATE BILL NO. 469, by the Labor & Commerce Committee. Would exempt commercial fishermen from state workers' compensation laws. Would take effect 90 days after governor signs bill.

Introduced April 1, 1986 and referred to Labor & Commerce.

Workers' Comp (exempting fishermen)

SENATE BILL NO. 469, (see page 404). Reported back to the Senate April 10 by Labor & Commerce recommending it do pass. Concurring: Zharoff (Chair), Sackett and Ray. To Rules.

Workers' Comp. (exempting fishermen)

SENATE BILL NO. 469, (see pages 404;443). Received in the House 4/16/86 and referred to Labor & Commerce and Finance.

Workers' Compensation (exempting fishermen)

SENATE BILL NO. 469, (see pages 404;443). Passed the Senate April 15, 1986, 17-0-1-2. Excused: Gaghill. Absent: Kerttula, Sackett.

Workers' Compensation (exempting fishermen)

SENATE BILL NO. 469, (see pages 404;443;484;487). Reported back to the House April 22, 1986 by Labor & Commerce recommending that it do pass. Concurring were Navarre (chair), Koponen, Davis, Boucher, Collins and Hanley. Referred to Finance.

The following letter of intent accompanied the committee report:

> "It is the intent of the Legislature that SB 469, An Act exempting commercial fisherman from workers' compensation coverage, be used to clarify potential issues, not to imply that fishermen may have been covered by workers' compensation prior to the enactment of the legislation."

HOUSE

COMMITTEE REPORT

(11)

Date referred: 4/22/86

FURTHER REFERRALS:

DATE: 5-10-86

The FINANCE Committee has considered SB 469

"An Act exempting commercial fishermen from workers' compensation coverage."

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
~~[X] zero fiscal note~~ 4/3/86 same

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

CHAIRMAN'S INFORMATION: SB 465

1) BILL TITLE: "An act exempting commercial fisherman from workers' compensation coverage."

a) Introduced: Senate Labor and Commerce Committee

b) Co-sponsors:

2) INTENT: This measure exempts commercial fisherman from workers comp coverage, and seeks to eliminate a duplicate remedy available to injured fisherman. Currently, fisherman have access to compensation under federal maritime law, but a 1962 Alaska Supreme Court decision afforded duplicate coverage for fisherman when injured "shoreside".

Without this exemption, a vessel owner could be required to carry both P&I ocverage for federal remedies as well as workers comp.

FISCAL NOTE: 0 (Not yet received from the Dept of Labor)

3) ADDITIONAL REFERRALS: Sen Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Would you like to have a CS with "Findings" language and an effective date?

Pouch V
Juneau, Alaska 99811

Alaska State Legislature
House of Representatives

Phone:
(907) 465-3892

Labor and Commerce Committee

LETTER OF INTENT - SB 469
4/21/1986

It is the intent of the Legislature that SB 469, An Act exempting commercial fishermen from workers' compensation coverage, be used to clarify potential issues, not to imply that fishermen may have been covered by workers' compensation prior to the enactment of the legislation.

Bill No. SB No. 469

Date April 18, 1986

Title "An Act exempting commercial fishermen from workers' compensation coverage."

Contact Jacque McClintock
465-2790

The Department has no objection to the provisions of SB 469 exempting commercial fishermen from workers' compensation coverage.

This legislation does not change any current practice in Alaska's Workers' Compensation System, but does serve to clarify "twilight zone" issues of potentially overlapping coverage that have resulted from various Supreme Court decisions.

We recommend a statement or finding be included making it clear to the courts that the legislative intent of the bill is to clarify potential issues, not to infer that fishermen may have been covered by workers' compensation prior to enactment of the legislation.

APPROVED:

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

I would set aside the trial court's findings, express and implied, and would reverse the judgment appealed from and order that a decree be entered for the defendant Innes.



CORDOVA FISH & COLD STORAGE COMPANY and Underwriters Lloyds of London, Appellants,

v.

Gerald T. ESTES and Alaska Workmen's Compensation Board, composed of B. G. Johnson, Chairman, A. D. Wallace, member, and L. H. Shaffer, member, Appellees.

No. 126.

Supreme Court of Alaska.

Jan. 26, 1962.

Rehearing Denied April 11, 1962.

Workmen's compensation case. The Alaska Industrial Board made an award of compensation to a fisherman against a cannery operator, and, on appeal, the Superior Court of the State of Alaska, First District, James A. von der Heydt, J., affirmed. The cannery operator appealed. The Supreme Court, Dimond, J., held that State Compensation Act applied to injuries sustained by crab fisherman, moving crab pots on boat deck, where he was hired to fish crab for local cannery on percentage basis, crabbing was daytime operation conducted in inland waters of state, state had primary and vital concern with his well-being and any maritime interest involved was slight so that application of state compensation system could not cause any undesirable disuniformity in maritime law.

Affirmed.

1. Workmen's Compensation ⇐93

State Compensation Act applied to injuries sustained by crab fisherman where he was hired to fish crab for local cannery on percentage basis, crabbing was daytime operation conducted in inland waters of state, state had primary and vital concern with his well-being and any maritime interest involved was slight or marginal so that application of state compensation system could not cause any undesirable disuniformity in maritime law. A.C.L.A.1949, §§ 43-3-1 to 43-3-39 as amended; Longshoremen's and Harbor Workers' Compensation Act, § 1, 33 U.S.C.A. § 901.

2. Workmen's Compensation ⇐1446

Determination of whether employer-employee relation existed between cannery operator and fisherman hired on percentage basis was discretionary with board, and finding of such relationship was supported by evidence. A.C.L.A.1949, § 43-3-9.

F. M. Doogan (of Faulkner, Banfield, Boochever & Doogan), Juneau, for appellants.

Ralph E. Moody, Atty. Gen., and John E. Havelock, Asst. Atty. Gen., for appellees.

Before NESBETT, C. J., and DIMOND and AREND, JJ.

DIMOND, Justice.

Estes, a crab fisherman, suffered a back injury at the end of a fishing day while moving crab pots on the deck of a boat which was tied to a dock. The Alaska Industrial Board made an award under the Alaska workmen's compensation act,[1] finding that he had sustained a compensable injury arising out of the course of his employment with Cordova Fish & Cold Storage Company. On appeal to the superior court the Board's decision was affirmed. Cordova has appealed to this court—its principal point being that no relief could be given under the Alaska act because of the supremacy of maritime law.

1. Sections 43-3-1 to 43-3-39, ACLA 1949, as amended. This statute was in effect at the time of the injury in 1958. It has since been superseded by a new law, SLA 1959, ch. 193.

[1] The root of the problem is found in the Jensen [2] case, decided by the Supreme Court in 1917. It was held that New York's Workmen's Compensation Act, McKinney's Consol.Laws c. 67, could not constitutionally be applied to a stevedore fatally injured on board ship while engaged in unloading cargo at a New York pier. The court announced the doctrine that state legislation can have no application if it "works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." [3] Since Jensen's injuries were maritime, the locus being on navigable waters, and since the nature of his employment was maritime, it was determined that application of the state compensation act would prejudice the uniformity of maritime law.

The court recognized, however, that there would be instances where the general maritime law may be affected by state legislation.[4] The first of these, as applied to workmen's compensation, was exemplified in the Rohde [5] case, decided in 1922. Applying a doctrine previously worked out in a death act case,[6] the Supreme Court held that the uniformity of maritime law is not prejudiced by application of a state law to maritime employment which is local in character, and that work is deemed local if it has no direct relation to navigation or commerce.[7] Thus emerged the "maritime but local" doctrine, following which a considerable body of case law developed classifying borderline cases one way or the other.[8]

An illustrative case involving an Alaskan fisherman, where the employment was held to be of local concern, is Alaska Packers Ass'n v. Marshall [9], decided by the Court of Appeals for the Ninth Circuit in 1938. Two men were employed to fish for the company, which included operation of a fishing vessel. In addition, they had shoreside duties such as working in the cannery, conditioning the fishing vessels, and mending fishing gear. They were customarily on the boat fishing from Monday to Saturday during the salmon run.[10] They ate and slept on the vessel, and approximately once every twenty-four hours delivered their catch to a lighter anchored on the fishing grounds. While they were engaged in fishing, and had been away from shore for several days, the vessel was destroyed in a storm and both men were drowned.

The question for determination was whether the state compensation act applied.[11] The court recognized the dual character of the employment: in one aspect, local, because the men never sailed their boats beyond a few miles from the cannery to which their catch was taken; and in another aspect, maritime, because they sailed their boats in navigable waters. But the court found from considering the details of the employment contract that the gathering of the cannery's raw materials was a mere incident in the canning process and there-

2. Southern Pac. Co. v. Jensen, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917).

3. Id., 244 U.S. at 216, 37 S.Ct. at 529 (61 L.Ed. at 1098).

4. Id., 244 U.S. at 216, 37 S.Ct. at 529 (61 L.Ed. at 1098).

5. Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 42 S.Ct. 157, 66 L.Ed. 321, 25 A.L.R. 1008 (1922).

6. Western Fuel Co. v. Garcia, 257 U.S. 233, 242, 42 S.Ct. 89, 66 L.Ed. 210, 214 (1921).

7. Grant Smith-Porter Ship Co. v. Rohde, supra note 5, 257 U.S. at 475–476, 42 S.Ct. 157 (66 L.Ed. at 324).

8. A selection of "maritime but local" cases is found in 2 Larson, Workmen's Compensation Law § 89.22 (1952), and in Davis v. Dept. of Labor, 317 U.S. 249, 253 n. 2, 63 S.Ct. 225, 87 L.Ed. 246, 249 (1942).

9. 95 F.2d 270 (9th Cir. 1938).

10. The period of the salmon run at this time was about 20 days.

11. The California act, rather than that of Alaska, was relied upon, presumably since the contract of employment was made in California. See Alaska Packers Ass'n v. Indus. Acc. Comm., 294 U.S. 532, 55 S.Ct. 518, 79 L.Ed. 1044 (1935).

fore local in character. It was held that there was a single locus of employment and that there was no disturbance of uniformity of employer-employee relationship if certain portions of the contract were to be regarded as maritime, and yet the employment status were to be controlled by state law. The court determined that the regulation of the rights, obligations and consequent liabilities of the company to the two men, by application of state law, would not work prejudice to any characteristic feature of maritime law. It was held, in fact, that "To deny compensation *would work deep prejudice to the compensation system*, now so widely accepted as 'necessarily' an incident to such creative service as supplying the material to this food canning plant, and which enlightened statesmanship, with its eyes opened to modern concepts of human relations, has enacted in so many of the states." [12] Application of the state compensation act was held not barred by the Jensen doctrine.

We hold that the control of Estes' status as an employee comes within the principles of the Marshall case. Estes had been hired by Joseph Balestrieri, operator of Cordova Fish & Cold Storage Company, to fish crab on a percentage basis. Balestrieri furnished the boat and repairs and hired and paid a helper. The crabbing was a daytime operation conducted in the inland waters of the state within a couple of hundred yards to a mile from shore. It consisted of Estes taking the boat out, baiting the pots and submerging them, and returning to the City of Cordova for the night. The next morning he would again take the boat out and lift the pots, remove the crabs, and rebait the pots and again submerge them. He then returned to the shore-based cannery with the crab. It took twenty minutes to get to the crab pots, six to eight hours lifting pots, and from 45 minutes up to an hour to return. In addition to the fishing, when bait was not available for purchase, Estes dug it on the land. This was an essential part of the crabbing operation.

In Marshall the court found that the fishing incidents of the employment were by function and distance local to the cannery and part of the canning enterprise.[13] The same situation exists here. The primary function of Estes' employment was to provide raw materials for the cannery operation. That the fishing was necessarily local to Cordova's plant is shown by the fact that the catch could not be sold to any other cannery. The distance was local since the fishing was done within a relatively short distance from the cannery. Estes had a shore duty, since at times he was required to dig bait—a necessity if crab were to be caught.

Considering these aspects of employment, predominantly local in character, we find that the state has a primary and vital concern with Estes' status and well-being. If there is any maritime interest involved, it is slight or marginal. We do not see how the operation of the state compensation system can cause any undesirable disuniformity in the scheme of maritime law.[14]

In support of its argument that maritime law provides the exclusive remedy, Cordova cites Parker v. Motor Boat Sales,[15] decided by the Supreme Court in 1941. This case concerned an employee of a store which sold boats and maritime supplies. He was hired primarily as a janitor and porter, and his work was almost entirely on land. He went along with another employee in a small boat in a river to test an outboard motor, and was drowned when the boat capsized. The Supreme Court affirmed an award made under the Longshoremen's and Harbor Workers' Act,[16] reversing the court

12. Alaska Packers Ass'n v. Marshall, supra note 9, 95 F.2d at 283.

13. Id., 95 F.2d at 281–282.

14. Cf. Kossick v. United Fruit Co., 365 U.S. 731, 740, 81 S.Ct. 886, 6 L.Ed.2d 56, 63 (1961).

15. 314 U.S. 244, 62 S.Ct. 221, 86 L.Ed. 184 (1941), reversing 116 F.2d 789 (4th Cir. 1941).

16. 44 Stat. 1424 (1927), 33 U.S.C.A. § 901 (1957).

of appeals. That court had held that the decedent's employment was so local in character that the state compensation act, rather than the federal act, was applicable.[17] The Supreme Court stressed that the maritime character of the employment was not to be determined by the habitual performance of duties on land, but by the activity in which decedent was engaged at the time of the accident, that is, riding in a boat on a navigable river.[18]

This decision would appear to have done away with the "maritime but local" doctrine, and to have established the rule that states could not validly provide relief for an injury occurring on navigable waters.[19] It would support Cordova's argument on this appeal, if it had been the last word on the subject by the highest court. But it was not. In 1942 the Supreme Court decided Davis v. Dept. of Labor,[20] which involved a steel worker who, while engaged in dismantling a bridge across a navigable river, fell into the river and was drowned. This time the Supreme Court held that the state compensation act could be applied. It based its decision not on the "local concern" exception to maritime employment, but on a new concept. It found that certain employees occupied "that shadowy area within which, at some undefined and undefinable point, state laws can validly provide compensation."[21] This was denominated as a "twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements."[22] Relying on the fact that the decedent was, as a matter of actual administration, protected under the state compensation act, and that there was no conflicting process of administration since no action had been taken under the Longshoremen's and Harbor Workers' Act, the court found the facts of the case did not overcome the strong presumption of constitutionality in favor of the state statute.

The significance of this case, it has been said, "lies in its obvious attempt to set up a means of escape for the difficulties in drawing a line between State and Federal Authority under the doctrine of the Jensen case."[23] Its practical effect, it has been said elsewhere, is to permit an employee in a situation such as in Davis to recover either under the federal act or a state statute[24], and to resolve all borderline cases "in favor of coverage by the first act under which application is made by the claimant."[25] If that is what Davis holds, it would seem clear that Estes' employment would fall within the twilight zone and that state compensation coverage would be valid. As a matter of actual administration, Estes is in fact protected by the Alaska statute, the Alaska Industrial Board having found the act was intended to include commercial fishermen such as Estes.[26]

17. Motor Boat Sales, Inc. v. Parker, 116 F.2d 789 (4th Cir. 1941).

18. Parker v. Motor Boat Sales, Inc., 314 U.S. 244, 247, 62 S.Ct. 221, 86 L.Ed. 184, 189 (1941).

19. Gilmore & Black, The Law of Admiralty at 348 (1957); 2 Larson, Workmen's Compensation Law § 89.23(b) at 413 (1952).

20. 317 U.S. 249, 63 S.Ct. 225, 87 L.Ed. 246 (1942).

21. Id., 317 U.S. at 253, 63 S.Ct. 225 (87 L.Ed. at 248).

22. Id., 317 U.S. at 256, 63 S.Ct. 225 (87 L.Ed. at 250).

23. Moores' Case, 323 Mass. 102, 80 N.E. 2d 478, 480 (1948), aff'd. Bethlehem Steel Co. v. Moore, 335 U.S. 874, 69 S.Ct. 239, 93 L.Ed. 417 (1948), approved Baskin v. Industrial Accident Commission, 338 U.S. 854, 70 S.Ct. 99, 94 L.Ed. 523 (1949).

24. Justice Frankfurter's concurring opinion in Davis v. Dept. of Labor, 317 U.S. 249, 259, 63 S.Ct. 225, 87 L.Ed. 246, 252 (1942).

25. 2 Larson, Workmen's Compensation Law § 89.24, at 414 (1952).

26. The act was clearly intended to encompass the fishing industry. § 43-3-5 ACLA 1949 permitted one entitled to compensation to have a lien against the employer's property. As an example of what the statute meant, it was stated: "In the case of an employee injured or killed while engaged in fishing or in the packing, canning, or salting of fish, or

There was no conflicting process of administration between federal and state law, since Estes sought relief only under the Alaska act. Under these circumstances, together with those relating to Estes' employment, we could rely as the Supreme Court did in Davis on the presumption of constitutionality in favor of Alaska's statute as it pertains to Estes, and affirm the Board's determination on that ground.

Cordova argues, however, that Estes was a seaman, and that the twilight zone doctrine relates only to overlap between the Longshoremen's and the Harbor Workers' Act and state compensation statutes, and not between state acts and seamen's remedies. That proposition appears to be supported by a 1948 decision of the Court of Appeals for the First Circuit.[27] In 1956 the opposite view was expressed by a state court which held that the twilight zone approach was not limited to longshoremen, but included seamen as well.[28]

It is probably unnecessary for us to pass upon that question. We do not perceive any real difference between (1) the connection that must exist between a state and employment involving some maritime interest to come within the twilight zone, and (2) the connection that must exist between a state and such employment to come within the maritime and local concept. The general idea appears to us to be the same: a recognition of the right of a state to confer the kind of protection it thinks wise on persons or employments in which it has a legitimate interest. In a realistic sense, that interest is just as significant where Estes is concerned as it is for other employees of Cordova who work ashore in the cannery.[29] We find that all of the circumstances of the case point to an accommodation favoring application of the state compensation act, and that this will not interfere with the true demands of maritime law.

[2] The second point raised by Cordova is that Estes cannot recover under the Alaska compensation act in any event because no employer-employee relationship existed between Cordova and him. The Board found otherwise on the basis that Cordova had the right to control, the right to hire and fire, and that it furnished the tools Estes needed, that is, the boat and the pots.

The pertinent statutory provision which was in effect at the time of injury reads as follows:

> Any person rendering service for another, other than as an independent contractor, or as expressly excluded herein, is presumed to be an employee within the meaning of this Act. The term "independent contractor" shall be taken to mean, for the purposes of this Act, any person who renders service, other than manual labor, for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.[30]

This means that one is to be regarded as an employee if the principal has the right to control the details of the work. It is clear from the Board's decision that it had evidence before it on the four principal factors showing right of control, namely: (1) direct evidence of right or exercise of control; (2) method of payment; (3) furnishing of equipment; and (4) the right to fire.[31] The findings of the Board showed it considered evidence that Balestrieri hired and paid a helper for Estes; that the man-

other branch of the fish industry, the lien shall extend to the entire packing, fishing, salting or canning plant or establishment and all property used in connection therewith; * * *."

27. Gahagan Const. Corp. v. Armao, 165 F.2d 301, 301 (1st Cir. 1948), cert. denied, 333 U.S. 876, 68 S.Ct. 905, 92 L.Ed. 1152 (1948).

28. Beadle v. Mass. Bonding & Ins. Co., 87 So.2d 339 (La.App. 1956).

29. See 2 Larson, Workmen's Compensation Law § 89.30 (1952).

30. Section 43-3-9 ACLA 1949.

31. 1 Larson, Workmen's Compensation Law § 44.00 (1952).

ner of payment was on a percentage basis; that the employer furnished the boat, repairs and crab pots; and that Balestrieri fired Estes on one occasion. From this evidence the Board determined the employer-employee relationship did exist. Its determination should not be reversed unless there was an abuse of discretion.[32] We perceive none. The finding that the employer-employee relationship existed between the parties is supported by the evidence.

The judgment is affirmed.

AREND, J., concurs in the result.

Fred A. POPE, Appellant,

v.

Phil C. ANDERSON, and Multi-Venture of Fairbanks, Alaska, Inc., an Alaskan Corporation, Appellees.

Phil C. ANDERSON, and Multi-Venture of Fairbanks, Alaska, Inc., an Alaskan Corporation, Appellants,

v.

Fred A. POPE, Appellee.

Nos. 79, 89.

Supreme Court of Alaska.

March 3, 1962.

Rehearing Denied April 13, 1962.

Suit against owner and operator of tractor to recover damages for injuries sustained by plaintiff when dozer blade attached to tractor fell, while operator was attempting to change angle of blade, causing arm of blade to strike plaintiff. The Superior Court, Fourth District, Everett W. Hepp, J., entered judgment dismissing the suit on the merits, and plaintiff appealed and defendants cross-appealed. The Supreme Court, Von der Heydt, Superior Court Judge, held, inter alia, that the evidence was insufficient to establish prima facie negligence of defendants and that failure to find that tractor operator had duty to inspect center pin, by which dozer blade was attached to tractor, before attempting to change angle of blade and warn plaintiff of dangerous condition was not error, in view of uncontroverted testimony of operator, testifying as plaintiff's witness.

Judgment affirmed and cross-appeal dismissed.

1. Automobiles ⇨244(2)

Evidence was insufficient to establish prima facie negligence of owner or operator of tractor, being sued for injuries sustained by plaintiff when dozer blade attached to tractor fell, while operator was attempting to change angle of blade, causing arm of blade to strike plaintiff. Rules of Civil Procedure, rule 41(b).

2. Automobiles ⇨244(2)

Failure to find that tractor operator was negligent in failing to inspect center pin, by which dozer blade was attached to tractor, before attempting to change angle of blade and warn plaintiff of dangerous condition was not error, in view of uncontroverted testimony of tractor operator, testifying as plaintiff's witness in suit against owner and operator of tractor for injuries sustained by plaintiff when dozer blade fell. Rules of Civil Procedure, rule 41(b).

3. Appeal and Error ⇨843(2)

Where dismissal of action for failure to establish prima facie negligence was affirmed on appeal, defendants' contentions on cross-appeal that trial court erred in failing to make findings as to assumption of risk by plaintiff and that plaintiff was acting

32. "Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Alaska Administrative Procedure Act; SLA 1959, ch. 143, art. VII, § 25(2) [§ 2A-12-25 ACLA Cum.Supp. 1959.]

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

WILBUR G. ANDERSON, Appellant, v. ALASKA PACKERS ASSOCIATION; ALASKA PACIFIC ASSURANCE COMPANY; ALASKA WORKERS' COMPENSATION BOARD, Appellees.	File No. 5101 O P I N I O N [No. 2436 - November 13, 1981]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, James K. Singleton, Judge.

Appearances: James F. Vollintine, Anchorage, for Appellant. Charles P. Flynn, Burr, Pease & Kurtz, Inc., Anchorage, for Appellees.

Before: Rabinowitz, Chief Justice, Connor, Burke and Matthews, Justices, and Cooke, Superior Court Judge.* (Compton, Justice, not participating.)

BURKE, Justice.

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* Cooke, Superior Court Judge, sitting by assignment made pursuant to article IV, section 16 of the Constitution of Alaska.

This is an appeal from a final judgment of the superior court affirming a decision of the Alaska Workers' Compensation Board. The Board's decision denied an injured seaman's claim for benefits under the Alaska Workers' Compensation Act, AS 23.30.005-.270. We affirm, having concluded that the claim is one subject to the exclusive jurisdiction of the United States.

Appellant Wilbur G. Anderson, a commercial fisherman, was injured on June 17, 1977, when he became entangled in a winch aboard the Crane, a purse seine vessel owned by Alaska Packers Assocation. Anderson, the captain of the vessel, was operating the Crane under a lease agreement with Alaska Packers. The injury occurred while the vessel was fishing in navigable waters, approximately one mile from Chignik Lagoon, a small coastal village in southwestern Alaska.

Anderson filed a claim against Alaska Packers and its insurance carrier, Alaska Pacific Assurance Company, contending that he was an employee of Alaska Packers and, therefore, entitled to compensation benefits under the Alaska Workers' Compensation Act. The Alaska Workers' Compensation Board ruled that Anderson was an independent contractor, rather than an employee of Alaska Packers, and

denied his claim. On appeal to the superior court, the Board's decision was affirmed. This appeal followed.[1]

I

The United States Constitution, article III, section 2, provides that "[t]he judicial power [of the federal government] shall extend to all cases . . . of admiralty and maritime jurisdiction . . . ." Section 1333 of title 28 of the United States Code gives the federal district courts "original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." Gilmore and Black define admiralty jurisdiction as extending

> to all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign water commerce, whether or not the particular body of water is wholly within a state, and whether or not the occurrence or transaction that is the subject matter of the suit is confined to one state.

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1. The superior court affirmed the Board's decision upon the ground that there was substantial evidence supporting its conclusion that Anderson was an independent contractor. The court's decision did not address the question of exclusive federal jurisdiction, although the issue was raised in a timely fashion and discussed at oral argument. The Board, in its decision, did mention this issue, but the Board, like the superior court, apparently concluded that it had jurisdiction to consider Anderson's claim on the strength of our holding in Cordova Fish & Cold Storage Co. v. Estes, 370 P.2d 180 (Alaska 1962).

G. Gilmore & C. Black, The Law of Admiralty § 1-11, at 32 (2d ed. 1975) (footnote omitted).

The policy behind the grant of exclusive jurisdiction is to ensure a nationally uniform system of maritime law. The Lottawanna, 88 U.S. (21 Wall.) 558, 575, 22 L. Ed. 654, 662 (1874), cited with approval in Moragne v. States Marine Lines, 398 U.S. 375, 402, 26 L. Ed. 2d 339, 357 (1970).

The United States Supreme Court recently had occasion to discuss the interrelationship of state compensation laws and the exclusive federal admiralty jurisdiction. Justice Brennan wrote for a unanimous court in Sun Ship, Inc. v. Pennsylvania, 447 U.S. 715, 65 L. Ed. 458 (1980) that:

> The evolution of the law of compensation for workers injured in maritime precincts is familiar. In 1917, Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917), declared that States were constitutionally barred from applying their compensation systems to maritime injuries, and thus interfering with the overriding federal policy of a uniform maritime law. Subsequent decisions invalidated congressional efforts to delegate compensatory authority to the States within this national maritime sphere. Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, (1920); State v. Washington V.W.C. Dawson & Co., 264 U.S. 219, (1924). At the same time, the Court began to narrow the Jensen doctrine by identifying circumstances in which the subject of litigation might be maritime yet "local in character," and thus amenable to relief under state law. Western Fuel Co. v. Garcia, 257 U.S.

> 233, 42 S.Ct. 89, 66 L.Ed. 210 (1921); Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 42 S.Ct. 157, 66 L.Ed. 321 (1922). And, in 1927, Congress was finally successful in extending a measure of protection to marine workers excluded by Jensen by enacting a federal compensation law--the Longshoreman's and Harbor Workers' Compensation Act [LHWCA], 33 U.S.C. § 901 et seq. That statute provided, in pertinent part, that "[c]ompensation shall be payable [for an injury] . . . occurring upon the navigable waters of the United States . . . if recovery . . . through workmen's compensation proceedings may not validly be provided by State law."

Id. at 717, 65 L. Ed. at 458.

Excluded from the coverage of the LHWCA at their own request, see Gilmore & Black, supra, at 427, were masters or members of the crew of vessels, 33 U.S.C. § 902(3), as these "seamen" were covered by the traditional maritime remedies of maintenance and cure, the Jones Act (46 U.S.C. § 688), and liability for unseaworthiness of a vessel. These divisions between persons doing similar work, or doing work subject to characterization as being in one or more categories, engendered questions in the courts in the years following the Jensen decision. Concerning those covered by the LHWCA, the Sun Ship court spoke of three "jurisdictional spheres":

> At the furthest extreme, Jensen commanded that nonlocal maritime injuries fall under the LHWCA. "Maritime but local" injuries "upon the navigable waters of

> the United States," 33 U.S.C. § 903(a), could be compensated under the LHWCA or under state law. And injuries suffered beyond navigable waters--albeit within the range of federal admiralty jurisdiction--were remediable only under state law.

Sun Ship, 447 U.S. at 719, 65 L. Ed. at 462.

The use of the term "sphere," as opposed to a term denoting precise boundaries between federal and state jurisdiction, was appropriate because, as the court recognized, "the boundary at which state remedies gave way to federal remedies was far from obvious in individual cases." Id. at 718, 65 L. Ed. at 461. The difficulties led the court to establish "a regime of concurrent jurisdiction," id., in the "twilight zone" between federal and state compensation programs. Davis v. Dept. of Labor, 317 U.S. 249, 87 L. Ed. 246 (1942). The high court has not created a twilight zone between the state acts and the traditional seaman's remedies, Gilmore & Black, supra, at 434, but the commentators see little reason why seamen should not also be entitled to the benefits of a twilight zone theory of jurisdiction. Id. at 434 n.335; 4 A. Larson, The Law of Workmen's Compensation § 90.41 (1980).

It seems apparent that Anderson is indeed a "seaman" within the meaning that term has come to have. See Offshore Co. v. Robinson, 266 F.2d 769, 779 (5th Cir. 1959); 4 A. Larson, supra, § 90.21. Anderson is also plainly excluded from the coverage of the LHWCA as a master or

member of the crew of the Crane. 33 U.S.C. § 902(3). We find it unnecessary to determine whether there is a twilight zone between the seamen's remedies and the workers' compensation system because we find Anderson's employment "on his vessel in navigable waters is in 'clear daylight' . . ." Alaska Indus. Bd. v. Alaska Packers Ass'n, 186 F.2d 1015, 1917 (9th Cir. 1951).

As noted, the twilight zone was created because of the difficulty encountered in determining when an injury was of a "maritime but local" nature. 4 A. Larson, supra, § 89.51, at 16-258 to 16-259. The cases in the area of local concern centered around activities with a close connection to the land, and not on persons engaged in traditional maritime occupations and tasks. Thus, in London Guarantee & Accident Co. v. Indus. Accident Comm'n, 279 U.S. 109, 73 L. Ed. 632 (1929), the court refused to apply the local concern exception to the claim on behalf of a seaman engaged in an effort to board a boat that had broken loose from its mooring less than a mile from shore. Though the decedent was employed only on vessels that operated within five miles of the shore for pleasure fishing, it was held that the state could not constitutionally make a compensation award. Id. at 125, 73 L. Ed. at 637.

Anderson seeks to avoid a similar holding by citation of our decision in Cordova Fish & Cold Storage Co.

v. Estes, 370 P.2d 180 (Alaska 1962). Estes relied on the "maritime but local" exception to the Jensen rule, and the injured claimant there was engaged in moving crab pots on the deck of a boat tied to a dock. Id. In view of the London Guarantee holding,[2] we see no way to extend Estes to the injury that occurred to Anderson while he was actually engaged in fishing on navigable waters.

We note that other cases in which the local concern doctrine was invoked to provide a state remedy for an injury within the admiralty jurisdiction involve facts, like Estes, with a closer connection to land-based activity than to traditional maritime work. See cases cited in 4 A. Larson, supra, § 90.30, at 16-352 n.70. Where the facts

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2. While it has been suggested several times since the Jensen case was decided that the Court had abandoned the principles stated there, e.g., Note, Has the Jensen Case Been Jettisoned?, 2 Stan. L. Rev. 536 (1950), the case instead has "a tenacity which refuses to acquiesce in occasional contemporary reports of its final rejection . . . ." Flowers v. Travelers Ins. Co., 258 F.2d 220 (5th Cir. 1958), cert. denied, 359 U.S. 920, 3 L. Ed. 2d 582 (1959). Thus, in Askew v. Am. Waterways Operators, Inc., 411 U.S. 325, 36 L. Ed. 2d 280 (1973), the court noted its prior statement that "Jensen and its progeny mark isolated instances where 'state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system,'" id. at 338, 36 L. Ed. 2d at 289, and stated that such instances occur with respect "to suits relating to the relationship of vessels, plying the high seas and our navigable waters, and to their crews." Id. at 344, 36 L. Ed. 2d at 293. We hold here that Anderson's case comes within the Court's description of Jensen's applicability.

instead show a claimant engaged in wholly maritime work, the courts have declined to lengthen the shadow of the twilight zone, and have remitted the claimants to their federal remedies. E.g., Bearden v. Leon C. Breaux Towing Co., 365 So. 2d 1192 (La. App. 1978); Valley Towing Co. v. Allen, 109 So. 2d 538 (Miss. 1959). We do likewise here.

The superior court's judgment is AFFIRMED.

Introduced: 4/1/86
Referred: Labor and Commerce

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE BILL NO. 469

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act exempting commercial fishermen from workers' compensation coverage."

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

* Section 1. AS 23.30.230 is amended by adding a new subsection to read:

(b) A commercial fisherman, as defined in AS 16.05.940, is not covered by this chapter.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 469: Summary

This measure exempts commercial fisherman from workers' compensation coverage and seeks to correct a potentially difficult situation which developed out of a 1962 Alaska Supreme Court Case. (See back up report)

Currently, commercial fisherman have access to injury compensation under Federal Maritime Law, and workers comp coverage would provide duplicate remedies. Without this exemption, a vessel owner would be required to carry both P&I coverage for federal maritime remedies, as well as a workers' compensation policy. As a further consideration, it was not the original intention of the workers' compensation act that commercial fisherman be provided such coverage, and this measure clarifies that exemption in statute.

BILL SUMMARY

Bill No. SB No. 469

Title "An Act exempting commercial fishermen from workers' compensation coverage."

Date April 3, 1986

Contact: Jacque McClintock
465-2790

The Department has no objection to the provisions of SB 469 exempting commercial fishermen from workers' compensation coverage.

This legislation does not change any current practice in Alaska's Workers' Compensation System, but does serve to clarify "twilight zone" issues of potentially overlapping coverage that have resulted from various Supreme Court decisions.

APPROVED:

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 469
Title : "An Act exempting commercial Fishermen from Workers' Compensation"

Sponsor : Senate Labor & Commerce
Requestor : Senate Labor & Commerce
Date of Request : 4/2/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Workers' Compensation

Components : Workers' Compensation

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Jacque McClintock — Phone : 465-2790
Division : Workers' Compensation — Date : 4/3/86

Approved by Commissioner : Jim Robison — Date : 4/3/86
Agency : Labor

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor

A REPORT ON THE COST AND AVAILABILITY OF MARINE INSURANCE IN ALASKA

BY
A. W. HALL
SENIOR ADVISOR, SENATE ADVISORY COUNCIL

30 January 1986

BACK UP INFORMATION

fledgling self insurance program with limited capital reserves should not be subject to such risk. Fortunately, such insurance is obtainable from private insurance companies although at a high premium. If the present efforts to improve the system of providing compensation for injured fishermen are successful, then premium costs should be reduced.

C. THE ALASKA WORKMAN'S COMPENSATION LAW

It is recommended that an amendment be passed to the Alaska Workman's Compensation law that exempts commercial fishermen from the provisions of the act. This is desirable for the following reasons.

1. It was not the original intent of the act that commercial fishermen by covered by it.

2. Fishermen have access to a system of injury compensation under maritime law.

3. A duplication of programs is unnecessarily confusing and is unaffordably expensive.

4. Although described as inadequate, the existing system of compensating injured fishermen is presently under study for the purpose of possible congressional overhaul. A solution defined by federal law would be much more definitive and efficient than a system characterized by overlapping jurisdictions and duplications of effort and cost.

D. COMMERCIAL FISHERIES MANAGEMENT

It is recommended that a legislative resolution be passed requesting that safety be a factor to be considered in the development of all fishery management plans and regulations.

E. EDUCATION

It is recommended that the University of Alaska be directed to investigate the possibility of developing instructional programs on fishing vessel risk management or safety at sea that could be taught through the marine advisory program or community college system.

It is quite possible that a program such as this could be an important part of any organized effort to improve the safety record of the fishing industry. Like driver education programs it could be used as a means to improve individual abilities using reduced insurance premiums as an incentive.

F. MANDATORY SAFETY REQUIREMENTS

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HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

**ADMITTED IN WASHINGTON & ALASKA
OTHERS NOT ADMITTED IN WASHINGTON

FEB 24 1986

February 10, 1986

Craig S. Wiese
University of Alaska
Marine Advisory Program
P.O. Box 103160
Anchorage, Alaska 99510

Dear Craig:

Enclosed you will find a brief summary of the presentation I made at the seminar. I hope this is sufficient for your purposes.

Very truly yours,

Michael A. Barcott

MAB:kl
10831

Enclosure

The insurance crisis in the marine industry in Alaska is, in part, merely a reflection of the fact that litigation costs and awards are getting higher. This fact is in turn, in part, merely a reflection of the fact that the fishing industry in Alaska has numerous dangers inherent in the industry. In one area, however, insurance premiums are higher than need be because of an unnecessary duplication of coverage and remedies to fishermen. The nature of that duplication and the ease with which it can be eliminated are easily explained.

In 1962 the Alaska Supreme Court considered the case of a fishermen who was injured on his vessel while that vessel was tied to a dock. It was undisputed that this fisherman would have available to him the full panoply of federal maritime remedies which are generally seen as extremely generous and beneficent to the fishermen. The question presented to the Alaska Supreme Court was whether the fishermen was also entitled to benefits under the terms of the Alaska Workers' Compensation Act. Looking to two factors, the court concluded that this fishermen fell within the "twilight zone" of coverage between the federal maritime remedies and the Alaska Workers' Compensation Act, and was entitled to the benefits of either or both. See Cordova Seafoods v. Estes, 370 P.2d 180 (1962). The factors looked to by the Alaska Supreme Court in determining that there was coverage under the Alaska Workers' Compensation Act were (1) the fact that the employee had

some shore-side duties (digging bait); and (2) that the nature of his fishing business was inherently of a local concern.[1/]

Virtually all fishermen have some shoreside duties including mending gear, storing pots, buying food for the galley, or other such activities. Under the Estes case, those fishermen are entitled to benefits under the Alaska Workers' Compensation Act if injured while the vessel is tied up to the dock. If the fishermen does not have Alaska Workers' Compensation coverage in addition to his standard P&I coverage, there is a presumption under the Alaska Workers' Compensation Act that the accident was caused by the negligence of the vessel owner and that there was no contributory negligence on the part of the injured employee. See AS 23.30.080. These claims can be asserted in civil litigation. There may be coverage under the standard P & I policy for such litigation. However, the vessel owner comes into such a lawsuit with one hand tied behind his back because of the presumptions which exist if there is no insurance. In addition, if there is no insurance and the employee should chose to pursue his workers' compensation remedy, the vessel owner will have to pay any such award out of his pocket. Depending upon the severity of the

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1/ Subsequently, in 1981, the Alaska Supreme Court concluded that a fishermen who was injured while his vessel was underway was not entitled to the benefits of the Alaska Workers' Compensation Act. See Anderson v. Alaska Packers Assoc., 635 P.2d 1182 (Alaska 1981).

injury, such awards can easily reach six figures. With this twofold penalty for the failure to insure under the Alaska Workers' Compensation Act the prudent owner must carry both a standard P&I policy for federal maritime remedies and a workers' compensation policy. This overlap in coverages need not exist and creates an unnecessary expense to the vessel owner.

A fishermen working on a fishing vessel has available to him extremely generous remedies under the federal maritime law. The only time that such a fishermen is additionally entitled to the benefits of the Alaska Workers' Compensation Act is in the fortuitous event that his injury occurs while the vessel is tied up. Fishermen who are injured at sea do not have available to them the remedies of the Alaska Workers' Compensation Act. The normal shore-based employee does not have available to him the benefits of the federal maritime law. It is only in this peculiar case of a fishermen who is injured while his vessel is tied up that duplicate coverage exists. There is no justifiable policy reason for providing such a duplication of remedies when that duplication mandates increased insurance costs. The most effective way of eliminating this coverage is through the Alaska Legislature. Coverage under the terms of the Alaska Workers' Compensation Act is purely a matter of state law. Such coverage can easily be eliminated with a very minor amendment to the Alaska Workers' Compensation Act. Such an amendment would preclude the necessity of the vessel owner having Alaska Workers' Compensation

Act coverage. Although this is but a very small slice of the insurance premium, it is a simple, justifiable, and easily obtained legislative remedy to partially reduce the significant exposure that a vessel owner has for personal injury insurance premiums.

AS16.05.940
CHAPTER = 16.05
SECTION = 16.05.940
TITLE = 16
HEADINGS TITLE 16.
Fish and Game.
CHAPTER 05.
Fish and Game Code.
ARTICLE 7.
General Provisions.
CITATION Sec. 16.05.940.
CATCH LINE
DEFINITIONS.
TEXT In AS 16.05 - AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as

specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "department" means the Department of Fish and Game unless specifically provided otherwise;

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(10) "fish derby" means a contest in which prizes are awarded for catching fish;

(11) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(12) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(13) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(14) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 AS 16.40;

(15) "hunting" means the taking of game under AS 16.05 - AS 16.40 and the regulations adopted under those chapters;

(16) "nonresident" means a person who is not a resident of the state;

(17) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(18) "operator" means the individual by law made responsible for the operation of the vessel;

(19) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the

state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

(20) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 - AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(21) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(22) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(23) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(24) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(25) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(26) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state,

but does not include aircraft.

HISTORY (Sec. 2 art I ch 95 SLA 1959; am secs. 1 - 4 ch 131 SLA 1960; am sec. 1 ch 21 SLA 1961; am secs. 1, 2 ch 102 SLA 1961; sec. 9 art III ch 94 SLA 1959; am sec. 23 ch 131 SLA 1960; am sec. 1 ch 160 SLA 1962; am secs. 13, 14 ch 31 SLA 1963; am sec. 2 ch 32 SLA 1968; am sec. 3 ch 73 SLA 1970; am sec. 1 ch 91 SLA 1970; am sec. 4 ch 110 SLA 1970; am sec. 1 ch 90 SLA 1972; am sec. 5 ch 82 SLA 1974; am secs. 26, 82 ch 127 SLA 1974; am secs. 18 - 20 ch 206 SLA 1975; am sec. 12 ch 105 SLA 1977; am secs. 14, 15 ch 151 SLA 1978; am sec. 1 ch 78 SLA 1979; am sec. 1 ch 24 SLA 1980; sec. 4 ch 74 SLA 1982; am sec. 24 ch 132 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS23.30.230 DOCUMENT
CHAPTER = 23.30
SECTION = 23.30.230
TITLE = 23
HEADINGS TITLE 23.
Labor and Workers' Compensation.
CHAPTER 30.
Alaska Workers' Compensation Act.
ARTICLE 6.
General Provisions.
CITATION Sec. 23.30.230.
CATCH LINE
PERSONS NOT COVERED.
TEXT As defined by regulations adopted by the board, part-time baby sitters, cleaning persons, harvest help and similar part-time or transient help are not covered by this chapter.
HISTORY (Sec. 33(3) ch 193 SLA 1959)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

473

BOARD: REAL ESTATE COMMISSION

TITLE: Real Estate Commission

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.88.011

STATUS: 86/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS:

TERM: 4 years - staggered

DESCRIPTION: 7 members appointed by Governor: 5 real estate brokers or associate brokers licensed in Alaska for 3 years, to represent each judicial district, and 1 at-large; if none available from second judicial district, 2 shall be at-large; plus 2 public members; Commission appoints Executive Director; Commission elects chair.

SPECIAL FACTS: Quorum - majority (at least 2 judicial districts represented)

FUNCTION: Regulates and controls licensing, suspensions, revocations of real estate industry; manages surety claim fund

COMPENSATION: Standard travel/per diem

MEETINGS: 6 times per year, 2 days each; 6-12 committee meetings per year; 24 days total

*FOR FURTHER INFORMATION CONTACT: Executive Director, Real Estate Commission, Frontier Building, 3601 C Street, Suite 722, Anchorage, AK 99501 - 563-2169

Real Estate Commission

MEMBER	APPT	REAPPT	TERM
John E. Benson P.O. Box 7076 Ketchikan 99901 Broker/1st JD	83/10/19	85/01/31	89/01/31
Barry L. Brown 627 Gaffney Fairbanks 99701 Broker/4th JD	85/01/31		89/01/31
LaVerne F. Collins P.O. Box 102751 Anchorage 99510 Public	83/05/20	84/01/31	88/01/31
Barbara J. Hill 4201 Tudor Centre Drive Anchorage 99508 Broker at Large - Chairman	80/02/21	84/02/15	88/01/31
Jon "Dave" D. Ribacchi 2531 Banbury Drive Anchorage 99504 Broker/3rd JD	83/05/20		87/01/31
Gilbert Serrano c/o Land Co., 641 "A" St. Anchorage 99502 Broker at Large	83/10/19		87/01/31
Iola Young-Robinson P.O. Box 1329 Palmer 99645 Public	85/02/21		87/01/31

CHAIRMAN'S INFORMATION: SB 473

1) BILL TITLE: "An act extending the termination date of the Real Estate Commission; and providing for an effective date."

a) Introduced: Senate Labor and Commerce Committee

b) Co-sponsors:

2) INTENT: This measure extends the Real Estate Commission until June 30th, 1987. As discussed during sunset hearings held earlier this week, it is my intention to prefile the text of SB 487 (rewrite of the real estate commission statutes), and act upon this measure next year.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4199 SLAB SB 474 - SCR 2

1679

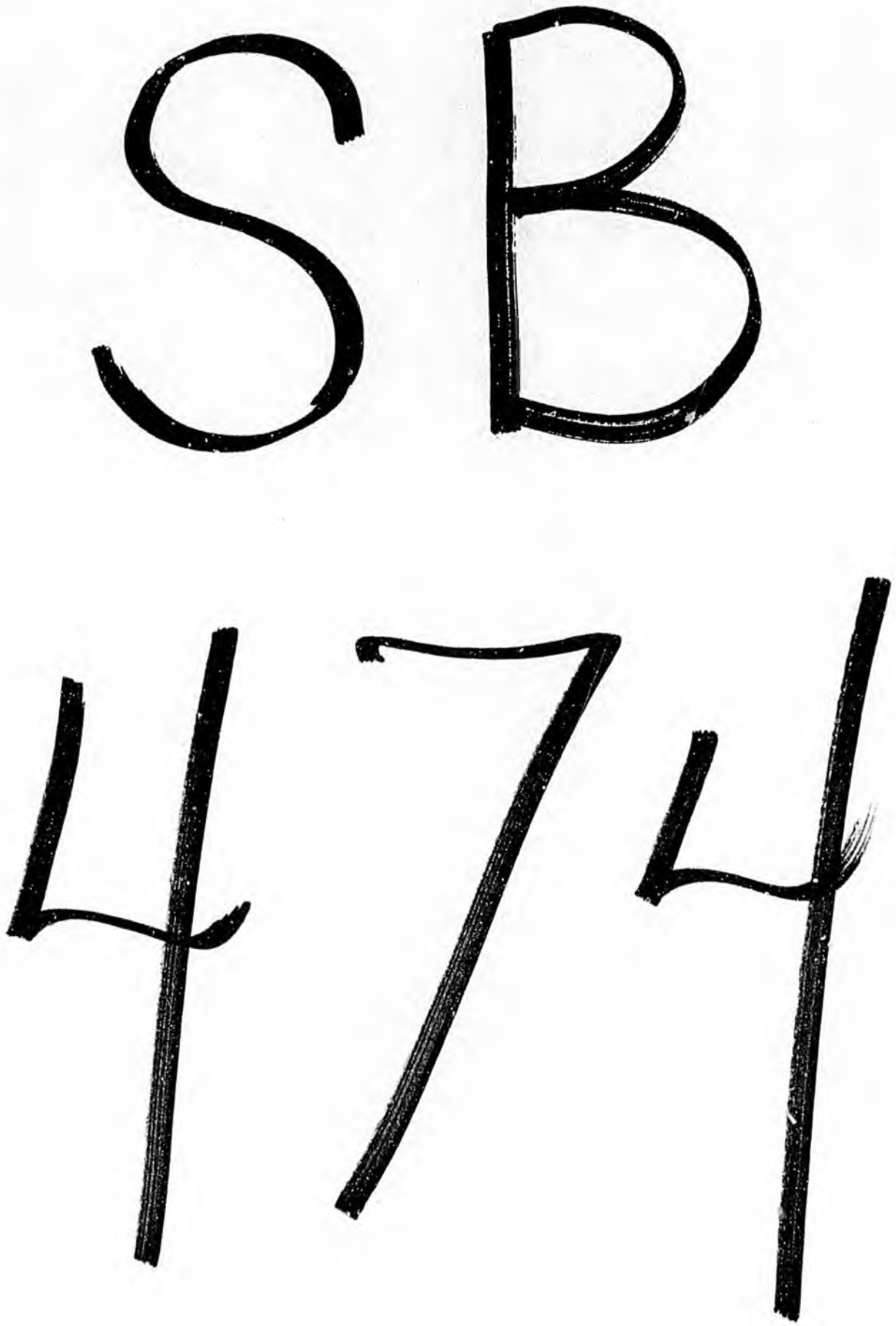
RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)


SB
474

THIS MEASURE EXEMPTS PERSONS WHO INSTALL AND WIRE SUBMERSIBLE PUMPS IN WATER WELLS FROM THE LICENSURE REQUIREMENTS AS ELECTRICAL ADMINISTRATORS. CONCERNS HAVE BEEN EXPRESSED BY WATER WELL PUMP INSTALLERS OVER THE CURRENT LAW WHICH REQUIRES THE WIRING TO BE DONE BY AN ELECTRICIAN AND INSPECTED BY AN ELECTRICAL ADMINISTRATOR.

**** YOU WILL NEED TO MOVE THE L&C AMENDMENT ON THE FLOOR*****

AN AMENDMENT WAS OFFERED IN THE SENATE LABOR AND COMMERCE COMMITTEE TO LIMIT THE ELECTRICAL WIRING PROVISIONS TO THE WELL HEAD CONTROL UNIT <u>IF OUTSIDE OF A BUILDING OR STRUCTURE.</u> THIS AMENDMENT WAS SUPPORTED BY THE DEPARTMENT OF LABOR, AND HAS THE EFFECT OF ALLOWING AN INSTALLER OF SUBMERSIBLE PUMPS TO WIRE TO THE CONTROL UNIT IF IT IS LOCATED OUTSIDE OF A BUILDING OR STRUCTURE, OR TO THE WELL HEAD IF THE CONTROL UNIT IS OUTSIDE A STRUCTURE.

AMENDMENT OCCURS ON PAGE 2, LINE 13: after unit insert:

<u>if outside a building or a structure.</u>

Alaska Water Well Assn.
P.O. Box 110435
Anchorage, AK 99511-0435

April 12, 1986

Representative Sam Cotten
District 15
Pouch V
Juneau, AK 99811

Dear Sam:

First, I would like to thank you for your efforts and assistance thus far in our communications regarding the State Department of Labor's proposed certificate of fitness program for water well pump installers. Your great support was acknowledged at the annual Alaska Water Well Association meeting in February and was extremely well received by the membership.

The research material provided by your staff is first rate and has been quite useful in responding to inquiries.

Sam, we seem to have another obstacle on this subject, specifically opposition to the proposed exemption for a water well pump installer by permitting them to go to the load side of the disconnect. The terminology used in SB 474 implies limiting service to the well head. The crucial term here is <u>well head controller unit</u> which we suggest would better serve the need by reading <u>well pump system controls.</u>

At the request of your office, I spoke with Mr. Al Dwyer, the inspector responsible for electrical functions in Southeast Alaska.

Mr. Dwyer expressed a serious concern over improper installation by present contractors, and indicated he wanted their level of responsiblility to terminate at the well head. The reasons he stated were that (A) installations he has inspected were of poor workmanship. (B) The cable being used inside the household was the twisted three wire material designed for use in the wet environment of the well. (C) This wire was being stapled to the floor joists, etc. leaving a potential fire hazard in the years to come. (D) The contractors responsible for this workmanship have been warned previously but

persist in the stated practice. (E) Commercial installations such as stores, gas stations and office buildings have wiring codes that are specifically different than those required in residential construction and consequently, these contractors are not versed in the proper techniques and codes and therefore are not qualified to perform those installations.

Sam, all of Mr. Dwyer's objections are valid concerns, however I believe he is trying to prevent the certificate of fitness program from doing what it is designed to do; to pre-qualify people within a given industry by testing and minimum experience standards set at levels which would prevent persons utilizing improper installation knowledge from being licensed. If this is allowed, then why do we even have a certificate of fitness program? It is a lot like the stereotype attitude used in racial prejudice. If one person is lazy, all like him are lazy.

I would like to address what seems to be the logical corrective approach to Mr. Dwyer's objections by reviewing them one at a time.

(A) Present installations are of poor workmanship. If there is a defined code where proper techniques are stated and the observation is not based on personal preference of technique, the card carrying contractor should be informed as such. If he then fails to correct the error or continues to perform shoddy work at other installations, his certificate of fitness should be revoked thereby putting him out of business until such time as he is reinstated. The first suspension could be something like 60 days with a requirement for re-passing the exam, while a second suspension (or third) should be permanent.

(B) The cable being used inside the household is the twisted three wire material designed for use in the wet environment of the water well. Surely there is a code in this State that requires the use of either a Romex or UF type cable in that type of installation. If such a code exists, the contractor should be required to comply or have his certificate either revoked or suspended per the above mentioned procedure.

If not, Mr. Dwyer's objection is a personal one that should not be considered, because if we let field inspectors be the interpreters of various laws, there will be no consistency in the field for the contractors to follow. As a result, project cost overruns will run rampant on construction jobs and shoddy workmanship will be even more prevalent as the contractor tries to cut cost in other areas due to being caught doing something that is perfectly acceptable in other parts of the State.

(C) The potential for a fire hazard existing in these conditions is obvious, and I am in complete agreement with Mr. Dwyer. A double insulated wire such as Romex or UF should be used inside the house per existing codes.

(D) The contractors have been warned previously of shoddy workmanship, but persist in their ways. Fine, use the program to weed them out, but don't knock the program if you're (sic) not using it properly! The whole purpose of a Certificate of Fitness program is to improve the quality of workmanship in the respective industry and provide a mechanism for establishing and maintaining competency.

(E) Commercial installations such as stores, gas stations, office buildings have wiring codes that are specifically different than those required in residential construction and consequently, these contractors are not versed in the proper techniques and codes and therefore are not qualified to perform those installations.

It has already been agreed to by the AWWA membership and the Department of Labor that two classifications need to exist; one fo residential and one for commercial. We suggest Mr. Dwyer's object on could easily be remedied by allowing only contractors certificated for residential service to connect as far as the load side of the disconnect on residential applications only. Those certificated for and servicing commercial work should limit their service to the source side of the motor controller and not be involved in running wire to the source from the controller.

Mr. Dwyer objected to my suggestion of allowing the commercial contractor to service beyond the well head, but it is imperative that they be allowed to do so. Otherwise, costs for the system owner will rise due to the requirement of at least one additional service personnel to be at the job site while the equipment is being installed and tested. Again, the exam for a certificate is properly structured to adequately test the knowledge of the individual as well as his practical experience.

We feel it is imperative that the certificated pump system installer be allowed to service the system to the above stated levels to avoid unnecessary call backs resulting in high costs to the consumer and also to avoid tarnishing the image of the installer by having provided a product that fails. If the electrician doesn't install the controller equipment provided by the pump manufacturer, then the warranty for the motor is void. Who pays for a motor that burns out on start-up wh- the proper ambient compensated quick trip overload heaters were not installed by the electrician?

All too often, we experience installations where the control circuit was installed by a licensed journeyman electrician where the motor or control failed upon start-up simply because the electrician connected the third lead from the motor to a ground at the control box, rather than follow the manufacturer's wiring diagram located inside the cover of the enclosure, or use a Romex 2 wire with ground from the well head to the control. These failures aren't the responsibility of the pump installer, but because he provided the equipment, the electrician and/or consumer turns and points a finger at him, expecting him to warranty the allegedly "defective" product.

Unfortunately, I have yet to experience an electrician come forth and admit that he's made a mistake and buy the compontent(s) necessary to repair the fault.

On commercial installations, the motor manufacturers very emphatically state that if their control requirements are not met, they will not warrant the product. That is because they recognize the potential for human health hazard should a failure occur. However, on most applications, particularly 3 phase, again, the journeyman electrician feels his practical experience makes him more qualified than the factory's design engineers and he doesn't provide the overload protection they require.

Who is to pay for the burned out motor when they haven't followed the directions? It isn't the pump installer's problem, nor is it the supplier's problem. The manufacturer has already protected himself by stating his requirements in his installation and operation instruction manual. The pump installer has normally paid for this equipment before he gets paid, and in this situation, he is forced to submit to the demands of the owner to get his money, even though he is not the responsible party.

If, as Mr. Dwyer states, the licensed journeyman electricians are fully qualified in motor start circuits, I wonder why it is that my employer is asked several times each construction season to warrant failures directly attributable to improper techniques practiced by these same licensed electricians.

It is extremely disturbing to realize one individual that has had experience with a limited number of contractors representing a very small segment of this state's population could influence such a major decision by making a few casual comments while being uninformed about all aspects of the subject being discussed. If this situation is an example of how our system works, there is definitely a need for improvement in the system.

Sam, I'm enclosing a copy of the National Water Well Association's primer on their Certified Pump Installer program which is the testing standard the AWWA has suggested the Department of Labor adopt in this program. You will also find a copy of a cover letter NWWA sends out which confirms the need for proper practical experience to pass these exams. By reviewing it, you will see it requires more than knowledge of how to turn wrenches and squeeze a pair of crimping pliers to pass and become recognized by the National Association as a Certified Pump Installer. Mr. Dwyer is of the belief the exam is geared primarily towards health concerns for well construction, which isn't correct.

You will also find enclosed copies of the letters we submitted to the Department of Labor at the public hearing held November 4th in Anchorage.

Again, Thank you for your assistance in our cause. If I may be of further help, please feel free to contact me at 563-3424 days or at home evenings at 344-4707 (unlisted.)

Respectfully,

Barry L. McCormack

Barry L. McCormack, Executive Secretary
Alaska Water Well Association

cc: Mr. Don Robison, Commissioner
State of Alaska
Department of Labor

November 4, 1985

State of Alaska
Department of Labor, Mechanical Inspection
Pouch 7-020
Anchorage, AK 99510

Subject: Licensing and Certification of Fi[illegible]s Exams for Water Well Installers.

Gentlemen:

As a supplier, we applaud your good intention of requiring water well installers to take a qualifying exam for licensing and to certify their fitness as an experienced, competent technician to install and service commercial and residential water systems.

This move should help to stem the tide of disreputable firms and individuals that have managed to tarnish the image of the Alaskan water well installer from continually coming into Alaska from Outside when their reputations prevent them from making an acceptable living wage in their economically depressed home area. We view this as an opportunity to improve the level of competency of the people in the industry and possibly reduce some of the excessive competitiveness brought on by the insurgence of these people into the Alaska marketplace.

We feel it is imperative that we express concern over the definition you have proposed for a "water well installer." The definition given leads us to believe you would not permit the water well installer to install the control box for a three wire submersible pump, nor install the pressure tank. We further see this as a problem for the few cases where a jet pump is needed, either as a booster pump or as the sole pumping source for the water system.

Experience as a supplier that is asked to warranty defective products leads us to object to the limitation you have placed on the water well installer with this definition. Not once, but several times each year, we are asked to warranty failed motors and control boxes because some certified journeyman electrician wired the control in accordance with all he has been taught. When we question the cause of failure and find that the electrician grounded the third lead, which is part of the start circuit for the motor. This is definitely not a warrantable failure. When the electricians are questioned why they didn't follow the instructions in the cover of the control, their typical response is that they thought the manufacturer had made a mistake in the wiring diagram.

Each year nearly one million domestic submersible water pumps are produced in the United States. This statistic comes from the Water Systems Council, a consortium of the 26 major water system manufacturers. Surely none would make that mistake consitently for several years, or they would go out of business due to insurmountable warranty costs.

It appears that a licensed electrician feels that he is entitled to redesign a circuit at will and then not have to accept responsibility for his actions and warrant the failed product.

And what about the situation where the journeyman plumber installs a pressure tank too small for the capacity of the pump in the well? The pump cycles on and off too frequently and either burns out the motor or a component of the control box. What happens if the plumber installs a pre-pressurized tank when the water well installer has made provisions for a galvanized tank by installing a bleeder orifice in the vertical drop pipe? The consumer continually gets air out the faucets, possibly breaking dishes and glasses until the plumber comes out to change the tank, probably to another pre-pressurized tank thinking the first was defective. This becomes another situation where the supplier is asked to warranty a product that is in fact not defective but simply improperly applied because the installing technician was not aware of the total system design.

Many times we've received calls from plumbers and system owners complaining about the limited amount of water (drawdown) they are able to get out of the pre-pressurized tank on each pumping cycle. This comes from not having matched the pressure switch's pre-set operating range with the air charge in the tank. Again, this causes undue rapid cycling of the pump unit and possibly a failure which is not warrantable.

Alaska has many aquifers which yield very little water. In some cases, not enough for a standard water system to work. Consequently, special controls and storage tanks along with a booster pump must be used to provide the water system owner with a water supply adequate to pass the lending instutition's requirements and those of the Department of Environmental Conservation. In those instances, the total system design becomes even more important, as there are several areas where mismatched equipment could lead to system failure and costly repairs. Failures of this nature are not warrantable.

Who pays for these unnecessary failures? The consumer, the technician, the supplier and the manufacturer all wind up paying through either cash outlay or reputation for not giving in to every incompetent's demands.

The water well installer must be able to install the complete system from the pump in the well thru the exit of the pressure tank, as it is a system requiring a complete balanced design. If the system is not balanced or some of the necessary components are left out, the results can spell disaster for the water system owner as they will be plagued with problems or faced with ridiculously high repair bills when they have to have a "journeyman plumber," "service/sewer plumber," "maintenance electrician" and a "water well installer" all come to the point of service at the same time to diagnose the defect and then hopefully, repair it to an acceptable operating condition.

Again, we applaud the intent of setting a standard for more qualified technicians in the industry, but implore you to allow the "water well installer" to have complete control over the installation of the system thru the tank and its necessary accessories, and the electrical circuit providing power to the system from the breaker box forward. This will follow suit with the training provided by manufacturers at in the field seminars and the National Water Well Association's Certified Pump Installer (CPI) examination program.

We also suggest that you not give "Grandfather Rights" to ar individuals other than those holding NWWA CPI certificates, as as you would otherwise only perpetuate the problem of unqualified operating in the Alaska water well industry. We urge you to consider using the NWWA'S CPI exam as a measurable standard to qualify any and all licensee's.

Respectfully,

Barry L. McCormack

Barry L. McCormack, General Manager
Alaska Pump & Supply, Inc.

cc: State Senator Sturgelewski
State Senator Faiks
State Representative Boucher
State Representative Collins

November 4, 1985

State of Alaska
Department of Labor, Mechanical Inspection
Pouch 7-020
Anchorage, AK 99510

Subject: Proposed Licensing of "Water Well Installers"

Gentlemen:

The Alaska Water Well Association (AWWA) submits the following information on behalf of member and non-member water well/pump installers and Alaskan water well owners.

Ten (10) states are known to require licensing of water well/pump installers currently. Those states are California, Colorado, Delaware, Hawaii, Illinois, Maryland, Michigan, New Hampshire, New Jersey and Tennessee. Several additional states have proposed legislation under consideration to license water well/pump installers.

Each of the 10 licensing states has a licensing board with appointed members ranging from 5 to 13 total members of which 1 to 6 are current licensed resident specialty contractors serving from 2 to 5 year terms. They usually represent various geographic areas of the respective state.

Qualifications for applicants vary from no required time in service to as much as 5 years in service with the majority using 2 years, which the proposed 4,000 hours experience would equate to if the applicant were to work steady 40 hour weeks for 51 of 52 weeks over a two year period.

Several but not all require a performance bond ranging from $2,000.00 to $10,000.00. All require an examination, with some requiring either written or oral and some offering a choice to be made by the licensing board. Translators are provided by some where they may be needed.

The regulating or licensing State agency varies from state to state with most being regulated by the agency or department equal to Alaska's Department of Environmental Conservation (D.E.C.).

Presently the State of Alaska recognizes the National Water Well Association (NWWA) by reference to NWWA publications and studies in D.E.C. publications regarding practices for installation and sizing of Class A, B, and C water systems. The NWWA is recognized by the United States Geological Survey division of the Department of the Interior by requesting its assistance thru chapter and affiliate state associations in monitoring and recording the quantity and quality of water well activity over the preceding decade.

The NWWA has utilized its own voluntary certification program for the last decade. To become certified, individuals must have at least two years full time experience in an operational or supervisory capacity in pump installing to be eligible to take the exams. If the state in which the applicant operates requires licensing, he must show evidence of having this license before he can become certified. Membership in the NWWA is not required.

The exams consist of a general test on well drilling and at least one additional exam from any one of 13 specialty categories available. These categories test the applicant's ability to use his equipment on the particular types of products used in his area, giving consideration to the local geological formations.

To maintain certification, individuals are required to renew annually and demonstrate they have attended at least 20 hours of approved continuing education each three-year period.

These exams are given upon request of local chapter and affiliate associations, however, NWWA strictly requires enforcement of a neutral, non-licensable individual such as a State or Federal employee or an NWWA staff member acting as proctor during the examination.

It is the position of the Alaska Water Well Association, by majority of the Board of Directors to support licensing and Certificate of Fitness exams for water well/pump installers in the State of Alaska.

We do object to wording used in definition of a "water well installer" in that the 'work necessary to the installation of commercial and residential wells' 'is limited to the pump installation terminating at the well head.' It should be understood that our reasons for this objection are not only for our behalf but also on behalf of the Alaskan water well owners as they will suffer increased cost on initial installations and aftermarket service of their water well system.

None of the aforementioned states has explicitly established a limit of service to be performed by the installer. Some do specifically include the water system as a whole by including provision to service as may be necessary to protect such water from contamination and all construction involved in connecting pumping units or pressure tanks into the water supply system of buildings served by the well from which the pump is supplying water. Provision is also included for repair to existing installations.

As this proposed change is written, responsibility for warranty of the water system design lies spread over as many as 4 separate parties. Consumer costs will rise considerably when each contractor has to raise prices to cover possible errors by the other involved parties should they error in selection of appropriately sized equipment or make an improper installation resulting in failure of another party's installed equipment.

Presently, when a well/pump installer performs a new installation, he may provide in addition to the pump and it's required electrical control, the water and electrical lines between the well and tank as well as the pressure tank and it's required appurtenances for proper operation of these components as a <u>system</u>.

When a consumer needs service currently, one phone call can result in a service call to diagnose and rectify the fault by one technician. However, if the proposed change is passed as written, as many a 4 technicians may be required to analyze and rectify the problem. With current labor rates from $45.00 to 60.00 per hour, the wording of this change would be a grave injustice to the typical well owner, because getting all the required parties together at one time will be next to impossible, in addition to horrendously expensive.

The AWWA requests that the State of Alaska Department of Labor revise the term 'water well installer' to "pump and water system installer." We also request that the definition be revised to include installation of the complete water system from the pump installed in the well thru the first gate valve from the exit of the pressure tank, (not to be more than 24 linear pipe inches from the tank outlet) and to the circuit breaker box with electrical service limited to the circuit(s) required to operate the pump and its related controls.

With many low producing aquifers in Alaska it is not uncommon for the water system to require the use of a storage tank, high and low level controls for same and the well plus a booster pump. If the 'water well installer' is not permitted to be directly involved in the selection, application and <u>installation</u> of this equipment, severe water shortage problems may be experienced by the homeowner.

Alaska presently has several NWWA certified pump installers. The AWWA urges the Department of Labor to recognize the NWWA certification program as its testing standard for the State's Certificate of Fitness exam. This coupled with the above request to redefine a water well installer should result in a cohesive comprehensive program that will benefit all Alaskans served by water wells.

We respectfully request that you carefully consider the re-wording we've suggested to this proposed change before submitting a final format to the legislature.

Sincerely,

R.P.

Ronald Palmer, President
Alaska Water Well Assoc' tion

RP/BLMc

cc: Governor Bill Sheffield

Board of Directors, AWWA

Ms. Christine Reimer, Legislative Services, NWWA

CHAIRMAN'S INFORMATION: SB 474

1) BILL TITLE: "An act relating to exemptions from licensing requirements as electrical administrators; and providing for an effective date."

a) Introduced: Senate Labor and Commerce

b) Co-sponsors:

2) INTENT: This measure expands the list of exemptions from the licensing requirements for electrical administrators. The amendment adds persons who install submersible pump motors and wire them to the "well head" controller unit in water wells.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

AMENDMENT #2

By Eliason

Offered in the SENATE

TO: SB 474

On page 1, line 12 After the word "manufacture" insert the following:

",maintenance, replacement"

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SB 474: Summary

This measure expands the list of exemptions from electrical administrator licensing requirements. The amendment adds persons who install submersible pump motors and wire them to the well head controller unit in water wells.

Introduced: 4/9/86
Referred: Labor and Commerce

BY THE LABOR AND COMMERCE COMMITTEE

IN THE SENATE

SENATE BILL NO. 474

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to exemptions from licensing requirements as electrical administrators; and providing for an effective date."

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

* Section 1. AS 08.40.190(b) is amended to read:

(b) This chapter does not apply to a [ANY] person engaged in

(1) the manufacture or repair of electrical apparatus or equipment;

(2) electrical work, the cost of which does not exceed $5,000, involving residences or small commercial establishments in communities

(A) which have a population of under 500; or

(B) which are over 50 miles by air or water transportation from the business place of an electrical administrator licensed under this chapter;

(3) electrical installation on residential property which is owned by the installer or a member of the installer's immediate family and not intended for sale at the time of making the installation;

(4) the operation, maintenance or repair of a television or radio broadcasting system and the installation of a radio broadcasting system under 500 watts input power except for A.C. power supply and wiring;

(5) the installation, maintenance and repair of elevators

so long as the work is performed by an agent or employee of the elevator industry and is confined to the elevator control system, which system does not include the power supply, wiring and motor connection;

(6) the operation, maintenance and repair of telephone, telegraph, and intercommunication facilities;

(7) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less;

(8) the maintenance or repair of diesel electric engines installed on heavy construction equipment, either in a shop or on a job site;

(9) the installation in a water well of the submersible pump motor and the wiring to the well head controller unit; if outside building or structure.

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

Department of Commerce & Economic Development / POSITION PAPER

SB 474 An Act relating to exemptions from licensing requirements as electrical administrators.

The department does not oppose this bill.

Loren H. Lounsbury, Commissioner

DATE: 4/17/86

0245k41786a

Bill No. Senate Bill 474

Date April 22, 1986

Title "An Act relating to exemptions from licensing requirements as electrical administrators; and providing for an effective date."

Contact: Eileen Plate
465-2700
Robert Bacolas
465-4870

Senate Bill 474 proposes to exempt the installation of water well pumps from the electrical administrator licensing requirements.

Although the Department has no particular objection to allowing an installer to wire a submersible pump and position it in the well, wiring from the well head to the controller should be performed by a qualified electrician and inspected by an electrical administrator. A controller can be located anywhere in a home, school or other building and it is critical that the person installing the wiring is knowledgeable of the proper wiring method required for the particular occupancy in which the wiring is being done. Further, since it is not possible for the Department of Labor to inspect every electrical installation, the supervision of such work by an electrical administrator is essential.

The Department is opposed to water well pump wiring being installed beyond the well head by a person other than a qualified electrician under the supervision of an electrical administrator.

Senate Bill 474 would not have a fiscal impact on the Department of Labor.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

AS08.40.190 DOCUMENT
CHAPTER = 08.40
SECTION = 08.40.190
TITLE = 08
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 40.
Electrical Administrators.
ARTICLE 3.
General Provisions.
CITATION Sec. 08.40.190.
CATCH LINE
EXCLUSIONS.
TEXT (a) This chapter does not apply to any utility or municipality engaged in

(1) electrical construction and maintenance of electrical wiring for the generation and distribution of electrical current where the wiring is an integral part of a system owned and operated by that utility or municipal light and power department;

(2) the installation, operation, maintenance, or repair of telephone, telegraph, signal or communication systems when the work is performed by the employees of that utility.

(b) This chapter does not apply to any person engaged in

(1) the manufacture or repair of electrical apparatus or equipment;

(2) electrical work, the cost of which does not exceed $5,000, involving residences or small commercial establishments in communities

(A) which have a population of under 500; or

(B) which are over 50 miles by air or water transportation from the business place of an electrical administrator licensed under this chapter;

(3) electrical installation on residential property which is owned by the installer or a member of the installer's immediate family and not intended for sale at the time of making the installation;

(4) the operation, maintenance or repair of a television or radio broadcasting system and the installation of a radio broadcasting system under 500 watts input power except for A.C. power supply and wiring;

(5) the installation, maintenance and repair of elevators so long as the work is performed by an agent or employee of the elevator industry and is confined to the elevator control system, which system does not include the power supply, wiring and motor connection;

(6) the operation, maintenance and repair of telephone, telegraph, and intercommunication facilities;

(7) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less;

(8) the maintenance or repair of diesel electric engines installed on heavy construction equipment, either in a shop or on a job site.

(c) Work within the exclusionary provisions of this section is nevertheless subject to the inspection provisions of AS 08.40.070 and must follow the regulations regarding workmanship adopted by the board.

HISTORY (Sec. 8 ch 158 SLA 1960; am sec. 1 ch 79 SLA 1967; am sec. 10 ch 53 SLA 1977; am secs. 7, 8 ch 71 SLA 1980)

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

March 26, 1986

Honorable Sam Cotten
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Cotten:

Mr. Bill Stoltze advised that our suggested wording for an exemption from the electrical administrator act for water well drillers appeared quite limited.

I discussed this further with Al Dwyer, Electrical Inspector, to further critique the wording suggested in my letter to you dated March 24, 1986. My suggested wording was:

AS 08.40.190(b)(9). This act does not apply to any person engaged in

(9). Water well drillers for installation of the submersible pump motor and the wiring to the well head controller unit.

The intent is to assure that the installer can install the pump motor and bring the wire to the top of the well, but not to wire into the controller units, whether they be automatic or manual switching units. After our critique, to assure the installer who is not properly licensed to perform the wiring work does not make any connections at the controller unit or elsewhere toward the energy source, perhaps the wording should be shortened to read:

(9). Water well drillers for installation of the submersible pump motor and the wiring to the top of the well.

As I mentioned in my previous letter, there are many and varied safety problems and various electrical code requirements that vary pertaining to connecting the installed pump to a controller unit and the energy source. If improperly installed there can be serious danger to persons and property according to the well location compared to the energy source. Mr. Dwyer still advises that it would be unwise to extend the exemption any further than the well head, up to but not including into the controller unit.

Thank you for this opportunity to provide comments to you on this matter. Feel free to contact this office again for further assistance.

Sincerely,

Richard H. Long
Chief Investigator and
Acting Director

DCED LETTER

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 474
Title: An Act relating to exemptions from licensing requirements as electrical administrators;
Sponsor: Senate Labor & Commerce
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill exempts water well drillers from being subject to the electrical administrator statutes in the installation of a submersible pump motor and wiring to the well head controller unit.

The bill is not expected to generate new costs or revenues.

Prepared by: Jennifer Strickler, Management Analyst
Phone: 465-2144
Division: Occupational Licensing
Date: 4-15-86

Approved by Commissioner: Lorenz A. Lounsbury
Date: 4/16/86
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
[redacted]

10/25/85

FISCAL NOTE

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 474
Title : "An Act relating to exemptions from licensing requirements as electrical administrators..."
Sponsor : Senate Labor and Commerce
Requestor : Senate Labor and Commerce Comm
Date of Request : 4/10/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards and Safety
Components : Mechanical Inspection

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert J. Bacolas, Str. Phone : 465-4870
Division : Labor Standards and Safety Date : 4/21/86

Approved by Commissioner : Jim Robison Date : 4/21/86
Agency : Labor

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

10/25/85

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

487

MEMORANDUM State of Alaska

TO: Michael Thill, Staff Assistant
Senate Labor & Commerce Committee

DATE: April 30, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Att
By: Harold M. Brown
Attorney General
Pete
Assi
Peter B. Froehlich
Assistant Attorney General

SUBJECT: Proposed amendment to SB 487 concerning general regulation adoption authority

As I mentioned to you by telephone yesterday, there is an additional clarifying amendment that should be included in SB 487 on the Real Estate Commission. That amendment would correct an apparent oversight which has resulted in the absence of an explicit grant to the commission of general regulation adoption authority. Currently, AS 08.88 includes two explicit grants to the commission of specific regulation adoption authority, but no grant of the typical general regulation adoption authority usually given to occupational licensing boards and commissions.

The commission has the following explicit specific regulation adoption authority:

> Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall adopt regulations pertaining to the responsibilities of persons licensed under this chapter and the grounds for revoking or suspending a license.
>
> Sec. 08.88.111. COMMISSION REGULATIONS. The commission shall adopt procedural regulations describing
>
> (1) how it conducts an examination;
>
> (2) how a person applies to take an examination, applies for a license, and registers that person's office.

I propose that AS 08.88.081 be amended to add a general regulation adoption authorization and at the same time consolidate the two specific authorities as follows:

> * Sec. 2. AS 08.88.081 is amended to read:
>
> Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall adopt regulations <u>necessary to carry out the purposes of this chapter including regulations</u>
>
> <u>(1)</u> pertaining to the responsibilities of persons licensed under this chapter and the grounds for

revoking or suspending a license;

(2) describing how it conducts an examination; and

(3) describing how a person applies to take an examination, applies for a license, and registers that person's office.

Renumber the following sections of the bill accordingly.

Of course, AS 08.88.111 should then be repealed.

This additional amendment would clarify that the Real Estate Commission has the same general regulation adoption authority as do other agencies. We believe that the commission has this authority implicitly, even without this amendment but it would be better to make the authority explicit.

Concerning SB 487 as a whole, we believe that the bill includes both some desirable housekeeping amendments and some amendments that may not be desirable, or that at least may require more study.

Please let me know if I can provide you or the committee any further information on this proposed amendment to SB 487, or on the entire bill.

PBF:md

cc: Hon. Loren Lounsbury, Commissioner
Dept. of Commerce & Economic Development

James Magowan, Director
Real Estate Commission

Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

4809

CHAIRMAN'S INFORMATION: CSSB 489 (L&C)

1) BILL TITLE: "An act extending the termination date of the Alaska Public Utilitites Commission until 1987; and providing for an effective date."

a) Introduced: Sen Finance

b) Co-sponsors:

2) INTENT: This measure extends the termination date of the APUC for 1 year.

FISCAL NOTE: 0 (not received, but should be zero predicated on budget resources)

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the Senate L&C CS

Original sponsor: Finance Committee

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 489 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act extending the termination date of the Alaska Public Utilities Commission until 1987; and providing for an effective date."

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

* Section 1. AS 44.66.010(a)(4) is amended to read:

(4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30, 1987 [1986];

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

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SR

NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99633 • PHONE (907) 246-4261

"Owned by those we serve" NAKNEK, ALASKA

MAR 3 1986

February 26, 1986

Senator Frank Ferguson
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Ferguson:

The reading of Resolution Number Nine into the Commerce Committee log was received with astonishment.

This association is recipient of consecutive safety awards, has no written nor verbal complaint by members, public, Federal or State agencies.

We take pride in our ability to provide service of high quality and continuity. When the "Bristol Bay winds" blow at excess of seventy miles an hour, our line crews are able to busy themselves with inside work rather than emergency exposure to the climatic conditions with repair.

The total systems unscheduled outage last year amounted to one half minute per consumer. The highly technical service requirements to the United States Air Force Base at King Salmon, fourteen miles from our generation plant, indicates they have the best quality and continuity of service in the Alaska command.

It is felt such service would be unattainable with "poor safety" conditions as referred to in Resolution Number Nine to the Commerce Committee.

We request your consideration to withdraw Resolution Number Nine in lieu of the aforementioned remarks.

If you have written complaint of safety infraction we should appreciate such to enable our prompt attention. Work and system safety is of prime concern of our Board of Directors, employees, management and members. Our annual budget has allocation of one hundred hours for safety training alone.

On another subject, we should like to thank you for your assurance to Dave Hutchens that the P.C.E. program shall be properly addressed by your office. We too should like to offer any data our office has that might assist you with reference to P.C.E.

In closing, we once again should appreciate your passing along any information you have of safety infractions within our system to enable our prompt attention and removal or repair.

Sincerely,

Claude E. Franke
General Manager

cc: Senator Fred Zharoff
Representative Herrmann
Dave Hutchens
Roger Kemppel

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SCR

2

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Econ. Dev.	Office of Enterprise	SCR No. 2	Vic Fischer

DEPARTMENT POSITION

Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Paul Fletcher, Director		Loren H. Lounsbury	

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Labor Department of Community & Regional Affairs Department of Environmental Conservation	Small Business Persons
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**

FISCAL IMPACT: ☐ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This was submitted by Senator Vic Fischer.

ANALYSIS OF BILL/PROGRAM EFFECTS

Although the department is in favor of any bill that would assist its efforts in business development, the department feels that the creation of a new task force is not needed at this time. The advocacy BRU of the department is already engaged in many of the proposed task force activities. Given the funding which will be required for such a task force to operate, the advocacy BRU could provide the same results.

The department is in support, however, of requesting the Governor to direct the Attorney General to investigate and recommend measures available to the State to assure that small businesses get a proportinate share of State business.

AMENDMENTS PROPOSED

None.

1637W21185b

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SCR No. 2

Title: Relating to Small Business Development in the State

Sponsor: Vic Fischer

Requestor: Vic Fischer

Date of Request: 1/15/85

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Economic Development

BRU, Program or Subprogram(s) Affected: Advocacy

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached.

Paul Fletcher

Prepared By: Paul Fletcher Phone: 465-2018

Division: Office of Enterprise Date: 2-11-85

Approved by Commissioner: for Commissioner - Loren H. Lounsbury Date:

Agency: Department of Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84

1624Wa21185b

The purpose of SCR No. 2 is to establish a task force to assess small business in Alaska and make recommendations. Specifically, the task is charged with:

1. emphasizing and promoting small business development and maintenance in Alaska;
2. assisting in securing adequate sources of bonding, credit and loans for small, Alaska-owned businesses; assuring, wherever possible, that State funded construction projects are specified, modified, and contracted in a manner to assure a reasonable proportion of State funded construction projects are performed in small, Alaska-owned businesses; and
3. assuring that a reasonable portion of State funded construction and procurement dollars be contracted through small owned businesses.

For the purposes of this Fiscal Note, it will be assumed that this will be an interagency task force with the following departments represented:

The Commissioners of the Departments of Commerce and Economic Development, Revenue, Labor, and Transportation and Public Facilities and/or their designees;

The task force will have one-day meetings on a quarterly basis.

The task force will submit a final report to the Governor, Legislature, and the general public with its findings and recommendations.

1624Wc21185b

Chairman's Information:

1) SCR 2 "Relating to small business development in the state"

   a) Introduced: Sen Victor Fischer
   b) Co-Sponsors: none

2) INTENT: Requests the Governor to appoint a task force to assess state policy in contracting, local hire, and small business advocacy. Further, requests the Governor to direct the attorney general to investigate and recommend measures that will assure a reasonable portion of state funded construction projects are contracted thru small Alaskan owned businesses.

   FISCAL NOTES: 0

3) COMMITTEE COMMENTS:

4) PUBLIC HEARINGS:

   a) Sponsor

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committe for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?

Senator Vic Fischer (907) 465-4954
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

February 6, 1985

To: Senator Fred Zharoff, Chair and
Members, Senate Labor and Commerce Committee

From: Senator Vic Fischer

Re: SCR 2 - Small Business Development in Alaska

During the 1982 Interim, the Senate State Affairs Committee conducted an investigation into the effects of state contracting procedures on small, minority and female owned businesses in Alaska.

In the course of that study, and through subsequent testimony before committee hearings on small business development in Alaska, it's become apparent that problems facing minorities and women are basically the same as those facing all small Alaska-owned businesses.

Besides the obvious problems associated with high costs,extreme weather, lack of infrastructure, and vast distances, small businesses face major problems in dealing with the state, particularly on state funded construction projects.

The state has no comprehensive policy of support and advocacy for small business development. We don't even have a working defination of "small" business that realistically reflects the kind of "mom and pop" operations most of us think of when we think of "small".

State construction projects are contracted in a manner that, often as not, preclude any Alaskan-owned business from successfully bidding, at least as a prime contractor. That leaves Alaskans in the position of competing for subcontracts, usually with a large "outside" prime.

Lack of technical assistance, inability to secure adequate bonding, credit or financing, and an impossibly tight cash flow, makes successful competition for a sub-contracts extremely difficult for small, local businesses. Meanwhile, the concrete continues to be poured and Alaskans continue to stand in the cold while someone else reaps the benefits of state funded construction projects.

Small businesses are the state's best source of employment, new industry, local control, and a diversified economy. In spite of this, small businesses are folding at a phenomenal rate due to insurmountable problems with obtaining adequate bonding, financing, and technical assistance.

[redacted]

Background Materials

During Interim • 1024 W. 6th Avenue, Suite 204C • Anchorage, Alaska 99501 • (907) 278-3654

SCR 2 asks the Governor to address these concerns through several measures, including appointing a task force to assess state policy in contracting, local hire, and small business advocacy, and to recommend measures that will:

- emphasize and promote small business development and maintenance
- assist in securing adequate sources of bonding, credit, and loans for small, Alaskan-owned businesses
- specify, modify and contract state-funded construction projects a manner to assure a reasonable portion of the work is performed by small, Alaska-owned businesses

Further, SCR 2 asks the Governor to direct the Attorney General to investigate and recommend measures available to the state to assure that a reasonable portion of state-funded construction and procurement dollars be contracted through small, Alaskan-owned businesses, consistent with provisions of the United States and State of Alaska's constitutions.

Encouraging small business development in Alaska is the single most effective thing the state can do to provide for new industry and a stable economic base, opportunities for future growth to Alaska's young people, a diversified economy, and jobs for Alaskans.

More than that, the state benefits greatly from local businesses with strong community, family, and cultural commitments to Alaska. That business community, with proper nurturing, can maintain and strengthen the overall economy, mobilize the state's full productive capacity, and preserve and expand the competition basic to our free enterprise system.

It will take a push from both the legislative and executive branch to end this policy of "benign neglect" and take an active lead in assuring that small, Alaska-owned businesses benefit from publicly funded construction projects and an enhanced business climate.

I believe SCR 2 is an important step in that direction and I urge your positive consideration of this measure.

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Small Business

Small business has always been an integral and vital part of American life. Prior to the onset of rapid industrialization, it dominated the economy. Following the emergence of large corporations in the late nineteenth century, observers predicted that small companies would become obsolete with the eventual nationalization of the economy; despite major changes in the social, economic, and political environment, however, small businesses in America have persisted in significant numbers. They constitute approximately 99.8 percent of the companies in the United States, produce about 38 percent of the nation's goods and services, and account for more than 47 percent of the jobs in the private sector.

A widespread preoccupation with industrial and commercial giants has obscured the contributions small business has made to America's growth and development. For example, few people are aware that between 1953 and 1973 close to half of the major innovations introduced into U.S. industry came from firms with fewer than 1,000 employees—and a quarter of those originated in firms with fewer than 100. In addition, small business has outshone big business with respect to job-creating efficiency. As a

SOURCES

"Rebirth of Technological Innovation via Small Business" address (also published as part of a technology booklet series), American Physical Society, Chicago, Illinois, March 23, 1979.

"Small Business: A Great Resource for a Country, A Great Opportunity for Big Business" address, American Club of Stockholm, Stockholm, Sweden, February 6, 1980.

Testimony by W.C. Norris before the Senate Select Committee on Small Business, Hearings on Economic Growth, Washington, D.C., July 1, 1980.

"Big Business Helps Small Business To Improve Productivity and Create Jobs" essay, June 24, 1980.

"Technology for Community Enterprise Development" address, Second National Conference on New Enterprise Development, Washington, D.C., March 2, 1981.

Dorn Books, Minneapolis

1979 MIT study demonstrated, small companies were responsible for 7.4 million, or 78 percent, of the 9.6 million new jobs added to the U.S. economy between 1969 and 1976.

Today small business continues to serve as a symbol of opportunity and enterprise in our system of values, but there is reason to be concerned about its future. The cumulative impact of government regulations, the escalating cost and concomitant scarcity of capital, the decreasing availability of technology, and heightened competition from big business have combined over the past decade to bring about a serious deterioration in the climate for small business. The mortality rate of new companies is shocking: only about 20 percent of those that are started each year manage to survive, and close to 400,000 fail annually. These figures affect not only would-be entrepreneurs, but also the millions of Americans who could be sharing in the abundant benefits and countless skilled jobs that would have resulted had these businesses been successful.

If we are to save small business, we—meaning big business, government, non-profit and for-profit endeavors, community organizations, and all other major segments of our society—must join in a massive and systematic effort to nurture the innovative potential and profitable growth of existing small businesses and stimulate the creation of still more new businesses and small firms. We already have at hand the technological, professional, and management resources needed to implement this systematic effort. However, many of these lie dormant or underutilized in corporations, government offices, universities, and other places. We must find ways to assemble them, apply them, and make them more accessible to small business. To achieve these objectives, we must revise existing government policies and commercial practices that inhibit the use of these resources, find better ways of distributing them, and enlist the aid of community-based organizations in coordinating and focusing the talents of business, academia, and state and local governments.

In 1978, I chaired a committee which made a number of

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recommendations to Jordan Baruch, then Assistant Secretary of Commerce, aimed at making capital and management resources more available to small, technically oriented enterprises. Specifically, the committee advocated the following: (1) reducing capital gains taxes to 25 percent for firms employing between 100 and 500 workers, and to 10 percent for firms with fewer than 100 employees; (2) deferring the capital gains tax for firms that re-invest the proceeds from their stock sales in small businesses; (3) raising to $200,000 the threshold at which the full corporate income tax takes effect for small businesses; (4) increasing the carry-forward provisions for small business start-up losses from five to ten years; and (5) restoring qualified stock option plans for key employees.

In 1977-78, the 95th Congress reduced the maximum tax on capital gains to 28 percent; in 1979-80, the 96th Congress followed this example by reducing it further to 20 percent. Pending legislation reflects two more of the committee's recommendations: a carry-forward period of ten years for start-up losses, and the deferral of taxes when the proceeds from stock sales are re-invested in small business.

The committee also suggested means by which research could be further stimulated and the technology developed by big business and government be made more useful to small enterprises. These included: (1) requiring each government agency to allocate at least 10 percent of its R&D budget to helping small business; (2) allowing small companies to establish and maintain tax-deductible reserves for R&D use in times of financial hardship; and (3) redirecting some government-sponsored research into improving small farms and food processors, and making food production less capital- and fossil fuel-intensive.

The first two of these recommendations are contained in pending legislation, but little attention has been given to date to the redirection of funds for agricultural purposes. There are two exceptions: the National Science Foundation recently set aside some funds for research applicable to small-scale agriculture, and the Department of Agriculture has stated its intention to do likewise. Generally speaking, though, no major legislative action has been taken on these matters. This may be due to a lack of awareness of the

tremendous potential inherent in small-scale agriculture and food processing. Control Data is one of the few companies to recognize this potential and act on it; since 1979, we have been committed through Rural Ventures to fostering the development of small-scale agriculture and food-processing enterprises.

Finally, the committee made two recommendations designed to improve the diffusion of technology to small businesses: (1) that each government agency allocate five percent of its R&D funds for technology transfer; and (2) that tax incentives be provided to induce large companies to make their technologies more available to small companies.

Traditional methods of technology transfer have proved ineffective. Were government agencies to begin devoting five percent of their R&D budgets to technology transfer, these funds could be used primarily to encourage individual researchers to contribute their time and skills to identifying commercial applications. The incentives could be tied to the benefits realized from the transfers of the technologies involved.

On October 21, 1980, Congress acknowledged the feasibility of this idea by passing the Stevenson-Wydler Technology Innovation Act of 1980, which mandates that each government agency allot one-half of one percent of its R&D funds to technology transfer. While this falls short of the recommended amount, it is a step in the right direction. No effort has yet been made to give corporations tax incentives for sharing their technologies.

More is needed than budget allocations and tax incentives, however. To increase the flow of technology to small business, a well-defined technology transfer system must be established and implemented. Control Data offers two such systems, Technotec and Worldtech. Technotec is a commercially available computer-based information storage and retrieval network; its memory holds massive amounts of information about technologies that can be quickly recalled. Worldtech is a marketing service that gives subscribers assistance in finding, transferring, and applying specific technologies. One method of transfer in-

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volves the establishment of small companies based on replicable technologies in fields including microcircuitry, small-scale agriculture, and food processing.

There are resources besides technology that are not being wisely used. Huge reservoirs of untapped management and professional expertise exist in both big business and universities. Most small businesses urgently require professional and management consulting help, especially during start-up and the early years. Although several consulting programs already exist under the sponsorship of government agencies, local chambers of commerce, universities, and other organizations, these tend to be sporadic, not easily accessible, and not specific enough. A far better approach would be for business, universities, and community-based organizations to work together to develop a systematic method of delivering consulting and other support services to small business.

Since big business is the largest single source of persons qualified to do consulting work, it is especially important for it to recognize the profit potential inherent in aiding small companies. That this is not mere theory has been demonstrated by Control Data's success with a variety of approaches, including Business Advisors, Inc., Control Data Business Centers, and Control Data Business and Technology Centers.

Business Advisors, Inc. (BAI) was organized in 1979 to provide professional assistance to small enterprises in the areas of finance, technology management, manufacturing and processing, communications, marketing, personnel, operations, and strategic and business planning. It is unique with respect to quality, diversity, and affordability. The majority of the people involved are Control Data employees who are made available to small businesses on a part-time, temporary basis. Information about them and their specific skills is entered in a computerized "skills data bank." Also listed are the names and capabilities of retired persons and university personnel who have indicated their interest in and availability for consulting work. This arrangement has proved beneficial to all concerned: to small businesses that obtain the consulting help they need; to Control Data employees who offer their services and find

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE
SENATOR VIC FISCHER, CHAIRMAN
POUCH V, JUNEAU 99811
(907) 465-4954

Senate State Affairs Committee
1982 interim report

EFFECTS OF STATE CONTRACTING PROCEDURES ON SMALL AND MINORITY-OWNED ALASKAN BUSINESSES

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Senate State Affairs Committee
1982 Interim Report

EFFECTS OF STATE CONTRACTING PROCEDURES ON SMALL AND MINORITY-OWNED ALASKAN BUSINESSES

During the 1982 interim, the Senate State Affairs committee investigated the effects of state construction contracting procedures on small and minority-owned business in Alaska. This is a report on that effort.

Specifically, the committee examined an interagency agreement between the state Department of Transportation and Public Facilities (DOTPF) and the Alaska State Commission on Human Rights (ASCHR) affecting minority owned businesses contracting with the state.

The following report includes a review of that agreement, description of development and transmittal of a polling questionnaire, an analysis of the results, and recommendations based on suggestions and information received during the course of administering the questionnaire.

ASCHR/DOTPF AGREEMENT

In 1980 the ASCHR entered into an agreement with DOTPF to increase participation of minority owned businesses in contracting for state funded capital projects.

DOTPF agreed to take affirmative action in insuring minority owned business had an equitable chance to successfully bid state funded projects. Included in the agreement were provisions requiring that DOTPF:

- create the position of Minority Business Enterprise officer in DOTPF
- Prepare and distribute a policy and procedure memorandum outlining the scope and authority of the MBE officer
- charge the MBE officer with responsibility for developing and implementing an affirmative action plan
- identify and certify MBE's
- require successful prime contract bidders to submit proof of having contacted MBE's as subcontractors (when they intend to subcontract) for information and to solicit bids
- be responsible for notifying and informing minority owned businesses of contracting bids and procedures
- establish, print, maintain, update and distribute a MBE directory

DOTPF and ASCHR also agreed on goals for assuring a reasonable percent of total state construction dollars were contracted to minority owned businesses. Those goals required that 7.5% of total construction dollars for projects under $100,000, not subject to competitive bid, to be contracted through MBE's in FY 1981 (the first year of the agreement), 11.5% in FY 1982, and 15% in FY 1983. Identical percentage goals were agreed upon for total subcontracting dollars on wholly state funded construction projects.

These goals were not considered quotas, and terms of the agreement provided that justified failure by DOTPF to meet these goals would not be considered to be a breach of the agreement.

The agreement further required that ASCHR actively monitor DOTPF's compliance and required DOTPF to provide adequate and accurate records to enable the Commission to document their compliance.

This agreement represented final resolution of a complaint originally filed with the Commission in December, 1978. After several months of negotiations between agencies, it was finalized and went into effect for the first time in 1980.

By June of 1982, a quest editorial in the Anchorage Times by E. Louis Overstreet, charged that DOTPF had not complied with the agreement. He based this charge on an "unreleased report" that "documents the failure of DOTPF to live up to the provision of an agreement it entered into with the Alaska Human Right commission in February 1980".

Shortly after that editorial appeared, a constituent delivered a copy of the ASHRC file charging DOTPF with non-compliance to the Senate State Affairs Committee. That constituent requested the committee to review the effectiveness of the agreement in increasing minority business participation and to find out why the ASCHR was "suppressing" a report of non-compliance under the "cover" of confidentiality.

The committee formally requested a compliance report from the ASCHR. ASCHR, however, was statutorily prevented from meeting the committees request due to terms of the agreement with DOTPF* and restrictions under state law (AS 18.80.115).

The ASCHR subsequently filed an action in superior court charging DOTPF with non-compliance on October 14, 1982. However, until they had exhausted conciliation efforts, and met the time provisions for filing and rebuttal laid out in the agreement, they were prevented from disclosing any information about DOTPF's compliance or non-compliance.

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* Part III, paragraph 4, of the agreement states: "Whether or not a breach of this agreement has occurred shall be determined by the superior court. Prior to filing an action seeking any such determination by the superior court, the parties agree to maintain strict confidentiality regarding any alleged breach and any conciliation efforts".

Because of the confidentiality restrictions, the committee was unable to enlist the help of the Commission or the Department in determining compliance with and effectiveness of the agreement. At the time they were asked to investigate, it was impossible to predict whether there had been compliance, how long conciliation efforts may take or, indeed, if they were being pursued at all.

The Committee met the same restriction and frustration the minority business community faced when asking for swift and affirmative state action in increasing opportunities to participate in state funded construction projects. In addition, as the committee of oversite, Senate State Affairs was vitally interested in how seriously state agencies complied with agreements made with the Commission.

In order to independently determine the effectiveness of this agreement, the committee prepared and distributed a questionnaire to prime and subcontractors relating to state construction contract award procedures, specifically as they apply to minority owned businesses and the DOTPF/ASCHR agreement.

Following is a description of that questionnaire, an analysis of the results, and recommendations based on suggestions and information received during the course of administering the questionnaire.

QUESTIONNAIRE DESCRIPTION AND METHOD

Two questionnaires were prepared by Committee staff with help from minority businesses, DOTPF's Minority Business Enterprises officer, the Minority Business Assistance Center, and the ASCHR Systemic Discrimination Unit. One was directed to prime contractors, the other to minority owned businesses eligible to subcontract a DOTPF project. (Copies of questionnaire are attached).

Committee staff obtained a list of bid applicants for DOTPF construction projects from 1980 to 1982 and were able to compile a mailing list from that information. When it could be determined, only successful bidders for DOTPF contracts were sent prime contractor questionnaire.

A mailing list for minority owned business was compiled from a directory provided by DOTPF's Minority Business Enterprise officer, the Minority Business Assistance Center, and other constituent sources. Each was sent a Minority Business Enterprise questionnaire.

In addition to returned questionnaires, some recipients phoned or wrote to the committee to provide additional comments or suggestions regarding state contracting procedures and small or minority owned businesses. Copies of that correspondence is available on request.

The two questionnaires covered a time period from June of 1980 through June of 1982 (the same time period as ASCHR's affirmative action agreement with DOTPF), and limited themselves to state funded construction projects.

Besides specific contracting information, contractors were also asked to provide suggestions and recommendations for legislation (or no legislation), to address the philosophical and public policy considerations of minority business set aside programs, and, in some cases, to provide business and personal history (residency, years in business, etc.)

Each questionnaire was accompanied by a Senate State Affairs Committee cover letter explaining the purpose of oversite on the DOTPF/ASCHR agreement. The committee requested return of the questionnaires within two weeks of transmittal and enclosed a self addressed, stamped envelope in an attempt to increase timely participation in the polling process.

STATISTICAL ANALYSIS OF QUESTIONNAIRES

Prime Contractor Questionnaire:

- 436 questionnaires mailed, 49 returned = 11.2% return rate
- nearly half the respondents claimed to have been a successful DOTPF contractor during the time period covered.
- 20% claimed not to be aware of the MBE Directory, 25% didn't use the directory to locate sub-contractor, and nearly half said the "maintained their own list" for locating sub-contractors.
- significant number of respondents were not aware that a MBE contact form was required as part of a DOTPF bid package.
- 36% of respondents said they have never been contracted by DOTPF regarding minority owned businesses and state contracting.
- most prime contractors felt DOTPF was making a serious effort in assuring MBE's adequate opportunity to bid state construction contracts.
- 20 % of prime contractors said they were philosophically opposed to minority owned set aside or advocacy programs and that current MBE programs should be eliminated.
- 18% of respondents felt no legislative action was necessary.

Subcontractor Questionnaire:

- 450 mailed out, 58 returned = 12.9% return rate
- 79% of the respondents were certified as MBE's (12 in 1982, 17 in 1981, 11 in 1980)

- Over half the respondents indicated no awareness of MBE officer services
- over half claimed never to have received bid information from DOTPF.
- 28% of respondents had subcontracted on DOTPF projects.
- 33% of respondents claimed to have been contacted by prime contractors
- 67% of respondents claimed never to have been contacted by prime contractors
- of the successfully bid contracts, most were less than $100,000.
- less than half of the respondents knew about the MBE contact form requirement.
- a majority of likely construction project bidders said they had problems getting bonding and credit.
- over half the respondents businesses have been operating in Alaska for over 3 years with half of those over five years.
- over half the respondents have lived in Alaska over 10 years with over half of them having lived here more than 20 years.

The general questions in the minority business questionnaire addressed and identified problems preventing small Alaskan owned businesses from successfully bidding on state funded construction contracts. A discussion of those problems follows.

PROBLEMS IDENTIFIED

In the last ten years, billions of dollars have been allocated for state funded construction contracts. The sudden explosion of construction, coupled with the size and scope of many projects, has placed small and minority owned Alaskan businesses at a tremendous disadvantage in successfully bidding for contracts.

Besides the "normal" problems with Alaskan-based businesses (high cost of labor and transportation, vast distances, little infrastructure etc.), small and minority owned businesses face special problems.

Minority owned businesses are usually small businesses (under $. million dollars in gross revenues per fiscal year) and are often unable to get bonding, loans or credit, for large-scale contracts. In

addition, they are often unaware of bidding procedures or notices, and are out of the mainstream of the contracting "network".

A brief review of DOTPF construction contract awards from 1978 through 1982 illustrates the problem well. While nearly 50% of the awards are in amounts under $1 million dollars, they represent less than a third of total contract dollars. The vast majority of total construction dollars go to a relative handful of contracts over $1 million dollars.

Most large-scale construction projects are awarded to out-of-state contractors. Even the existing state statute giving a bidders preference to Alaskan-based business, is not sufficient to overcome the competitive edge large, national or international companies have in bidding state funded construction contracts.

Since most of these prime contractors tend to subcontract to other "outside" companies, small and minority owned Alaskan businesses are excluded from taking advantage of the massive input of state dollars into capital projects.

The executive branch has attempted to address this issue through the ASCHR/DOTPF agreement but, so far, has been unable to insure that a reasonable portion of state funded construction dollars remain in Alaska through contracting with small and minority owned businesses.

LEGISLATIVE RECOMMENDATIONS

Specific statutes need addressed by the legislature, to assure a reasonable opportunity for Alaskan owned small businesses to participate in the current flood of state funded construction projects.

Following are recommendation for legislation based on information obtained from the questionnaires:

1. Establish an Alaska Small Business Administration under the Department of Commerce and Economic Development (DCED), modeled after the federal program that would: a) define small businesses for the purpose of this administration, b) provide a source of credit and bonding for Alaska based small businesses, c) promote and advocate for small business development and maintenance in Alaska.

2. Create a statewide office of minority business enterprises in the Department of Commerce and Economic Development, to aide, advocate and support small, minority owned businesses in Alaska.

3. Define "small" Alaskan-based businesses to realistically reflect the average assets and capabilities of existing contractors. Defining "small" as a business having under $2 million dollars in gross revenues for the year preceeding application for certification under an Alaskan small business administration, appears, from the questionnaire, to be a reasonable definition for Alaska.

4. Give adequate bidder preference to Alaska-based businesses that are small and/or minority owned. The current 5% bidders preference should be raised to a 15% preference to small, Alaskan based businesses. The 15% preference should require that the low bidder receive the contract if they re-submit a bid within 10% of the next lowest bid submitted.

5. Require prime contractors and joint ventures to award no less than 50% of total subcontract dollars to small or minority owned Alaskan businesses identified and certified by the Department of Commerce and Economic Development.

6. Include women, Viet Nam veterans and other economically disadvantaged classes of Alaskans in minority status for the purpose of these contracting considerations.

7. Require that no less than 30% of state funded construction contracts be awarded in amounts under $1 million dollars with half of those in amounts under $250,000.

8. Pass a legislative resolution calling upon the Governor to create a task force to address state policy in contracting, local hire, and small business advocacy. Require that the executive, judicial, and legislative branch, as well as other working Alaskans, are included in the task force to assure full representation.*

9. Require surety bonders to keep adequate records to document why businesses are denied credit or bonding.

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* Court decisions on the jurisdiction and authority of states to limit employment and contracting opportunities to residents or "protected" classes of citizens have been many and varied. A U.S. supreme court decision, issued in February 1983, upheld a Boston Mayor's Executive Order requiring that 50% of wages paid on city funded or administered construction projects be limited to Boston residents.

Based on the findings of that decision, Senate Bill 174, was introduced in the Alaska legislature on March 10, 1983, by Senator Joe Josephson. SB 174 requires that, when a construction project is wholly funded by state money and the state or an agency of the state is signatory to the contract, worker hours on a craft-by-craft basis must be performed at least 50% by bona fide state residents.

SB 174 adopts the specific language of the U.S. Supreme Court decision and replaces AS 36.10.010 in an attempt to strengthen Alaska hire preference laws to meet anticipated court challenges.

While not directly affecting small and minority business contracting, it appears that the Boston decision puts Alaska "back in the residency business". Alaska's authority to grant bidder preferences to resident owned small businesses, for instance, is strengthened by the supreme courts decision.

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

To: Alaskan Contractors (Prime Contractor Questionnaire)

From: Senator Vic Fischer, Chair
Senate State Affairs Committee

Date: September 29, 1982

Re: Minority business contracting

In the last five years, massive amounts of public dollars have gone to the State Department of Transportation and Public Facilities (DOTPF) for statewide construction projects.

It is the intent of the legislature that all Alaskan businesses are assured an equal chance to bid on and participate in state funded capital projects.

In order to assure this, the State Human Rights Commission entered into an agreement with DOTPF in June of 1980 to increase participation of minority owned small businesses in state construction contracting.

As the committee of oversite for the Human Rights Commission, the Senate State Affairs Committee is vitally interested in how seriously state agencies comply with agreements made with the Commission. We cannot determine this without your help.

The enclosed questionnaire was prepared by the Committee to help determine just how effective that agreement has been. Direct information from you is the only way to verify or refute the success of this agreement. Your response will be greatly appreciated.

The scope of this questionnaire includes contracts and sub-contracts involving minority owned businesses from June 1980 to June 1982. It does not include female owned businesses nor projects paid through federal, municipal or private funds.

The purpose of the agreement is to help, not hinder, your efforts to include small minority owned businesses in subcontracting procedures. We need to know if you think it has been successful and where you feel the system could be improved.

Please return this questionnaire by October ~~15~~ 22 to Senator Vic Fischer, Chair, Senate State Affairs Committee, 1024 W 6th Avenue, Suite 204-C, Anchorage, Alaska 99501. We have enclosed a self-addressed, stamped envelope for your convenience. For further information call Ginger Baim, in my office, at 278-3654.

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____

1. Did you submit a bid on any contracts for DOTPF projects from June 1980 through June 1982? _____Yes _____No.

2. Have you subcontracted any work for DOTPF from June 1980 to June 1982? _____Yes _____No.

List firms you have subcontracted with on DOTPF projects from June 1980 to June 1982.

1._____ 4._____

2._____ 5._____

3._____ 6._____

(Please list additional firms on space provided at the end of this questionnaire.)

3. Are you aware of the MBE Directory prepared by DOTPF's Office of Minority Business Enterprises (OMBE) _____Yes ____No.

4. When did you become aware of this directory? _____

5. Did you refer to the MBE Directory when looking for subcontractors? ____Yes ____No.

6. Is the MBE Directory adequate for your needs? ____Yes ____No. What would you like done to improve its usefulness to you?

_____

_____

_____

7. How else do you contact MBE's? _____

_____

Do you maintain your own list? ____Yes ____No.

8. Are you familiar with the MBE contact form provided by DOTPF? ____Yes ____No.

9. Are you aware that in order for DOTPF to approve a subcontract, a completed MBE contact form (25 A 329) must be submitted? ___Yes ___No.

10. Has DOTPF, to your knowledge, ever approved a subcontract without a completed MBE contact form? ___Yes ___No. (If yes, please provide additional information at the end of this questionnaire).

11. How many times did DOTPF contact you regarding MBE's from June 1980 to June 1982? _____ Was the contact adequate to fully inform you of the subcontracting requirements? _____Yes _____No. Do you know the contact person within DOTPF to call for further information about minority business contracting? _____Yes _____No.

12. From your personal experience, how serious do you perceive DOTPF to be in pursuing methods to assure adequate involvement of MBE's in state contracting? _____Very serious _____Serious enough _____ Not serious _____ "whitewash" _____.

Comments?_____

_____

_____

13. What would you like to see DOTPF do to help contractors comply with MBE contact requirements?

_____

_____

_____

14. What would you like to see the legislature do to help assure all small Alaskan businesses an equal chance to bid on and participate in state funded construction projects? _____

_____

_____

_____

15. When bidding on a project for which you intend to subcontract, what problems would it present to you should DOTPF require evidence of having contacted a MBE as part of your bid package?_____

_____

_____

_____

16. Please provide any other comments on these questions:

Space for additional comments on previous questions:

SCR 2:

1) Requests the Governor to appoint a task force to assess state policy in contracting, local hire, and small business advocacy.

   a) promote small business development
   b) assist in securing credit, bonding, and loans for small Alaskan owned businesses;
   c) Wherever possible, assure that state funded construction projects are tailored so that a reasonable proportion can be performed by small Alaskan owned businesses.

2) Directs the attorney general to seek and recommend measures to assure that a reasonable portion of state-funded construction projects are contracted thru small Alaskan owned businesses. Must be consistent with both US and Alaskan Constitutions.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4200 SLAB SCR 20 - SJR 2

1080

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SCR

20

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SCR 20: Summary

Purpose of this legislation is to encourage marine insurance availability at competitive rates. This resolution requests the Governor to direct the Division of Insurance to conduct a study which will provide marine insurance underwriters with information concerning fisheries management and safety.

The resolution requests the study to include identification of factors contributing to vessel safety and recommendations to achive safer vessel operations.

Findings of this study are to be reported to the Legislature and the Board of Fisheries so they may consider the adoption of safety regs that address the costs and availability of marine insurance.

NUKA POINT FISHERIES
P.O.B.1113 HOMER, AK 99603-1113 (907)235-8778

TO WHOM IT MAY CONCERN:

Regarding the insurance s ation for vessels and crew, I would like to make a few comm and relate a few experiences we have had in this area.

First the boat owner is in a catch-22 dilemma. The banks loan money to buy boats and demand yearly payments. Banks also demand insurance to protect their collateral. Insurance companies name their expensive premium and demand payment. Boats do not fish until insurance is in effect. No fishing--no money for insurance or loan payments.

Secondly, the insurance premiums were affordable in the less than 3.5% range. Now 4% is the lowest (on a crab boat) and up to 10% has been quoted. If fish prices and available product climbed at the same rate insurance would still be affordable. Such is not the case.

We own a crab boat. In 1980-82 the rate was about 2%. In the fall of 1983 it was 2.85% if we purchased a stability computer; otherwise it would be 3.25%. For the fall of 84, we have port risk only awaiting the insurance market to level out. We are hoping for 4% for the 85 season. We have been warned it could go to 7%. Our lender requires we insure for 1.5 million. The premium difference is $45,000.

Another example of outrageous premiums--Our crab boat is also a tow boat. We requested a quote for trip insurance for travelling from Homer to Nome and return with a disabled tug. Normal trading

warranties go almost to Nome. The trip would take about 20 days. The premium--$25,000.

I don't know the answer to this problem. Insurance companies have definitely experienced tremendous claims; however, most companies I know have considerable assets and are accustomed to making substantial profits. Some companies are lax in scrutinizing clients and insure questionable boats.

One aspect that could be looked at is the liability boat owners and underwriters face regarding crewmen injuries. No other industries I know of face such all-encompassing responsibilities in the event of an accident. Several applicable laws date back years to when crewmen were slaves. Laws need to be updated to make crewmen at least partly responsible for their own safety. The boat owner should provide a safe work place but if the crewman is negligent, i.e. inebriated, the vessel owner should not be liable.

Thank you for listening.

Jessie Nelson

Jessie Nelson

UNITED FISHERMEN OF ALASKA

[illegible]

Cass M. Parsons
Executive Director

January 25, 1985

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

Dear Governor Sheffield:

The United Fishermen of Alaska are concerned about a major problem the fishing industry is currently experiencing. The problem is the prohibitive cost or unavailability of vessel insurance From all reports we have received, the problem appears to have been cause by two factors. First, the Insurance Company of North America (INA) entered the Alaskan marine market several years ago offering premiums of around 4% (of the vessel value). This premium was much lower than other companies were offering so INA succeeded in essentially cornering the market on the larger crabbers/trawlers in Alaska. Secondly, there followed two terrible years when one out of every seven crab vessels sunk. Subsequently, INA pulled out, giving many boats only 15 days notice. The other companies remain unwilling to return to the Alaskan marine market.

The few crabbers/trawlers who can find insurance are not getting full coverage and are paying premiums as high as 12%. That means a vessel valued at $1 million (a common value) must pay a premium cost per year of $120,000! As a result, people are going fishing uninsured or are staying home because it costs less. Consequently, many Alaskan fishermen are in danger of losing their vessels.

This is a rather simplistic explanation as there are other factors involved, but it does provide a basic picture of what has occurred. There are two spin-offs about which you should also know. First, although full-time crabbers caused the problem, the problem now extends to vessels who are only crabbing part-time (large seiners, trawlers, etc.) and to many other vessels that don't fish for crab but are being penalized by high premiums from companies trying to spread the losses.

It is our view that several things must occur in order to help solve this problem. First, we need to discover what the principal cuases of the accidents are; i.e., equipment failure, operator error, improper safety equipment, etc. and then recommend specific changes to prevent the accidents from occurring. We could mandate annual vessel checks for certain equipment and we could recommend changes in fisheries management policies so that skippers and crew are not fishing in an exhausted condition. We could recommend that every fisherman and crewmember take a course on fishing vessel safety.

It is very important that we identify the specific causes of vessel accidents. We will gather the information from the vessel owners and skippers which requires carefully worded and confidential quentionaires. We will need to contract with the underwriters for the information they have on file since it is unlikely they will want an outsider looking at confidential information. Additionally, we will need to gather accident report information from the coast guard.

We feel the UFA is the organization that should conduct this review because we have the expertise available and we have access to the fishermen. We also have the ability through our board of directors to make carefully considered recommendations that other fishermen will respect. Furthermore, the results of this study will be published in the Alaska Fisherman's Journal. Recommendations will be made to the Governor's Office, Legislature and Board of Fish.

Thank you for your consideration.

Sincerely,

Cass M. Parsons
UFA Executive Director

CMP/jb
Enclosure: Proposal and budget

cc: John George, Director
Division of Insurance

PROPOSED BUDGET

1.0 PERSONNEL		
1.1 Two research-writers: 5 mos. @ $2900/mo.	$	29,000
1.2 Secretary: 240/hrs @ #13.00/hr.		3,120
	$	32,120
2.0 TRAVEL		
Seattle: 1 Rnd. trip + 3 days per diem @ $80/day	$	713
Anchorage: 2 Rnd. trip + 6 days per diem @ $80/day		1,184
Kodiak: 1 Rnd. trip + 3 days per diem @ $80/day		776
	$	2,673
3.0 POSTAGE AND PRINTING		
Questionaires: 44¢ x 2 x 3500	$	3,080
Report: 50 bound		500
	$	3,580
4.0 OTHER		
4.1 Computer time: 120 hrs. @ $30/hr.	$	3,600
4.2 Subcontract w/5 Ins. Underwriters @ $2,500		12,500
4.3 " w/2 Coast Guard Stations @ $2,500		5,000
	$	21,100
Subtotal:		59,473
Administrative Overhead @ 20%:		11,894
TOTAL:	$	71,367

Overhead Includes:

Bookkeeping

Administrative

Office Space

Long Distance Telephone

Printing for Questionaires

Additional Computer & Secretarial

Publish Results in Alaska Fisherman's Journal

Dan and Debbie Veerhusen
P.C. Box 6448
Halibut Cove, Alaska 99603

To Whom it May Concern,

We are all aware many Alaskan fishermen are having a pretty rough time "hanging in there" due to declining crab and shrimp stocks, increased vessel effort and near disaster halibut and herring prices. What's making things worse is that insurance rates are sky-rocketing. It is almost impossible for many to go fishing if you are lucky enough to even find insurance.

On Dec. 31st 1984 our current insurance policy expires on our 80 foot wooden boat. I have been told by many companies it will be hard for us to find insurance in the coming year and maybe impossible if we decide to fish tanner crab. If we are lucky enough to renew for another year we can be sure premiums will be much higher than the $36,0000.00 wehave paid this year. Our policy does not even have a lay-up warrenty and we are allowed only nine months of fishing - unless we want to pay more of course.

So many fishermen cannot even afford to go fishing because insurance rates are currently running 5½ - 10% the value of the vessel. The rates are even higher if you plan to crab fish. I know many fishing boats will be tied to the docks this upcoming crab season; others will be out taking a chance with no insurance. We deliberated for days on whether to pay $11,000.00 to fish tanner crab in Cook Inlet for two months. Between the insurance and the other expenses the figures barely add up to take the chance and go. Furthermore, I made dozens of phone calls checking into prospective insurance markets and was told that many companies will not write new marine policies and many more are looking for every reason possible to drop you. For instance, this crab season we were not allowed to lease out our boat; our policy would be cancelled unless we personally hired a skipper.

Many marine fiancial institutions are urging fishermen to convert their boats and forge into new fisheries. But I ask, how can we when we are paying these outrageous premiums for vessel insurance? We need state legislation and funds generated to create a statewide or community insurance pool to alleviate this problem. Strict measures could be enforced on the vessels condition, upkeep and skipper creditability before joinning into a pool. I see

no immediate relief in the months ahead for insurance rates to drop back down in the two to three percent range - WE NEED ACTION NOW!

Sincerely,

Deborah Leerhuser

cc: United Fishermen of Alaska
cc: North Pacific Fisheries Association
cc: CFAB, Mr. Dave Rodgers
cc: Senator Fisher
cc: Andre Marrou
cc: Mike Navarre
cc: Jay Kertula
cc: Govener Sheffield
cc: Director of Division of Insurance, Mr. Ken Moore



Kamishak Bay Fishing Co. Bob Tremain - Bill Bledsoe
P.O. Box 418 - Homer, Alaska 99603 (907) 235-8076
F/V Kamishak Queen

Nov 7, 1984

To Whom It May Concern,

I am writing in regards to the problems we are having with vessel insurance in Alaska.

As you know, the crab fishing industry is at a all time low. Many fishing boats and their companies are having a hard time making ends meet. Which may be the reason for the loss of some crab fishing boats,-Lack of funds to maintain and repair as needed.

The cost of vessel insurance is steadily increasing. Where it use to cost 1.8% (of the value of your vessel) per year, went to 3.0% and now is 8.0%. In some cases even higher. We can't survive a year with rates that equate to 40,000.00 dollars to 50,000.00 dollars a year.

There needs to be some flexibility for clients with good past records. Some of us don't cut corners when it comes to our boats. We maintain our engine rooms in good running condition, at <u>all</u> times. We should'nt have to carry the burden for those who don't.

Possibilty a solution would be for the insurance underwriters, to be more selective with their clientele. Have a representative from their company come visit the boat requesting insurance. Have this representative be knowledgeable in both the insurance field and fishing industry. Require him (or her) to of run a vessel before, so he knows what a well maintained engine room looks like. And then charge vessel insurance rates according to that representatives report.

y



Kamishak Bay Fishing Co. Bob Tremain - Bill Bledsoe
P.O. Box 418 - Homer, Alaska 99603 (907) 235-8076
F/V Kamishak Queen

" My experience with insurance companies has not been good. We have never had a claim. Bob Tremain maintains his boats very well. We take great care and a good deal of time preparing for any season. We recenty rerigged our vessel 'Kamishak Queen' from a crabber to a black cod longliner with freezing ability also.

We informed our insurance broker of this venture 3 months before we were actually able to leave on our first black cod trip. "There was'nt any problem" according to all the many telephone conversations we had with the insurance broker. We called to inform them that the vessel was about to leave the harbor, on her first trip for black cod and they at that time, decided to cancel us and gave us 15 days to find new coverage or fish with no insurance. Which was impossible due to our financing.

We had informed them 3 months in advance of the changes in fishing industy, skipper and fishing grounds. We were still charged for cancellation of the policy. Does that seem fair? Not to us. Espesially being as we had to find a new broker and underwriters. Plus pay a large cash down payment, again. (we had sunken all our money into the rerigging for black cod) We were upset!

We need some help to form some dind of balance between us and our insurance companies. Fishing is very frustrating anyway, we don't need insurance hassles too.

Thank you for listening.

Dian Tremain

This article is a copy taken from the November issue of Pacific Fishing Magazine and it suggests that insurance rates will begin to drop down into the 4 to 5 percent range in January 1985. From the many insurance companies I spoke with recently this is not true; rates are expected to remain in the 5 to 10 percent range. Furthermore, domestic markets are not re-entering the commercial fishing insurance markets, as stated.

How To Survive the Insurance Squeeze

Amo[illegible] all the other crises facing fishe[illegible] one is more serious than th[illegible] crisis in insurance. Insurance companies now consider the fishing industry too great of a risk and many will no longer provide hull and machinery and protection and indemnity insurance at any price. There are hundreds of stories of fishermen who are unable to find insurance for their boats. Consider these:

An Oregon fisherman with 20 years of experience and no insurance losses tried to get $500,000 of insurance. His boat is worth $1 million, but he decided to insure at the bare minimum. He wanted to take his 80-foot crabber to the Pribilofs. When that fact became known, he could not find any insurance.

Take a well known king crabber from Seattle. He was lucky and able to find somebody to cover him. The cost is what hurt. Where he had paid a bit over $80,000 a few years ago, the insurance companies now quote him an insurance premium of over $300,000 for the same level of hull and P & I coverage.

Although these big boats offer the most dramatic examples of the current insurance crisis, brokers up and down the coast report that all fishing vessels are suffering dramatic escalation in their insurance costs.

No Domestic Carriers

As of early September, there were at the most two domestic carriers that would even consider insuring West Coast commercial fishing vessels. This has meant that brokers must go to foreign carriers, principally located in London, to find enough insurance for their fishermen clients.

Why are the insurance companies afraid of the fishing industry? The reason is simple: they've lost a lot of money the last few years, particularly on Alaskan crabbers. In many instances, the insurance premiums paid hardly came close to matching the amount of losses claimed.

At the present time, a large Alaskan crabber can find enough insurance coverage to equal about $2.3 million. This insurance comes from three sources. First, $1 million from London carriers. Second, $1 million from insurance pools. Third, $300,000 from a couple of domestic carriers.

This sounds like plenty of insurance at first glance, but the average Alaska king crabber has a value of $1.5 million to $3 million. In other words, there is not now enough insurance capacity to fully cover most crabbers.

The current squeeze does not only affect boats that fish Alaska. That used to be the case. According to most brokers, the new demarcation is not geographic but monetary. Any vessel valued at more than $300,000 will have a difficult time finding adequate insurance coverage no matter where the boat fishes. Those vessels worth less than $300,000 may be able to obtain adequate coverage but only at rather exorbitant rates.

A Solution Comes

The current rate structure ranges between 5½ percent and 10 percent of the value of the boat. The more losses you have had in the past, the higher the rate you'll have to pay. And, again, no one company at the present time will assume the total risk. That means that your broker must shop among several carriers until the total risk is assumed.

Most brokers expect this situation to ease within the next several months. The fact that the London carriers are willing to take even some risk on fishing vessels is a good sign. In the past, U.S. insurance carriers have followed the lead of the London carriers. In other words, look for the domestic insurance companies to re-enter the commercial fishing market.

When will they come back? Estimates range from this month to January 1985.

What about the rates then? They will be lower than now, according to most observers. Look for premiums ranging between 4 percent and 5 percent. This may not be as good as the 2 percent to 3 percent of a few years ago, but they are far more palatable than the current rates.

10 Actions To Take

There are several actions you can take to increase the chance that you'll get all the coverage you need when you need it.

1. Investigate any possible source of insurance. Keep your ear tuned to any rumors. Admittedly, your broker will probably know what's available, but never assume anything.
2. Use a major insurance broker. If you use an established broker who's familiar with the fishing industry, you'll have a better chance of finding what insurance is available.
3. Get tenure with your broker. In other words, find a good broker and stay with him. Don't switch brokers for trivial reasons or a rate that's only marginally lower than your present rate. If you develop loyalty in your broker, your broker will work harder to find the insurance you need.
4. Join a pool. Lay the groundwork now to get into a pool.
5. Join a fleet. Boats in a fleet have a better chance of getting insurance. What's a fleet? Simply a group of boats that work the same area, or work for the same processor, or have some loose bond among them.
6. Cut your insurance to cover your equity, not the full value of your boat.
7. Have a good record. The fewer accidents, the fewer insurance claims, the better risk you are.
8. Be an owner-operator. Absentee owners or investor-owners are not looked upon favorably by insurance companies. The skippers of these boats change too often. The insurance company feels more secure if you are sharing the risk, and as an owner-operator you do.
9. Get an up-to-date, out-of-water survey of your boat. This will provide the basis for a realistic valuation of your boat.
10. Accept a larger deductible where possible. Some fishermen have even gone so far as to accept "total loss risk." In other words, the boat is covered only if it is a total loss.

Be sure not to panic in the tight insurance market. Don't jump at a deal that's too good to be true. Probably it isn't true. Be sure that the insurance you get is good insurance (see *Pacific Fishing*, February 1984).

Pacific Fishing *would like to thank the following brokers for help in preparing this brief look at insurance: Dan Buckley of LaBau Haynes, 4201 21st Avenue West, Seattle, WA 98199, (206)282-1152; and Tom Caspell of Durham & Bates, 330 S.W. 6th Avenue, Portland, OR 97204, (503)888-5527.*

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 5, 1984

MEMORANDUM

TO: Representative Fred Zharoff

FROM: Sharman Haley
Legislative Analyst

RE: Vessel Insurance in Crab Fisheries
Research Request 85-034

Lisa Weissler of your staff asked us for historical information on the insurance market for crab boats. She also asked what actions might make insurance cheaper and easier to purchase. I contacted representatives of fishermen's organizations, the marine insurance industry, and the State Division of Insurance for information. I found that they all are concerned about the current shortage of crab vessel insurance, but have no immediate solutions to suggest. Their assessments are provided below, along with a number of longer range policy options. I have also attached an article from the November issue of Pacific Fishing which makes several specific recommendations to fishermen seeking insurance coverage.

Overview

Five years ago there were several surplus carriers underwriting marine insurance for the Alaska crab fleet at a premium rate of 7 to 8 percent of the insured value.[1] The largest carrier was Lloyd's of London. In 1981 or so, when the high value crab boats flooded the market, the Insurance Company of North America (INA) sought to tie up the crab market by dropping their rates to 1.5 to 4 percent,[2] depending on the vessel and operator. The other carriers, who had been losing money even at 8 percent, pulled out. In 1982-83, INA reportedly collected $3.5 million in premiums and incurred $34 million worth of losses on

[1]Surplus carriers are not "admitted" or regulated by the State. They can only offer classes of insurance, such as marine, which are not readily available through admitted carriers.

[2]At this rate they were not expecting any profit on their underwriting. Their strategy, called "cash flow underwriting," was to earn profits on their investments before claims had to be paid.

marine insurance. Twelve to thirteen big boats sank that year, approximately one out of seven in the fleet. The best known of these were the Americus and Altair which rolled over with a load of pots in fair weather conditions in March of 1983. Following these heavy losses INA pulled out of marine insurance for large vessels, canceling many policies on 30 days notice. The other carriers are reluctant to reenter the market in light of the recent loss experience.

All the fisheries nationwide are currently experiencing substantial rate increases for marine insurance but none is harder hit than the Bering Sea and Aleutian crab fleet. Several of the boats were not able to leave port this year for lack of insurance. The big trawlers that fish the Bering Sea and Aleutians are also having some difficulty getting insurance. The smaller crab boats that fish inside waters can get insurance, but some have reported prohibitive premium rates. Premiums on a $575,000 Southeast seiner/crabber jumped from $18,000 in 1983 to $43,000 in 1984.

The current insurance crunch in the crab fishery is directly related to the boom/bust cycle of king crab. The boom in the late seventies fostered the construction of a fleet of multi-million dollar vessels. The bust in the last two seasons has radically shortened the season and made it difficult for the big boats to cover mortgage payments and operating expenses. There is more pressure on the boats to fish every hour, regardless of weather, and to transport all their pots in one load to minimize travel time. Experienced skippers and crew who expect high returns are leaving the fishery and being replaced by less experienced operators and crew. Vessel maintenance is being shorted. Vessels are being converted to trawl part-time, which radically changes their stability characteristics. Market values for the vessels have dropped radically, in many cases below the outstanding mortgage balance. There are rumors that some vessels have been deliberately sunk to collect the insurance. All these factors contribute to the high losses in recent years, and the consequent tightening of the insurance market.

High losses have also fostered a renewed concern for safety. A Fishing Industry Safety and Health Conference has already been planned for December 12, 1984, in Seattle. Sponsoring organizations include North Pacific Vessel Owners Association, Association of Marine Underwriters of Seattle, National Fisherman, and National Marine Fisheries Service, NOAA. (For more information contact National Marine Fisheries Service, NOAA, FNWR2, 7600 Sand Point Way N.E., Seattle, WA 98115).

Stability studies are being conducted at the University of Washington to analyze the causes of the vessel sinkings. The finding so far is that the problem is not primarily one of design, but human error. The operators often don't understand the stability calculation tables and

don't use them properly when loading their boats. Small boats are not as much of a problem because they are more responsive and easier to judge by feel. More information on stability problems is now being published in fishing journals. As renewed safety consciousness permeates the fleet, fewer losses should eventually translate into lower premium rates and more underwriting capacity.

Most insurance carriers are not very familiar with the fishing industry. The Alaska insurance brokers I spoke with felt that the premium increases on the small crab boats are not justified by their loss experience; they are simply getting caught up in the same insurance net with the big boats. They also believe that underwriting losses could be substantially reduced if the carriers paid more attention to the age, experience, and practices of the operator. Owner-operators have significantly fewer losses than absentee owners. The Alaska-based fleet also has substantially fewer losses than the Seattle-based fleet.

Several carriers are writing marine insurance, but the coverage is limited due to the shortage of reinsurance. Brokers I spoke with have been able to piece together as much as $1 million worth of coverage through several insurance carriers. The only firm that will underwrite Bering Sea crabbers presently is Lloyd's of London, and that too is difficult to obtain. Brokers are currently negotiating with other carriers to enter the market.

Limited amounts of insurance is also available to fishermen who qualify through the four Seattle-based pools. The pools are insurance cooperatives in which any premiums in excess of losses are redistributed to the members. Premium rates are 5 percent. To be admitted to a pool, a fisherman must be recommended in writing by three members and approved by the board. The pools are very conservative about who they admit, since the members' money is directly at stake. Pool members also strive to reduce losses by policing each other's safety practices and helping each other out in risky situations. One of the pools, United Marine Fund, experienced no losses in 1983 and was able to refund 100% of members' premiums. Between the four pools, $1 million worth of coverage is available. Pool members are also more likely to get insurance through a carrier, as they are regarded as a better risk.

POLICY OPTIONS AND PROSPECTS

1. Let the market take care of it. Brokers seeking new sources of marine coverage are currently negotiating with insurance carriers. If the price is right, carriers will reenter the market. Several of my contacts mentioned that the reinsurance market is improving again and predicted that within the next

few months carriers will reenter the marine insurance market. For the big crab boats, they are predicting premium rates of about 14 percent. There will likely be a difficult period of economic readjustment, and some boats may find that fishing is uneconomical.

2. Organize a pool. To establish a pool in Alaska, ten or more people need to incorporate and organize as a reciprocal insurer under AS 21.75. Or, if AS 21.75.330 were amended to allow marine insurance coverage, the incorporators could organize as a cooperative insurer, which is a little easier. A substantial amount of capital would be needed to get started, and the pool would have to be very conservative in its membership and coverage until it was firmly established.[3]

3. Legislatively create a public corporation to issue marine insurance, akin to the Medical Indemnity Corporation of Alaska which provides medical malpractice insurance. One potential problem in this approach is that the most knowledgeable people to review applications for coverage are other fishermen in the same fishery. These individuals may have difficulty, however, in turning down their friends and neighbors. This is less of a problem in pools because the reviewers have a personal financial stake in minimizing losses.

4. Improve the safety record of the fleet. Lowering losses will make the market more attractive to insurance carriers, as well as save lives. For this, fisherman education is basic. The upcoming conference is a good start. More could be done through fishermen's publications and organizations.

5. Management changes aimed at lessening the time and load pressures on fishermen might also help fishermen fish more safely. The National Council for Fishing Vessel Safety and Insurance in Washington D.C. is conducting a federally funded study on the safety impact of fish management policies. A similar study could be done for Alaska. Policy changes that could be examined include re-establishing the bait up period, timing openings and closures to avoid fishing in bad weather, instituting pot limits, or limiting the number of boats in the fishery to the point that seasons can be lengthened.

---

[3]A pool may make the remaining market less attractive to carriers, however, as pools cream off the good risks and leave the bad for the carriers.

6. Hiring larger vessels to transport the pots to and from the grounds would help prevent overloading and improve safety. One freighter could serve a whole fleet of Bering Sea crabbers.

7. Provide more information to insurance carriers. If the carriers were better able to discriminate between good risks and bad risks, they might be more willing to underwrite marine insurance. A study of risk factors could be funded by government or industry.

8. Fishermen engaged in joint ventures with foreign companies might be able to purchase insurance through their foreign partner.

9. Protection and indemnity insurance problems, while not as severe as hull insurance problems, could be addressed through Congressional action amending the Jones Act to institute liability limitations or establish a workers' compensation type program.

* * * *

I hope this memorandum answers your questions. If you would like me to examine any of these (or other options) in more detail, please contact me.

SH

Attachment

How To Survive the Insurance Squeeze

Among all the other crises facing fishermen, none is more serious than the current crisis in insurance. Insurance companies now consider the fishing industry too great of a risk and many will no longer provide hull and machinery and protection and indemnity insurance at any price. There are hundreds of stories of fishermen who are unable to find insurance for their boats. Consider these:

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As of early September, there were at the most two domestic carriers that would even consider insuring West Coast commercial fishing vessels. This has meant that brokers must go to foreign carriers, principally located in London, to find enough insurance for their fishermen-clients.

Why are the insurance companies afraid of the fishing industry? The reason is simple: they've lost a lot of money the last few years, particularly on Alaskan crabbers. In many instances, the insurance premiums paid hardly came close to matching the amount of losses claimed.

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The current rate structure ranges between 5½ percent and 10 percent of the value of the boat. The more losses you have had in the past, the higher the rate you'll have to pay. And, again, no one company at the present time will assume the total risk. That means that your broker must shop among several carriers until the total risk is assumed.

Most brokers expect this situation to ease within the next several months. The fact that the London carriers are willing to take even some risk on fishing vessels is a good sign. In the past, U.S. insurance carriers have followed the lead of the London carriers. In other words, look for the domestic insurance companies to re-enter the commercial fishing market.

When will they come back? Estimates range from this month to January 1985.

What about the rates then? They will be lower than now, according to most observers. Look for premiums ranging between 4 percent and 5 percent. This may not be as good as the 2 percent to 3 percent of a few years ago, but they are far more palatable than the current rates.

10 Actions To Take

There are several actions you can take to increase the chance that you'll get all the coverage you need when you need it.

1. Investigate any possible source of insurance. Keep your ear tuned to any rumors. Admittedly, your broker will probably know what's available, but never assume anything.
2. Use a major insurance broker. If you use an established broker who's familiar with the fishing industry, you'll have a better chance of finding what insurance is available.
3. Get tenure with your broker. In other words, find a good broker and stay with him. Don't switch brokers for trivial reasons or a rate that's only marginally lower than your present rate. If you develop loyalty in your broker, your broker will work harder to find the insurance you need.
4. Join a pool. Lay the groundwork now to get into a pool.
5. Join a fleet. Boats in a fleet have a better chance of getting insurance. What's a fleet? Simply a group of boats that work the same area, or work for the same processor, or have some loose bond among them.
6. Cut your insurance to cover your equity, not the full value of your boat.
7. Have a good record. The fewer accidents, the fewer insurance claims, the better risk you are.
8. Be an owner-operator. Absentee owners or investor-owners are not looked upon favorably by insurance companies. The skippers of these boats change too often. The insurance company feels more secure if you are sharing the risk, and as an owner-operator you do.
9. Get an up-to-date, out-of-water survey of your boat. This will provide the basis for a realistic valuation of your boat.
10. Accept a larger deductible where possible. Some fishermen have even gone so far as to accept "total loss risk." In other words, the boat is covered only if it is a total loss.

Be sure not to panic in the tight insurance market. Don't jump at a deal that's too good to be true. Probably it isn't true. Be sure that the insurance you get is good insurance (see *Pacific Fishing*, February 1984).

Pacific Fishing *would like to thank the following brokers for help in preparing this brief look at insurance: Dan Buckley of LaBow Haynes, 4201 21st Avenue West, Seattle, WA 98199, (206)282-1152; and Tom Caspell of Durham & Bates, 330 S.W. 6th Avenue, Portland, OR 97204, (503)888-5527.* PF

Chairman's Information:

1) SCR 20: "Relating to insurance on fishing vessels"

a) Introduced: Sen Zharoff, Eliason, P. Fischer

b) Co-Sponsors:

2) INTENT: The purpose of this legislation is to encourage marine insurance availability at competetive rates. This resolution requests the Governor to direct the Division of Insurance to conduct a study which will provide marine insurance underwriters with information concerning fisheries management and safety.

This resolution requests the study to include identification of factors contributing to vessel safety and to make recommendations to achieve safer vessel operations.

Findings of this study are to be reported to the Legislature and the Board of Fish so they may consider the adoption of safety regs that address the cost and availability of marine insurance.

FISCAL NOTE: $75.0 from the Division of Insurance
NOTE:

3) ADDITIONAL REFERRALS: Needs a Finance referral

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

Introduced: 4/12/85
Referred: Labor & Commerce

BY ZHAROFF, ELIASON
AND P.FISCHER

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to insurance of fishing vessels.

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

WHEREAS the cost of marine hull insurance for ~~crab, trawl, and~~ diversified seine ~~fishing vessels~~ in the state is prohibitively expensive, and often this insurance is only available in part or not available at all; and

WHEREAS this problem occurs statewide and is preventing vessel owners from diversifying into other fisheries and in some cases preventing vessel owners from fishing; and

WHEREAS this situation has resulted primarily from the high number of fishing accidents in recent years; and

WHEREAS the high number of accidents has resulted in tragic and in almost all cases, avoidable instances of loss of life; and

WHEREAS underwriters of marine insurance in the state have ceased issuing policies of insurance for this type of risk due to this situation; and

WHEREAS many marine insurance underwriters are not familiar with the fishing industry and the causes of fishing accidents;

BE IT RESOLVED by the Alaska State Legislature that the Governor is requested to direct the Department of Commerce and Economic Development, division of insurance, to conduct a study to provide the underwriters of marine insurance in the state with information concerning fisheries management and safety that will encourage them to make insurance available at competitive rates; and be it

FURTHER RESOLVED that the study

(1) quantify the contribution of operator factors and nonoperator factors, such as weather;

(2) identify which of these operator and nonoperator factors could be reduced by changes in fisheries management policy;

(3) identify specific types of safety problems;

(4) determine the viability of a statewide or industry insurance pool;

(5) make recommendations designed to achieve safer vessel operations; and be it

FURTHER RESOLVED that the findings of this study be reported to the Alaska State Legislature and to the ~~State Board of Fisheries~~ 2nd Session of 14th Leg. Dept. of F.S. so that they may consider adoption of safety regulations that address the factors causing an increase in the cost of marine insurance.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SCR 20

Title: Relating to Insurance of Fishing Vessels

Sponsor: Zharoff

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		75.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	75.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		75.0				
FEDERAL FUNDS						
OTHER						
TOTAL		75.0				

POSITIONS:

FULL-TIME		-0-				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John George, Director Phone: 465-2515

Division: Insurance Date: 4/24/85

Approved by Commissioner: Loren H. Lounsbury Date: 4/26/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

2213W42485a

Fiscal note

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-510 (REV 8/78)

SCR

21

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 26, 1985

The Honorable Fred Zharoff
Chairman, Senate Labor and
Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCR 21, Relating to local hire

Dear Senator Zharoff:

I am responding to a request from one of your staffers for our comments regarding SCR 21, "Relating to a report on maximizing local hire." The resolution would request the Attorney General and the Commissioner of Labor to prepare a report for the Legislature on a course of action that the state may take in order to maximize local hire.

Although the Department of Law certainly could participate in a report which would outline the present legal precedents and limitations on the state's ability to encourage local hire, we believe the real need at this point is for the preparation of a study which examines the problem of unemployment in Alaska and the extent to which the employment of nonresidents in various industries affects or aggravates the unemployment problem for residents. Such a study, at least with respect to construction employment in the state, is proposed in HB 295, which has now passed the House. Ideally, such a study should be expanded (with the funds necessary to accomplish that) to include a review of the unemployment problem of Alaska residents in other industries in which the Legislature might wish to consider the possibility of creating local hire requirements (e.g., fish processing and timber).

If I can provide any further information with respect to this matter, please do not hesitate to contact me.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:
Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Robert Landau
Deputy Commissioner
Department of Labor

Honorable Joe Josephson
Senator

Honorable Red Boucher
Representative

Introduced: 4/19/85
Referred: Labor and Commerce

IN THE SENATE BY JOSEPHSON AND ZHAROFF

SENATE CONCURRENT RESOLUTION NO. 21

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to a report on maximizing local hire.

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

WHEREAS the unemployment and underemployment of Alaskans causes serious social and economic problems in the state; and

WHEREAS the legislature is seeking ways to remedy the unemployment and underemployment of Alaskans;

BE IT RESOLVED by the Alaska State Legislature that the attorney general and the commissioner of labor are requested to report to the legislature by the first day of the Second Session of the Fourteenth Legislature on a course of action the state may take in order to maximize local hire.

Chairman's Information:

1) SCR 21: "Relating to a report on maximizing local hire"

   a) Introduced: Sen Josephson, and Sen Zharoff

   b) Co-Sponsors:

2) INTENT: Requests that the attorney general and the commssioner of labor report to the Legislature on the first day of the second session of the 14th Legislature on a course of action the state may take to maximize local hire.

   FISCAL NOTE: We have 2 fiscal note versions for this bill. One fiscal note is predicated on the passage of HB 295 (Study of unemployment and local hire issues) and is for $69.0. If HB 295 does not pass, then a fiscal note of $89.0 accompanies this resolution.

   NOTE:

3) ADDITIONAL REFERRALS: Needs a Finance referral

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?

Bill No. Senate Concurrent Resolution No. 21

Title "Relating to a report on maximizing local hire.

Date April 26, 1985

Contact: Robert W. Landau
465-2700
Eileen Plate
465-2700

Senate Concurrent Resolution No. 21 requests the Attorney General and the Commissioner of Labor to report on a course of action the state may take to maximize local hire in Alaska. The scope of the proposed inquiry would broadly cover the entire labor force employed in both the public and private sectors.

Currently, the state's local hire requirements apply only on public construction projects. However, as state revenues decline, it is essential that all industries and geographic areas of the state be examined in order to maximize the economic benefits of local hire and reduce the adverse impact of unemployment and underemployment.

Preliminary statistics prepared by the Department of Labor suggest that many industries in Alaska currently employ significant numbers of nonresidents. The Department believes it is important to conduct further research to identify those industries and areas with the highest percentages of nonresidents and to ascertain the precise impact of wages paid to both residents and nonresidents on the Alaska economy and the cost of government.

Once an adequate statistical foundation has been established, the state will be in a much better position to make policy and to evaluate the economic and legal implications of any local hire policy.

The Department of Labor supports Senate Concurrent Resolution No. 21. A fiscal note is attached.

APPROVED:

Robert W. Landau
for Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SCR 21
Title: "Relating to a report on maximizing local hire"
Sponsor: Josephson and Zharoff
Requestor: Senate Labor & Commerce
Date of Request: 4/22/85

FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		89.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	89.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		89.0				
FEDERAL FUNDS						
OTHER						
TOTAL	0	89.0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

(This analysis reflects costs if HB 295 does not pass)

Prepared By: Jim Robison
Phone: 465-2700
Division: Commissioner
Date: 4/22/85

Approved by Commissioner: Jim Robison
Date: 4/22/85
Agency: Labor

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

FISCAL NOTE (two versions) and analysis

FISCAL NOTE ANALYSIS

THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE
BILL/RESOLUTION NO.: SCR 21
TITLE: "Relating to a report on maximizing local hire"
AGENCY AFFECTED: Department of Labor

This resolution requests a report to the legislature on a course of action to maximize local hire.

Assumptions:

1. Further research is necessary to: a) establish an accurate benchmark of nonresident to resident employees and wages by industry and area; b) survey employees for reasons associated with high nonresident hire; and c) analyze the benchmark data and employer responses for policy implications.

2. Work would begin July 1, 1985, and be conducted with a written report to be submitted to the Alaska Legislature on January 14, 1986.

3. If House Bill 295 is funded at $100,000 then the costs associated with this resolution would be reduced by $20,000.

4. The Alaska Department of Labor will assign a Labor Economist III for three months, a Labor Economist II for six months, and a Statistical Technician I for six months to research and provide this information.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SCR 21

Title: "Relating to a report on maximizing local hire"

Sponsor: Josephson and Zharoff

Requestor: Senate Labor & Commerce

Date of Request: 4/22/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		69.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	69.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		69.0				
FEDERAL FUNDS						
OTHER						
TOTAL	0	69.0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

(This analysis reflects costs if HB 295 passes)

Prepared By: Jim Robison Phone: 465-2700

Division: Commissioner Date: 4/22/85

Approved by Commissioner: Jim Robison Date: 4/22/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

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

7/1/84

FISCAL NOTE ANALYSIS

THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE
BILL/RESOLUTION NO.: SCR 21
TITLE: "Relating to a report on maximizing local hire"
AGENCY AFFECTED: Department of Labor

This resolution requests a report to the legislature on a course of action to maximize local hire.

Assumptions:

1. Further research is necessary to: a) establish an accurate benchmark of nonresident to resident employees and wages by industry and area; b) survey employees for reasons associated with high nonresident hire; and c) analyze the benchmark data and employer responses for policy implications.

2. Work would begin July 1, 1985, and be conducted with a written report to be submitted to the Alaska Legislature on January 14, 1986.

3. The Alaska Department of Labor will assign a Labor Economist III for three months, a Labor Economist II for six months, and a Statistical Technician I for six months to research and provide this information.

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SCR

35

CHAIRMAN'S INFORMATION: SSSCR 35

1) BILL TITLE: "Relating to general liability and property insurance."

a) Introduced: V. Fischer

b) Co-sponsors:

2) INTENT: This resolution requests the Governor to investigate proposals for national insurance regulation, the establishment of multistate insurance pools for high risk markets, and the development of multistate insurance compacts.

Also requests the Division of Insurance to report to the Legislature by 1/15/87 on the availability and affordability of insurance in Alaska, market assistance plans for high risk markets, and resource and statutory changes necessary to increase affordability and availability of insurance.

N.B. See position paper from the Div of Insurance

FISCAL NOTE: 15.0 (needs a finance referral)

3) ADDITIONAL REFERRALS: Rules; needs a finance referral

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

Senator Vic Fischer
Alaska State Legislature • P.O. Box V • Juneau, Alaska 99811 • (907) 465-4954

TO: Interested Parties

FR: Senator Vic Fischer

RE: Sponsor Substitute to SSSCR 35; relating to general liability and property insurance.

DT: March 25, 1986

The sponsor substitute for SCR 35 introduced today adds provisions directed at broad insurance issues of state and national concern.

The resolution is a necessary complement to both the insurance bills being considered in the Senate and House.

SCR 35 combined with the Labor and Commerce bills provides a package of proposals covering some reforms of the legal system, rights of the consumer, roles and duties of Alaska's Division of Insurance, and operation of the insurance industry in Alaska.

The resolution directs the Governor to work with other states, the Council of State Governments and other national organizations, the federal administration, and Congress to investigate:

* proposals for national regulation of the insurance industry
* establishment of multi-state insurance pools for high-risk markets
* development with other states of a multistate reinsurance compact

The resolution also directs the Division of Insurance to provide the next state legislature with a report on the status of liability and property insurance in Alaska as well as identify the Division's needs to help increase the availability of affordable insurance.

horage, Alaska 99501 • (907) 278-3654

Department of Commerce & Economic Development / POSITION PAPER

SSSCR 35: "Relating to general liability and property insurance."

This resolution requests the Governor to work with others to investigate national regulation of insurance, multistate pools for high risk markets and multistate reinsurance compacts.

Although we feel that federal regulation of insurance will be to the detriment of Alaskans due to our small population and unique problems, we have no objection to working with any group to investigate any proposal which may positively affect market availability.

The resolution requires reports to the Legislature in three specific areas. The first uses the terms availability and affordability. Unless a clear definition of affordability is provided, the report would be meaningless. What is affordable to one person may be unaffordable to another. Reports on adequacy or excessiveness of rate relative to potential exposure is possible.

The resolution requires a report to the Legislature by the Division of Insurance on resource or statutory changes needed in order to increase availability and affordability of insurance. Although such a report could be written, subject to previous comments on affordability, it circumvents the procedures set up by the Executive Branch and poses a potential constitutional question over separation of powers by requiring an Executive Branch agency to make reports concerning policy issues directly to the Legislature rather than through the Governor. That problem would be avoided by reporting through the Governor.

Any meaningful study or coordination with national groups involves travel out of state and thus has a fiscal impact. We have prepared the minimum amount for any meaningful or serious activity. Anything less would be ineffective.

Loren A. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 4/9/86

John L. George, Director of Insurance

Date: 3/3/86

0267K4386b

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SSSCR 35
Title: Relating to general liability and property insurance.

Sponsor: V. Fischer
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
BRU: Insurance

Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-				
TRAVEL		12.0				
CONTRACTUAL		3.0				
SUPPLIES		-0-				
EQUIPMENT		-0-				
LAND & STRUCTURES		-0-				
GRANTS, CLAIMS		-0-				
MISCELLANEOUS		-0-				
TOTAL OPERATING	-0-	15.0	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		15.0				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL	-0-	15.0	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Travel to meet with Conference of Insurance Legislators, Council of State Legislators, Federal Administration and other national groups. Contractual services are required to prepare and print report to the Legislature.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: April 2, 1986

Approved by Commissioner: _____
Agency: Commerce and Economic Development
Date: April 2, 1986

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

10/25/85

FISCAL NOTE

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SJR

2

STATE OF ALASKA

TOTAL STAFF MONTHS

		1 CONFERENCE COMMITTEE	2 AUTHORIZED	3 ACTUAL	4	5
1	FY 85	217 3848	2290869			
2	84	2294537	1943006	2186821		
3	83	2128602	2320238	N/A		
4	82	2077426	2089191	1837103		
5	81		1819064	1721476		
6	80			1595438		
7						
8						
9						
10						
11						
12			FULL TIME EQUIVALENT			
13						
14		CONFERENCE				
15		COMMITTEE	AUTHORIZED	ACTUAL		
16						
17	FY 85	181154	190906			
18	84	187878	161917	182235		
19	83	177384	185020	N/A		
20	82	173119	174100	153092		
21	81		151590	143456		
22	80			132953		
23						
24						
25						
26			PERMANENT FULL TIME			
27						
28		CONFERENCE				
29		COMMITTEE	AUTHORIZED	ACTUAL		
30						
31	FY 85	167640	172180			
32	84	164148	164343	132564		
33	83	157456	162973	151646		
34	82	151955	153462	140363		
35	81		133855	130730		
36	80			115467		
37						
38						
39						
40						

LFD/LB 1/85

Position Paper
SJR 2

This resolution would put before the voters of the state an amendment to the Constitution of the State of Alaska dealing with limits on appropriations and the number of employees of the State. The resolution will amend and clarify the appropriation limit currently found in Article IX, Section 16, of the Constitution. It would also impose an employment limit of 4% of the state's population. This position paper deals only with the latter provision.

Proposed Article IX, Section 16, subsection (g) provides the definition of population: "In this section 'population' means total resident population of the state computed under the method of computation used in the most recent federal decennial census." This provision presents technical problems. The "method of computation" used in the decennial census is always a physical count. If the resolution intends to provide for annual population figures, an annual count is required. The "continuously compounded annual rate of change" referred to in proposed subparagraph (b)(2) is not established by the United States Census Bureau and is therefore not an appropriate estimate.

The United States Census Bureau does provide population estimates. These estimates are subsequently revised for two years. The estimates are generally based on stable states with large populations. They vary considerably from the estimates prepared by the Alaska Department of Labor. For example, the estimates for July 1, 1982, differ by 4,000 residents; the estimates for July 1, 1983, differ by 29,000 residents; preliminary unpublished estimates for July 1, 1984, differ by 38,000 residents. With a 4% limit on the number of employees, this represents a difference of 1,520 employees. We believe expert advice from the Research and Analysis Section of the Department of Labor should be secured in drafting appropriate language for annual population estimates.

There will also be a problem with timeliness. The first estimate of population as of July 1 from the United States Census Bureau is not available until several months later. In other words, a fiscal year would be well underway before population at the start of the year, and therefore the maximum employee limit, is known.

Finally, there will be a problem of allocation of positions. For example, if the University of Alaska system were to grow in national and international prominence and attract a rapidly growing student body with an increase in facility and staff, soon the 4% cap on employees would be exceeded. Although the appropriation of student tuition to the University would not be subject to the spending limit (see proposed subsection (e)), the positions created because of the appropriation would be subject to the employee limit. The positions would have to come from the Legislative, Judicial, and Executive Branches with a corresponding decrease in their abilities to meet their Constitutional responsibilities.

Position Paper
SJR 2

The approach which better serves the state's interest is to manage state government human resources rather than focusing on controlling the number of employees. Managing state government human resources involves using all the management tools of planning, organizing, staffing, directing, as well as controlling. Management is necessary because the relationships among state population, state government programs, and state government employees is dynamic. Consequently, establishing a fixed relationship between population and state employees will not always ensure that state programs will be administered in a manner commensurate with the State's needs.

To suggest that a known ideal relationship exists between population and the number of state employees is incorrect. No one knows if the ideal balance is 4% or 3½% or 4½% or any other number. However, even more troublesome is the suggestion that the relationship is linear, that is, that state government employment should rise following increases in population and should fall immediately following decreases in population. Although those programs involving the direct delivery of formula-funded services would show a direct relationship to population, other programs, such as development, may not. In addition, some employment stabilization programs may need to increase activity immediately following the out migration resulting from the winding down of a large construction or resource exploitation project. Furthermore, the opening of state-managed facilities such as pioneer homes or prisons may require increases in employees not in line with changes in population.

Although we state these examples of complexities in the relationship between population and state employees, the Department of Administration does share the concerns of continual growth in state government employment. Indeed, efforts in this department to develop an effective Productivity Improvement Center demonstrate a commitment to better utilize current staffing levels. Other efforts by the Sheffield Administration reflect the same commitment.

Frank Raye — 1/31/85

Frank Raye
Director
Division of Personnel

Date

Lisa Rudd — 2/1/85

Commissioner Lisa Rudd
Department of Administration

Date

Introduced: 1/14/85
Referred: Labor and Commerce, State Affairs, Judiciary and Finance

IN THE SENATE BY FERGUSON AND DEVRIES

SENATE JOINT RESOLUTION NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to limiting the number of state employees and increases in appropriations.

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

* Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is amended to read:

SECTION 16. APPROPRIATION AND EMPLOYMENT LIMITS [LIMIT]. (a) Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year for operation of state government may not exceed the lesser of two-thirds of the estimated revenue for the fiscal year or the appropriations made in fiscal year 1985 for operation of state government adjusted by the cumulative change prescribed in this section [SHALL NOT EXCEED $2,500,000,000 BY MORE THAN THE CUMULATIVE CHANGE, DERIVED FROM FEDERAL INDICES AS PRESCRIBED BY LAW, IN POPULATION AND INFLATION SINCE JULY 1, 1981. WITHIN THIS LIMIT, AT LEAST ONE-THIRD SHALL BE RESERVED FOR CAPITAL PROJECTS AND LOAN APPROPRIATIONS]. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund [AND IN BILLS FOR APPROPRIATIONS FOR CAPITAL PROJECTS, WHETHER OF BOND PROCEEDS OR

OTHERWISE], if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. [EACH BILL FOR APPROPRIATIONS FOR CAPITAL PROJECTS IN EXCESS OF THE LIMIT SHALL BE CONFINED TO CAPITAL PROJECTS OF THE SAME TYPE, AND THE VOTERS SHALL, AS PROVIDED BY LAW, BE INFORMED OF THE COST OF OPERATIONS AND MAINTENANCE OF THE CAPITAL PROJECTS.] No other appropriation for operation of state government in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

(b) The appropriation limit established by this section shall be cumulatively adjusted annually through the end of the preceding fiscal year by the sum of the following percentages:

(1) the annual rate of change in the consumer price index for all urban consumers for the Anchorage Metropolitan Area as published by the Bureau of Labor Statistics of the United States Department of Labor for the fiscal year one year before the current fiscal year, but if significant change is made in the method of computing the consumer price index or if the index is discontinued another index may be presented by law;

(2) the continuously compounded annual rate of change in the estimated population of the State, as established by the United States Census Bureau for the period between the previous two decennial censuses.

(c) The base date for determining changes in population and inflation under (a) of this section is July 1, 1981.

(d) The appropriation limit shall be determined as of July 1 of

the year before the fiscal year in which the limit applies.

(e) As used in this section, "appropriations for operation of state government" does not include appropriations for capital projects, for state loans, appropriations for municipal revenue sharing, municipal assistance, or of taxes shared with municipalities, or appropriations for primary and secondary education.

(f) The total number of employees of the state, of agencies of the state and of the University of Alaska may not exceed four percent of the population of the state as determined under this section. For purposes of determining the number of employees each full-time employee shall be included and the hours worked by each employee other than full-time shall be converted to full-time equivalent employment and each full-time equivalent employee shall be included.

(g) In this section "population" means total resident population of the state computed under the method of computation used in the most recent federal decennial census.

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

To: Senator Bill Ray
Chairman of Judiciary Committee

From: Senator Frank R. Ferguson

Date: January 19, 1984

Subject: Proposed Letter of Intent

LETTER OF INTENT SSSB 326

It is the intent of the Legislature that for the purposes of calculating the spending limit in Sponsor Subsitute for Senate Bill 326 the following equation be used:

Base x 1 + (rate of growth in population + inflation adjustment) = Limit

The base is $2,500,000,000 for fiscal year 1982. For each succeeding fiscal year the base shall be adjusted by the rate of change in population and the Anchorage Consumer Price Index-Urban (CPI-U)

The rate of change in population shall be calculated as the continuously compounded annual rate of change between 1970 and 1980 (April 1) estimates of population established by the U.S. Census Bureau in their decennial censuses. For example, the rate of change for the 1980's is computed as follows:

$$\text{Population}_{1980} = \text{Population}_{1970} \cdot e^{rt} \text{ or}$$

$$\text{Rate of Change} = r = \frac{\ln(\text{population } 1980/\text{population } 1970)}{t} \text{ or}$$

$$\text{Rate of Change} = .0284 = \frac{\ln(401851/302583)}{10}$$

The rate of change in the Anchorage (CPI-U) computed as the July to July change in the index as published by the U.S. Department of Labor, Bureau of Labor Statistics.

SJR 2

Major Provisions:

+ Limits Operating Budget to FY 85 Level plus inflation & population growth; OR if revenues decline no more than two-thirds of available funds can be used for the operating budget.

+ Limits Number of State Employees to 4% of state population

+ Pulls out "pass thru funds" from operating budget:

  # Municipal Assistance
  # Revenue Sharing
  # Other Shared Taxes
  # Education Foundation Formula
  # Loans
  # Capital Projects

SJR2 Sectional Analysis:

Proposes an amendment to the Constitution of the State of Alaska with regard to appropriation and employment limits;

Section 1) Establishes an appropriations limit for the State operating budget as follows:

May not exceed the lesser of:

a) 2/3rds of the revenue estimate for the fiscal year, or
b) FY85 operating budget appropriations "adjusted".

Annual adjustments to be made as follows:

Add the annual rate of change in the CPI for the Anchorage Metropolitan Area as published by the Bureau of Labor Statistics/US Department of Labor, for the preceeding fiscal year.

If, however, significant change is made in the computation method, or if the index is discontinued, another index may be presented by law.

plus the continuously compounded annual rate of change in the US Census Bureau's state population estimates for the period between the 2 previous decennial censuses.

July 1st 1981 BASE date for population & INFLATION

Approp limit July 1 YEAR before FY

ANCHORAGE CONSUMER PRICE INDEX-URBAN PERCENTAGE ANNUAL CHANGE DURING THE TWO PREVIOUS FISCAL YEARS; TWO, USE THE UNITED STATES CENSUS BUREAU PERCENTAGE CONTINUOUSLY COMPOUND ANNUAL RATE OF CHANGE USING THE PREVIOUS TWO DECENNIAL CENSUS; AND THREE, ESTABLISH THE APPROPRIATION LIMIT BASE AS $2.5 BILLION DOLLARS FOR FISCAL YEAR 1982 WHICH ALLOWS THE CUMULATIVE CHANGES IN THE FEDERAL INDICES OF POPULATION AND INFLATION TO BE USED STARTING WITH FISCAL YEAR 1983.

THE ANCHORAGE CONSUMER PRICE INDEX-URBAN IS USED BECAUSE IT WOULD BE CONSISTENT WITH OTHER FEDERAL PROGRAMS WHICH USE THE INDEX. ALSO, MANY STATE LABOR CONTRACTS USE THE CONSUMER PRICE INDEX-URBAN; THE EDUCATION FOUNDATION FORMULA FOR FISCAL YEAR 1985 USES THE CONSUMER PRICE INDEX-URBAN AS MANDATED BY THE LEGISLATURE LAST

Approps for "operation of State Government" not to include Approps for Capital, State loans Mun Rev Sharing, Mun Assistance Taxes shared with Municipalities

SESSION IN HOUSE BILL 251; AND THE HOUSING FACTOR HAS BEEN ADJUSTED IN THE FEDERAL CALCULATION OF THE CONSUMER PRICE INDEX-URBAN, AND NOW IS MORE SUPERIOR, ESPECIALLY IN ALASKA WHERE THE STATE HEAVILY SUBSIDIZES THE HOUSING INDUSTRY.

IN ADDITION, ALTHOUGH THE CONSUMER PRICE INDEX-URBAN CALCULATES THE "BASKET OF GOODS" OF GROCERY ITEMS, IT IS THE MOST CONSERVATIVE INDEX AVAILABLE AND ONE THAT IS MOST READILY IDENTIFIED BY THE PUBLIC.

THE UNITED STATES CENSUS BUREAU POPULATION FIGURES FROM THE PRE IOUS TWO DECENNIAL CENSUSES ARE USED BECAUSE IT TAKES THE GUESSWORK OUT OF THE CALCULATIONS OF THE SPENDING LIMIT. THE UNITED STATES CENSUS FIGURES WOULD PROVIDE A CONSISTENT INDEX WHICH HAS NEVER BEEN SUCCESSFULLY

CHALLENGED IN COURT. THE CONTINUOUSLY COMPOUND RATE OF CHANGE IS USED BECAUSE THE STATE'S POPULATION IS GROWING EVERY DAY.

THE BASE OF $2.5 BILLION DOLLARS FOR FISCAL YEAR 1982 IS USED TO FIND THE RATE OF CHANGE IN THE INFLATION FACTOR TWO YEARS ARE NEEDED. THE CONSTITUTIONAL AMENDMENT STATED THE STARTING DATE FOR THE LIMIT IS JULY 1, 1981. THUS, FROM JULY 1, 1981 TO JULY 1, 1982 GIVES US OUR BASE, AND JULY 1, 1982 TO JULY 1, 1983 GIVES US THE NUMBER TO COMPARE AGAINST THE FIRST YEAR WHICH THEN GIVES THE ANNUAL RATE OF CHANGE TO BE USED THE SECOND YEAR.

THE INDICES PROPOSED IN SPONSOR SUBSTITUTE SENATE BILL 326 WOULD PROVIDE FOR A TRUE "SPENDING LIMIT" WHICH THE VOTERS INTENDED TO HAVE. BY

Introduced: 1/14/85
Referred: Labor and Commerce, State Affairs, Judiciary and Finance

IN THE SENATE BY FERGUSON AND DEVRIES

SENATE JOINT RESOLUTION NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

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* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4201 SLAB SJR 45 - HB 5

1681

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SJR

45

SJR 45: Summary

THIS MEASURE URGES CONGRESS TO REVISE THE PRESENT SYSTEM FOR COMPENSATING INJURED FISHERMAN, AND TO CREATE A SYSTEM OF COMPENSATION WHICH IS BOTH FAIR TO THE FISHERMAN AND AFFORDABLE TO VESSEL OWNERS.

THE US CONGRESS IS CURRENTLY DISCUSSING ALTERNATIVE COMPENSATION SYSTEMS FOR INJURED COMMERCIAL FISHERMAN, AND THE PASSAGE OF THIS RESOLUTION WILL COMMUNICATE OUR SUPPORT FOR THEIR EFFORTS. I URGE FAVORABLE CONSIDERATION BY THE BODY.

CHAIRMAN'S INFORMATION: SJR 45

1) BILL TITLE: "Relating to compensation for injuries to commercial fisherman."

a) Introduced: Senate Labor and Commerce Committee

b) Co-sponsors:

2) INTENT: This measure urges Congress to revise the pres system for compensating injured fisherman, and create a system of compensation which is both fair to the fisherman and affordable to vessel owners.

FISCAL NOTE: 0 (We could put together an L&C Committee F/N if you would like.)

3) ADDITIONAL REFERRALS: Sen Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SJR 45
Title : Relating to compensation for injuries to commercial fisherman.

Sponsor : Senate Labor and Commerce
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : None
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Michael Thill, Aide
Division : Senate Labor and Commerce Committee
Phone : 465-3844
Date : 6 April, 1986

Approved by Commissioner : Senator Zharoff, Chairman
Agency : Senate Labor and Commerce Committee
Date : 7 April, 1986

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

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Title : Relating to compensation for injuries to commercial fisherman.

Sponsor : Senate Labor and Commerce
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FISCAL DETAIL

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BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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10/25/85

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SJR 45: Summary

This resolution urges Congress to revise the present system for compensating injured commercial fisherman. The resolution finds that liability insurance for commercial fisherman is often unavailable, too expensive for many fisherman, and the method of compensation is inefficient. Additionally, the resolution references 3 studies which support the need for changes to the system of compensation for injured fisherman.

Introduced: 3/3/86
Referred: Labor and Commerce

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE JOINT RESOLUTION NO. 45

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to compensation for injuries to commercial fishermen.

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

WHEREAS the United States commercial fishing industry is facing a crisis in the cost and availability of marine insurance; and

WHEREAS the Alaska commercial fishing industry is experiencing severe economic costs as a result of these problems; and

WHEREAS these costs are having a detrimental impact on the people and the communities of the state; and

WHEREAS the most troublesome part of the marine insurance crisis is the method by which injured fishermen are compensated and the resultant impact on the protection and indemnity insurance (P&I) policy; and

WHEREAS the system for compensating injured commercial fishermen is established under federal law; and

WHEREAS a 1957 survey and study sponsored by the U.S. Fish and Wildlife Service concluded that the system "...disregards completely the financial, economic, and operational characteristics of the industry"; and

WHEREAS the study also stated that "the system is unjust because it is wasteful and slow and it fosters misunderstanding and bitterness between employer and employees"; and

WHEREAS the study recommended that the system be replaced by a more equitable one; and

WHEREAS a more detailed study sponsored by the National Oceanic and Atmospheric Administration in 1976 recommended the consideration of an alternative liability system; and

Introduced: 3/3/86
Referred: Labor and Commerce

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE JOINT RESOLUTION NO. 45

IN THE LEGISLATURE OF THE STATE OF ALASKA

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WHEREAS the United States commercial fishing industry is facing a crisis in the cost and availability of marine insurance; and

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WHEREAS the system for compensating injured commercial fishermen is established under federal law; and

WHEREAS a 1957 survey and study sponsored by the U.S. Fish and Wildlife Service concluded that the system "...disregards completely the financial, economic, and operational characteristics of the industry"; and

WHEREAS the study also stated that "the system is unjust because it is wasteful and slow and it fosters misunderstanding and bitterness between employer and employees"; and

WHEREAS the study recommended that the system be replaced by a more equitable one; and

WHEREAS a more detailed study sponsored by the National Oceanic and Atmospheric Administration in 1976 recommended the consideration of an alternative liability system; and

WHEREAS a 1985 study sponsored by the National Council of Fishing Vessel Safety and Insurance also recommends sweeping changes in the existing system of compensating injured fishermen and warns that "This is ... probably the last time this issue will be presented before Congress. Either the system will be changed, or the industry will not be strong enough to return"; and

WHEREAS the Congress is presently evaluating the problem and considering possible solutions to it;

BE IT RESOLVED by the Alaska State Legislature that Congress is respectfully requested to take whatever action is necessary to revise the present system for compensating injured fishermen so that it will be fair to commercial fishermen and affordable by the vessel owners.

Alaska State Legislature

Advisory Council Members
Senator Bennett, Chairman
Senator Abood
Senator Kerttula
Senator Sackett

P.O. Box V
State Capitol
Juneau, Alas..a 99811
Phone: (907) 465-3114

Senate Advisory Council

MEMORANDUM

TO: Senator Fred Zharoff
Alaska State Legislature

FROM: Bill Hall,
Senior Advisor

DATE: March 14, 1986

SUBJECT: SJR 45 regarding changes to Federal Maritime Law (Jones Act) as it relates to marine insurance.

Attached to this memo is a copy of a resolution under consideration by the Legislature of Hawaii regarding the above mentioned subject. The Hawaiian resolution (unlike our resolution) makes a specific recommendation to adopt a Federal workmen's compensation system for injured fishermen in place of the existing system.

I had recommended that the Alaska resolution (SJR 45) not contain any specific recommendations because I did not believe that we were well enough informed to make an intelligent decision at this time. I still believe that we need more information on this subject, but I am more convinced than ever that we should consider a workmen's compensation program as a possible solution. I say this with the knowledge that Al Burch of the Alaska Dragger's Association has testified at a Congressional hearing on the subject that a workmen's compensation system would not be acceptable because it would be unaffordable to boat owners. I am not convinced that this is true, and I am working with Paul Troeh, Deputy Director of the Division of Insurance to develop some cost data on the system.

Congressional hearings on this subject are scheduled to begin April 16. There are three probable options that will be considered regarding Congressional action. They are:

1. Maintain the existing system by doing nothing;

2. Modify the existing system, and;

3. Replace the existing system with a workmen's compensation program.

I don't believe that there is support at this time for Option 1. However because of a study sponsored by the National Council of Fishing Vessel Safety and Insurance there is considerable interest in a proposed solution that would constitute Option Number 2. There is also some support developing for Option Number 3. Sources in Washington, D.C. do not believe that Congress will complete action on any maritime insurance legislation this year. However, the process of considering options will begin, and it is important that the needs of the Alaskan fishing industry be considered in that process.

Because this is such an important issue, I have been working with Jack Cadigan, Executive Director of UFA, and Craig Wiese of the Alaska Sea Grant Program in organizing a meeting on the subject to be held in Juneau on April 4 of this year. UFA will host the meeting, and will invite every fishermen's organization in the State (including those organizations not affiliated with them) to send a representative. It is hoped that this meeting will result in the development of an Alaskan Fishing Industry consensus as to what specific changes in Federal Maritime Law are the most desirable. It is also planned that the meeting will address the subject of insurance pools so that some indication of interest will be available regarding SB 442.

I will keep you informed on the results of these activities. Please let me know if you have any suggestions or requests.

Enclosure
AWH:er

(To be made one and seven copies)

THE SENATE
THIRTEENTH LEGISLATURE, 19 86
STATE OF HAWAII

S.R. NO.

SENATE RESOLUTION

REQUESTING THAT THE UNITED STATES CONGRESS AMEND THE JONES ACT TO EXCLUDE COMMERCIAL FISHERS.

WHEREAS, there are two chapters of federal law which apply to persons injured in the course of maritime employment; and

WHEREAS, the Longshoremen's and Harbor Worker's Compensation Act affords quick monetary compensation to all injured maritime workers except members of the crew and masters, while the Jones Act covers these two categories; and

WHEREAS, the two pieces of legislation appear to be mutually exclusive, in that workers covered under the Jones Act do not have access to the remedies available under the Longshoremen's and Harbor Worker's Compensation Act; and

WHEREAS, rising insurance rates for commercial fishers who are subject to the Jones Act have increased costs and slowed expansion in this vital industry; and

WHEREAS, the Jones Act, unlike the Longshoremen's and Harbor Worker's Compensation Act, has no provision rendering inoperative state laws which create parallel remedies such as workers' compensation; now, therefore,

BE IT RESOLVED by the Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, that the Legislature requests the United States Congress to amend the Jones Act to exclude commercial fishers and amend the Longshoremen's and Harbor Worker's Compensation Act to include commercial fishers; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Speaker of the United States

(To be made one and seven copies)

THE SENATE
THIRTEENTH LEGISLATURE, 19 86
STATE OF HAWAII

S.R. NO.

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S.R. NO.

House of Representatives, the President of the United States Senate, and to each member of Hawaii's congressional delegation.

OFFERED BY: _____

S.R. NO.

House of Representatives, the President of the United States Senate, and to each member of Hawaii's congressional delegation.

OFFERED BY: _____

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SJR 45: Summary

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SENATE ADVISORY COUNCIL
ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811

A REPORT ON THE COST AND AVAILABILITY OF MARINE INSURANCE IN ALASKA

BY
A. W. HALL
SENIOR ADVISOR, SENATE ADVISORY COUNCIL
30 January 1986

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1. Sample Fishermen's Insurance Pool Legislation
2. Sample Marine Fund Documents
3. Performance data for West Coast Marine Fund
4. Letter Regarding Workmen's Compensation

INTRODUCTION

The subject of this report is the Alaska commercial fishing industry and the problems it is experiencing in obtaining fishing vessel insurance. The report, which is based on research conducted over the past three and one half months, contains recommendations on solutions to these problems with specific attention to the subject of pools as a form of self insurance.

One important, and inescapable, conclusion that the research has produced is that the cost and availability of fishing vessel insurance in Alaska is not the only problem that needs to be addressed. Rather, it is a symptom of the real problem which is the poor safety record of the Alaskan fishing industry. This record documents the loss of too many human lives and fishing vessels. The cost of these losses in terms of human suffering and financial impact is unacceptable on any social scale and is certainly unaffordable on any economic scale.

The preceding statement is not intended to suggest that nothing can be done to improve the cost, the availability or the quality of fishing vessel insurance. There is room for improvement. However, improvement cannot occur without either an overall improvement of the safety record of the fishing industry, or the development of a means by which the safe fisherman can be distinguished from the unsafe fisherman. In the latter situation, the benefits of improved insurance would not be shared by the fishing industry as a whole, but only by those who could demonstrate that they were safe operators. From a social perspective it is obvious that such an approach by itself would not be acceptable. However, in addition to efforts to improve the entire Alaska fishing industry's safety record, it is an important part of any overall solution.

One fundamental fact is absolutely clear. The need for insurance is a function of the risk inherent in the activity to be insured. If there is no risk of loss then there is no need for insurance. Furthermore, the cost of insurance is determined by the magnitude of the risk. If the risk of loss can be reduced or eliminated then so can the need for (and the cost of) insurance. To the extent that risk is a function of human behavior, it will be influenced by any change in human behavior. The challenge then appears to be one of determining the best and most acceptable method available for changing human behavior.

I. BACKGROUND TO THE PROBLEM

There is no law or regulation that requires fishing vessel owners to purchase marine insurance. However, lenders such as banks or the State of Alaska Commercial Fishing Loan Program

require that a borrower purchase specified insurance coverage as a condition of the loan agreement which is required by the mortgage document. Because the majority of fishing vessels in Alaska are subject to a marine mortgage, they are required to have insurance. If a vessel owner does not or cannot obtain the required insurance, then he is in violation of his mortgage agreement which places him in default and subject to foreclosure proceedings.

Fishing vessel owners are required by their mortgage holders to obtain two types of marine insurance coverage. One is a form of property and casualty insurance called hull and machinery and the other is a form of liability insurance called protection and indemnity or P & I. These two types of insurance are defined in two separate policies and are often provided by different companies or groups of companies.

Beginning in 1985 Alaskan fishermen began experiencing problems with both the cost and the availability of marine insurance. Premiums for typical hull and machinery policies for the Alaska salmon fleet on the average increased by approximately 30% with increases in some areas as high as 50 percent. Premiums for P & I insurance increased an average of 50 percent. Furthermore, coverage for some classes of vessels such as older wood boats or some Bering Sea crab boats was, and still is, unavailable at any price. Also, some vessel owners found the amount of their coverage reduced at the same time that their premiums were increased.

II. REASONS FOR THE PROBLEM

A. THE FISHING INDUSTRY

Faced with a situation that threatens their livelihood, many fishermen have been asking questions such as "Why do we have this problem?", "Who is responsible?", "What can we as fishermen do to solve it?", and "What can government do to help us?". The answers to these questions can be found in an examination of the insurance industry with particular regard to marine insurance and the fishing industry with particular regard to its safety record. Factors and circumstances unique to both industries have combined to create a multifaceted problem the solution of which will require the cooperation of fishermen, insurance companies and government.

Fishing has historically been a high risk industry. However in recent years the loss record of the U. S. fishing industry in terms of both money and human lives has been deteriorating. A recent U.S. Coast Guard study has revealed that commercial fishermen have the worst safety record of all U.S. industries with a death rate of 7 times the national average for all industry groups. Loss rates for large fishing vessels are 5 to 7 times greater than loss rates for U.S. ocean going cargo ships with a total of 2,414 documented fishing vessels lost at sea during the twelve years from 1970 to 1982. Also during that

period, another 9,503 vessels were damaged at sea, and deaths from loss of vessel, damage to vessel, or accident onboard vessel, numbered 1,271.

There is reason to believe that these increases are the result of recent developments in two areas: the increased importance and value of fish as a food source, and the passage of legislation that extended the jurisdiction of the United States over its fisheries resources to 200 miles. With these two developments the number of fishermen employed in the U.S. fishing industry has increased from 140,538 in 1970 to an estimated 223,000 in 1983. For those same years the number of fishing vessels has increased from 87,161 to 127,100. These increases have had three consequences. One is an increase in the overall value of the U.S. fishing fleet. A second is an increase in the cost and sophistication of the typical fishing vessel, and the third is a shortage of experienced and qualified fishermen available to operate the increased number of vessels. These factors, combined with the instability inherent in the fishing industry as a result of fluctuations in the availability of fish stocks as well as their market prices, have contributed to a situation where the fisherman is often under great economic pressure to produce. He is therefor forced to expose himself to risks that he would normally avoid.

The fundamental problem is not the cost or unavailability of insurance. Rather it is the poor safety record of the fishing industry which has produced an unacceptably high loss of human life and financial investment. But, even with this high rate of losses it is theoretically possible to provide insurance coverage if the insurance companies could quantify the risk and had the financial capacity to cover the losses. However, the price that would have to be charged for such insurance would most probably be unaffordable, and that is in fact one of the facets of the present problem. So, one of the major reasons for recent increases in the cost of fish boat insurance is the high rate of losses experienced by the U.S. fishing industry. Also, at the present time the U.S. insurance industry because of heavy financial losses, has lost the capacity to write all the insurance for which there is a demand. This has also contributed to the increase in premiums as well as the decrease in availability. The functional aspects of this problem must therefor be examined in terms of the present structure and status of the insurance industry.

B. THE INSURANCE INDUSTRY

Regulation of the insurance industry has been delegated to the states by the federal government. The states have vested their regulatory powers in insurance commissioners who through a national organization have worked to promote uniformity in the regulatory process. One of the generally accepted uniform principals is the requirement that an insurance company must have one dollar in reserves for every three dollars of insurance

that it writes. The amount of reserves that a company has then determines its capacity to write insurance. If a company suffers a decrease of reserves through payment of claims or investment losses then it must reduce the amount of insurance that it writes.

Historically the insurance industry has been a cyclical business alternating from periods of profit to periods of losses. Unfortunately, as a result of a cycle begun in the late 1970's the industry is now going through a down cycle of unprecedented proportions. Consequently, its capacity to write insurance has been significantly diminished; forcing many companies to cut back or eliminate not only the amount but often the type of insurance that they were writing. This has impacted the insurance market in Alaska by reducing the number of companies writing marine coverage from over 30 to less than 5, and those companies have both raised their rates and limited the amount of coverage that they are writing.

One reason for this situation is the fact that fish boat insurance constitutes only one tenth of one percent of the business written by insurance companies in the United States. It is also a category of insurance that has not been very profitable. So, when insurance companies are forced to reduce the amount of insurance that they are writing as a result of their diminished capacity; they naturally eliminate those categories of coverage that were the least profitable and that generated the least amount of business.

It is expected that as underwriting companies replenish their reserves through increases in the premiums charged, the number of companies writing marine coverage will increase. However, it is not expected that premiums for hull and machinery coverage will be decreasing as they are presently at levels which are considered to be the minimums necessary to support the coverage being written at the rate that losses are being experienced.

C. FEDERAL MARITIME LAW

Marine insurance like other forms of insurance is regulated by the states. However, because federal maritime law governs the ownership and operation of documented fishing vessels, the extent and nature of insurance contracts and their application are also subject to federal law. This is particularly true in the area of liability insurance where federal law governs the method by which injured fishermen are compensated. Unfortunately this system of compensation which was designed to protect the well being of merchant seamen has not been well suited to the needs and capabilities of the nation's commercial fishing industry. A study sponsored by the federal government during the 1950's included the following criticism about this method of compensating injured fishermen.

> ... it disregards completely the financial, economic, and operational characteristics of the industry. Furthermore, the system in itself is unjust because it is wasteful and slow and it fosters misunderstandings and bitterness between employer and employees. Moreover, it encourages the use of dishonest methods by both parties because court awards often are not in proportion to the employee's injury or need.

This 30 year old criticism is still valid today and if anything, the situation is now even worse because of two developments. In 1981 the Reagan administration closed the Public Health Service Hospitals to commercial fishermen thereby eliminating the free medical care that they had previously received. As a result of this the burden for providing medical care fell on the boat owner who had to provide for it through his protection and indemnity insurance. This of course increased the amount of claims paid by insurance companies (which they had not anticipated). It also placed the injured fisherman in an adversarial relationship with his employer as a claimant under the insurance policy or as a plaintiff in a court of law. The second development has been the increasing number of personal injury claims being filed by fishermen in the courts. In this regard the fishing industry is not unlike other industries that are now seeking relief through legislation that would reform the nation's tort laws. However, unlike other industries, the fishing industry cannot obtain relief through changes in state law. It must seek changes in federal law which is a much more difficult challenge.

III. POSSIBLE SOLUTIONS

Because, as has previously been stated, the problem of fish boat insurance is a multifaceted one, there is no simple, comprehensive solution. However, there are opportunities for improving the situation if the problem is broken down into some of its constituent parts. This section is therefore organized into subsections each of which contains a definition of a problem with recommendations for possible solutions to that problem.

A. IMPROVE FISHING INDUSTRY SAFETY RECORD

If the costs associated with losses in the fishing industry can be reduced, then the costs that must be bourn by a system of insurance will be less. If the cost of providing insurance coverage decreases, then the cost to those purchasing the insurance should also decrease. One means to achieve a reduction in losses is to improve the safety record of the fishing industry, and this can only be done by changing human behavior. Options available for changing human behavior include changes through the force of law, changes through economic requirements, and changes through economic incentive.

Opportunities for legislating requirements for human conduct include a.) extending the jurisdiction of existing federal laws and regulations from the U.S. maritime industry to the fishing industry and b.) passage or modification of state laws and regulations governing the operations of the fishing industry.

At the present time the option of extending federal regulatory authority to the fishing industry is not a politically viable option. The coast guard has testified at recent congressional hearings that they do not presently have the funding available to pay for implementation of such a program, and in fact they have been threatened with substantial budget cuts by the Reagan Administration over the past several years. Now, with the problems created by passage of the Gramm-Rudman legislation which requires congress to balance the budget within the next several years, it appears that additional budget cutting will be necessary. It is unlikely that the coast guard will escape this process, and it is virtually certain that their budget will not be increased to fund a new program of fishing vessel safety.

Because federal law preempts state law in the jurisdiction of the nation's maritime industry (which includes the fishing industry), the states have limited authority to regulate. However, within that limitation, there does appear to be some opportunity for regulation in the form of requirements for safety equipment as a condition of receiving a commercial fishing license. The authority for the state to do this has not been definitively determined. But, based on court decisions over the past several years and the a refusal of the federal government to exercise their authority, there appears to be some opportunity for the state to act.

One area in which the state's authority to act is not in doubt is the existing body of laws and regulations governing commercial fishing in the state. There is evidence that regulations determining the opening and closing dates of fishing seasons, the areas to be fished, and the type or size of vessels licensed to fish all have an impact on the risk to which fishermen and their vessels are exposed. For this reason it would seem prudent that safety should be a required consideration in the development of such regulations and laws.

The option for changing human behavior as a condition of receiving insurance (which would be change through economic requirement) has been rejected by the insurance industry. This possibility had been suggested by representatives of the U.S. Coast Guard in testimony given to a congressional committee in Seattle last August. The coast guard had testified that they were unable and unwilling to begin regulation of the fishing industry, but that they were in the process of developing a set of voluntary safety standards. They suggested that the insurance industry could require compliance with the standards as a condition of obtaining insurance. The insurance industry representatives rejected this suggestion stating that the

promotion and enforcement of safety standards was not their business.

The last option for changing human behavior through economic incentives may be the best opportunity available to the commercial fishing industry. But, it is an opportunity only if a mechanism can be found for implementing it. That mechanism may very well be the formation of self insurance programs which would place the responsibility for regulation on the fishing industry itself. This approach has in fact worked very successfully for a number of fishermen pools that have been operating out of the state of Washington since the early 1940's. These pools, which refer to themselves as funds, insure many boats that operate in the Alaskan fisheries from Kodiak to Ketchikan. However, because they do not wish to be subject to the authority of state insurance regulatory agencies and their requirements, they studiously avoid referring to their activities as constituting a form of insurance. And in fact the bylaws of one such fund contains the following statement, "No insurance business of any kind shall be done as such business is understood under the statutes of the State of Washington." Notwithstanding the foregoing, the pools have successfully provided economic protection to fishing vessel owners for over 40 years, and they have had an extremely good record. The following quotation from the bylaws of one of these pools defines its purpose and serves to illustrate its contribution to the promotion of safety at sea.

> The purpose of this organization is to create and maintain a fund for the reimbursement of marine losses suffered by members occasioned by perils of the seas or fire or by certain collision liabilities; to work for the elimination of careless and reckless operation of fishing vessels; to maintain staunch and seaworthy fishing vessels; and to afford assistance to fellow member's vessels in distress at a reasonable rate of compensation.

B. INSURANCE POOLS

The foregoing section regarding fishermen's insurance pools addresses the value of self insurance as a mechanism for changing human behavior as it relates to safety in the fishing industry. This value can be viewed as a long term social value that results from an ongoing program to reduce the loss of human lives and vessels to the Alaskan fishing community. However another potential value of insurance pools lies in the opportunity they offer for fishermen who are safe operators to differentiate themselves from fishermen who are unsafe operators. By so doing, the good operators will benefit from an insurance program the cost of which is based on their record of operations and not the record of the fleet in general. One additional advantage to such a program would be a lower cost due to the absence of the need for the program to generate profits for underwriters. These values can be viewed as short term economic values that improve the profitability of the Alaskan fishing community.

As previously stated, the Washington state based fishermen's insurance pools (as they are popularly called) have been operating in the Alaskan fisheries for over 40 years. However, in their present form, they are technically not in compliance with Alaskan law, and are therefor illegal. Nevertheless, they have been providing a valuable and a reliable service to the fishermen of both Washington and Alaska. And with the present crises that exists in the marine insurance industry, it would not be prudent to reduce the amount of protection available to the fishing industry. On the contrary, it would seem that a prudent course of action would involve passage of legislation that would permit the formation of Alaska based fishermen's insurance pools.

C. FISHERMEN'S COMPENSATION SYSTEM

The subject of marine liability insurance has been examined in the previous section of this report entitled "FEDERAL MARITIME LAW". That section outlined the inadequacies of the present system for providing fishermen's compensation and suggested the need for changes to the federal law that governs the system. It is important to note here that the problems associated with this situation are not new. They have been the subject of a number of congressionally funded studies going back as far as the early 1950's all of which have recommended changes to the federal law.

Now, once again, there is another congressionally funded study being conducted, and there are legislative solutions being considered. This latest effort is of greater importance than past efforts because of the increased liabilities (and therefor costs) to which boat owners are now exposed. The increased exposure of the vessel owner is the direct result of court decisions that have broadened the circumstances under which a boat owner is liable for accidents to crewmen both on and off the vessel. It is therefore extremely important that the fishing industry of each state participate in the development of a national fishing industry consensus on the best solution to this problem so that the appropriate legislation can be developed and passed by congress. Without some modification of the law, the cost of P & I insurance may very well become unaffordable.

There is also one area of Alaska's workmen's compensation law that has been identified as a problem for fishing vessel owners. As a result of a recent court decision, fishing vessel owners are subject to the requirements of the workmen's compensation laws in situations where their crewmen have shore side duties. The court decision stated that a fishing vessel crewman who was injured while performing duties on shore was eligible to collect under the law. With this judgement, crewmen enjoy a duplication of remedies where they can collect under the workmen's compensation no-fault system while at the same time

retaining the right to pursue existing remedies under maritime law. In order for a vessel owner to comply with the law and protect his investment, he must now obtain both P & I insurance as well as workmen's compensation coverage. This duplication is not necessary to protect crewman and it creates an unnecessary financial burden on the boat owner who may not be able to afford the increase costs.

IV. RECOMMENDATIONS

Preceding sections of this report have identified problems and made general suggestions for solutions. This section contains specific recommendations for action by the Alaska Legislature.

A. INSURANCE POOLS

It is recommended that legislation be passed that contains provisions to:

1. authorize the Director of Insurance to develop, with input from interested fishermen groups, a plan for the creation and implementation of marine insurance reciprocal associations for the purpose of providing property and casualty insurance coverage for commercial fishermen,

2. authorize the Director of Insurance to promulgate regulations necessary for the implementation and operation of marine insurance reciprocal associations,

3. authorize the Director of Insurance to set the level of surplus required of marine insurance reciprocal associations by regulation,

4. authorize approved marine insurance reciprocal associations to issue policies that are nonassessable,

5. appropriate to the Division of Insurance the funding necessary to accomplish the foregoing tasks.

Because of the present crises in insurance many groups are considering the possibilities of self insurance as a solution to their problems. This is true for many different kinds of insurance in many different parts of the nation. For all of these groups a fundamental question that they must answer is "Who will fund the program?". One group in New Jersey that is in the process of forming a fishermen's mutual insurance association with the assistance of a combined federal and state grant is considering the possibility of state loan guarantees as a back up to the contributions of policy holders. Other groups have indicated an interest in obtaining financial assistance from the government.

That is not the case in regard to this recommendation. For one reason, the recent decline in state oil revenues makes the availability of state funding unlikely. However, what is possibly a more important reason is the need to maintain the ability of any reciprocal to be selective in its choice of participants. If the use of public funds were to compromise this freedom of choice to any degree, it could threaten the success of the program.

The question still remains as to how a marine insurance reciprocal can be funded. The answer that offers the greatest promise at this time is through a combination of policy holder contributions in conjunction with excess insurance obtained from companies known as reinsurers. The important point to make is that persons expert in the field of marine insurance believe that it is possible to structure a marine insurance reciprocal program without the need for financial assistance from the state. However, the best method by which this can be done is not now known because more information needs to be developed as to the number of fishermen interested in such a program and the availability of reinsurers willing to participate.

The foregoing recommendation has therefor been developed because it offers a solution to the problem that provides the maximum flexibility at the lowest cost.

B. FISHERMEN'S LIABILITY INSURANCE

It is recommended that the Alaska Legislature hold hearings on the problems relating to the methods by which injured fishermen are compensated, and its impact on the cost and availability of protection and indemnity insurance. The purpose of the hearings would be to develop an Alaskan consensus on the best solution to the problem which would be communicated to the U.S. Congress in the form of a legislative resolution.

This subject is timely because a study has recently been completed on the problem which was funded by the National Council of Fishing Vessel Safety and Insurance. The study contains recommendations for congressional action (including amendments to the Jones Act) and will be considered by congress in the coming months. It is important that the recommendations of the report be examined to determine if they offer the best solution to the problem for Alaska's fishermen. Based on reactions to a preliminary version of this report there is reason to believe that there is some question as to whether or not it constitutes the best approach to the problem.

It is important to note here that the earlier recommendation for the formation of insurance pools for property and casualty insurance intentionally omits liability insurance. This is because the cost of a liability insurance program is difficult to quantify because of the system for determining awards for claims. This subjects liability insurance programs to great risk since the cost of the coverage is potentially open ended. A

fledgling self insurance program with limited capital reserves should not be subject to such risk. Fortunately, such insurance is obtainable from private insurance companies although at a high premium. If the present efforts to improve the system of providing compensation for injured fishermen are successful, then premium costs should be reduced.

C. THE ALASKA WORKMAN'S COMPENSATION LAW

It is recommended that an amendment be passed to the Alaska Workman's Compensation law that exempts commercial fishermen from the provisions of the act. This is desirable for the following reasons.

1. It was not the original intent of the act that commercial fishermen by covered by it.

2. Fishermen have access to a system of injury compensation under maritime law.

3. A duplication of programs is unnecessarily confusing and is unaffordably expensive.

4. Although described as inadequate, the existing system of compensating injured fishermen is presently under study for the purpose of possible congressional overhaul. A solution defined by federal law would be much more definitive and efficient than a system characterized by overlapping jurisdictions and duplications of effort and cost.

D. COMMERCIAL FISHERIES MANAGEMENT

It is recommended that a legislative resolution be passed requesting that safety be a factor to be considered in the development of all fishery management plans and regulations.

E. EDUCATION

It is recommended that the University of Alaska be directed to investigate the possibility of developing instructional programs on fishing vessel risk management or safety at sea that could be taught through the marine advisory program or community college system.

It is quite possible that a program such as this could be an important part of any organized effort to improve the safety record of the fishing industry. Like driver education programs it could be used as a means to improve individual abilities using reduced insurance premiums as an incentive.

F. MANDATORY SAFETY REQUIREMENTS

It is recommended that study and public hearings be conducted on the subject of state mandated safety requirements. According to information provided by the Legislative Affairs Division of Legislative Counsel, the state may have limited authority to require that certain safety equipment be carried on commercial fishing vessels as a condition of obtaining a commercial fishing license. This authority might also extend to requirements for demonstration of minimum competency or experience in the operation of commercial craft. This subject will most certainly generate considerable controversy, and therefor should be approached with great care for its potential impact on the commercial fishing industry.

V. CONCLUDING REMARKS

The present crises in marine insurance is a result of events that have occurred in both the fishing and the insurance industries. Some improvement in the cost and availability of marine insurance for Alaska's fishermen may occur as a result improving economic conditions in the insurance industry. However, substantial improvement in these areas cannot occur without a reduction in the loss of human life and the destruction of fishing vessels suffered by the commercial fishing industry.

Historically, the United States fishing industry has not been subjected to the extent of government regulation in the area of safety that other industries have had to endure. This freedom has been one of the attractions of the industry that has been valued and protected by many of its participants. However there are those who would now argue that fishermen should not have the right to be reckless with their own lives and certainly not the lives of others. Freedom in this sense may very well be defined by the song verse; "Freedom's just another word for nothing left to lose."

IN THE _____

BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to marine insurance; amending Alaska Statutes 21.75.020, 21.75.050, 21.75.200 and 21.80.020; and providing for an appropriation."

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

* Section 1. AS 21.75.020 is amended by adding a new section to read:

(C) The Director shall specify by regulation the types of marine risk a reciprocal may insure.

* Section 2. AS 21.75.050 is amended by adding a new section to read:

(D) Notwithstanding the foregoing provisions and the provisions of Section 21.75.230, if a reciprocal insurer insures marine risks the level of surplus shall be set by regulation by the Director.

* Section 3. AS 21.75.200 is amended by adding a new section to read:

(E) A reciprocal insurer that insures marine risks as authorized by AS 21.75.020(C) may issue policies that are nonassessable.

* Section 4. AS 21.80.020 is amended by adding a new sentence to read:

A domestic reciprocal that insures marine risks is exempt from the requirements of this chapter.

* Section 5.

The Legislature recognizes the crisis that has arisen in the marine insurance market now faced by persons who fish commercially in Alaskan waters. The development of marine insurance reciprocals will help remedy this crisis. The Legislature recognizes that, particularly in light of the depression affecting segments of the fishing industry, fishers are poorly situated to bear the cost of developing marine insurance reciprocals. The sum of $200,000 is appropriated to the Division of Insurance for the purpose of contracting for legal and management services necessary to develop marine insurance reciprocal pro forma documents in compliance with A.S. 21.75.060, 21.75.080, 21.75.100,

21.75.130, 21.75.170, policies and such other subscriber rules and management procedures as may be appropriate.

* Section 6.

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

APPLICATION FOR MEMBERSHIP

United Marine Fund

HAROLD S. ONGSTAD, Manager
2400 N. W. 64th
SEATTLE, WASHINGTON 98107

DATE _____

CORPORATE NAME _____

APPLICANT INFORMATION: _____

NAME _____ PARTNER, IF ANY _____

ADDRESS _____ PARTNER'S ADDRESS _____

PHONE _____ YOUR AGE ____ YRS. OF FISHING _____ ON THIS BOAT _____

NAME OF PREVIOUS BOAT _____ EVER REFUSED BY A POOL? _____

EVER LOST A BOAT OR BAD CLAIM _____ IF YES, EXPLAIN _____

PRESENT HULL INSURER _____ AMOUNT _____

EXPIRATION _____ DATE TO BEGIN MEMEBRSHIP _____

MEMBERS OR DIRECTORS KNOWN _____
if additional space needed use reverse side

VESSEL INFORMATION:

VESSEL NAME _____ REG. LENGTH _____ O.A. LENGTH _____ BEAM _____

YEAR BUILT _____ WOOD, OR? _____ TYPE FISHING _____

AREA FISHED _____ HOME PORT _____

ENGINE(S) MAKE _____ H.P. _____ MODEL _____ YEAR INST. ____

LAST OVERHAUL (MAJOR) _____ DO YOU HAVE: BILGE ALARM? _____ FIRE ALARM? ____

NUMBER OF STATIONS (FIRE) _____ AUXILIARY CHARGING? _____

COVERAGE INFORMATION: _____

RESALE VALUE OR PURCHASE PRICE _____ AMT. DESIRED, THIS POOL _____

OTHER HULL COVERAGE TO BE CARRIED $ _____ WHERE? _____

ALTERNATE SKIPPER, IF ANY _____

MORTGAGE TO _____ ADDRESS _____

MORTGAGE AMOUNT $ _____ SIGNED _____

MORTGAGE RATE _____ % SOCIAL SEC. # _____

(206) 783-0977

United Marine Fund

HAROLD S. ONGSTAD, Manager

2400 N. W. 64th

SEATTLE, WASHINGTON 98107

ENDORSEMENT #_____.

In consideration of premiums charged, it is hereby understood and agreed that;

(1) The _____ is the sole loss payee for all losses payable under this coverage.

(2) The assured(s) is without privilege of cancellation of this coverage without the prior consent of the _____.

(3) In the event of cancellation or modification of this coverage, the insurers will furnish _____ with twenty (20) days written notice of such cancellation or modification prior to the effective date thereof.

(4) The seaworthiness of the vessel insured by this coverage is admitted as between the mortgagee and the insurer and the interest of the mortgagee shall not be impaired or invalidated by any act or neglect of the mortgagor, owner, master, agent, or crew of the vessel insured by this coverage, or by any failure to comply with any warranty or condition over which the mortgagee has no control or over which the mortgagee has control but has not exercised such control.

This endorsement is attached to and forms part of the membership of the _____.

Signed at _____ _____
Authorized Signature

Dated _____

(206) 783-0977

United Marine Fund

HAROLD S ONGSTAD Manager

2400 N. W. 64th

SEATTLE, WASHINGTON 98107

INFORMATIONAL LETTER RE MEMBERSHIP IN THE UNITED MARINE FUND

PURPOSE AND COVERAGE: The purpose of the fund is to create and maintain a fund for the reimbursement of marine hull and machinery losses suffered by members. It is also to work for the careful and able operation of vessels. We offer the broadest coverage available and at reasonable rates with refunds to member as best possible.

MEMBERSHIP: To become a member of the fund you must submit an application with some references of people belonging to the fund to vouch for you. This application, then, is brought before the board of directors for approval. We can insure up to $350,000 per vessel for hull and machinery. We take most every type of fishing vessel including seiners, halibut, trollers, draggers, and crab boats. Generally, we do not encourage boats under 30 or 35 feet in length or under $20,000 in value.

MEANS OF OPERATION: The fund is managed by a manager and a board of directors. At the annual meeting, changes or policies are set and the board is elected by the members. All members have a vote.

RATES OF MEMBERSHIP: We charge a rate or premium of 5% of the amount carried in the fund. This is divided into quarterly payments payable at least by March 31st, June 30th, September 30th, and year end. In the last quarter, members will take lay-up credit for the whole year. That is any time their vessel was tied up over 15 days. With the lay-up off, the rate becomes some less than 5%, depending on the number of months tied up. Therefore, your actual rate would become:

With no lay-up at all	5.00%
With 2 months lay-up	4.58
With 4 months lay-up	4.16
With 6 months lay-up	3.75
with 8 months lay-up	3.33
with 10 months lay-up	2.91

This rate, after lay-up, is paid each year for four years. Each year a refund is set aside, depending on yours and the funds loss experience. In the fifth year you are still charged the 5% rate but your account is credited with the first year's refund. That means, then, that you are three years behind in your refunds and they come due in turn each following year. These refunds make up our reserves for bad years, if any-or for catastrophe. If you sell your boat, retire, etc., you will have three or four years refunds coming which are paid out by check.

REFUNDS: Over the more than fifty year experience of the fund, we have never failed to pay a refund. Some have been big and some have been small, but probably, on the average, have run about 70% for the whole 50 years or so. Lately, in the last ten years, they have been better with an average of about 85%. Our best have been 100% and lowest 40% or so.

STRENGTH: An important consideration when buying protection for your boat is the ability of the fund to pay. Lately, a few commercial insurance companies have gone broke, sometime in mid term for the insured and he has nothing for the money he

BYLAWS

OF

AMERICAN MARINE FUND

ARTICLE I

Name

The name of this organization shall be American Marine Fund.

ARTICLE II

Place of Business

The office and place of business of the Fund shall be in Seattle, Washington. All meetings of the members and of the Board of Directors shall be held in Seattle, Washington.

ARTICLE III

Purpose of Organization

The purpose of this organization is to create and maintain a fund for the reimbursement of marine losses suffered by members and to work for the elimination of careless and reckless operation of fishing vessels, to maintain staunch and seaworthy fishing vessels, and to give help to fellow members' vessels in distress, at a reasonable rate of compensation.

ARTICLE IV

Membership

1. Membership in the Fund shall be confined to owners of steel hull fishing vessels.

2. Continued membership is dependent upon the member being a fishing vessel owner with a record of careful and able operation of his vessel.

3. Any member wishing to enter more than one vessel with the Fund shall apply to the Board of Directors, which may at its discretion accept or refuse such entry.

4. A member whose membership is canceled for nonpayment of required contributions may be reinstated at the discretion of the Board of Directors upon payment of all delinquent contributions.

5. The widow or surviving children of a deceased member may retain his membership if the vessel is managed by a person approved by the Board of Directors.

6. All members shall have the same rights and privileges.

ARTICLE V

Membership Meetings

1. The annual meeting of members shall be held on the third Monday in January at 7:30 p.m. At each annual meeting the membership shall elect new directors in the place of those whose terms expire, in accordance with Article VI hereof. Their election shall be by ballot. Special meetings of the membership may be called by the majority of the directors or upon written demand by ten or more members served upon the manager, such demand to specify the particular business to be brought before such meeting.

2. Written notice of the annual meeting of members shall be mailed to each member in good standing by the Business Manager at least ten (10) days before the date of said meeting and similar notice shall be given of special meetings. The notice of special meeting shall state the business to be brought before such meeting. No business shall be brought before any special meeting if not stated in the notice thereof.

3. All members who have paid their contributions for the current quarter as provided in Article IX shall be entitled to express themselves at any meeting of the members, but only one vote may be cast for any one vessel, and only by members in person.

4. One-fifth of the total membership shall constitute a quorum at any annual or special meeting of the members.

ARTICLE VI

Administration

The affairs of this organization shall be administered by a board of seven (7) directors chosen in the following manner: At the time of organization three directors shall be chosen for three (3) years, two directors for two (2) years, and two directors for one (1) year. At each succeeding annual meeting vacancies shall be filled for three (3) year terms. Outgoing directors shall act as alternates for a term of one year.

ARTICLE VII

Board of Directors

1. The Board of Directors shall have the management of the organization and full control thereof as provided in these Bylaws and any amendments thereof.

2. All applications for membership shall be passed on by the Board. A quorum of the directors may approve or reject a particular application by a majority vote, and/or may freeze membership by not accepting any new applications. Upon the request of any director an application for membership may be decided by secret ballot.

3. The directors shall, from their own number, appoint a chairman who shall preside at all meetings of the Board and of the membership. They shall also appoint a vice-chairman to take the chairman's place in case of his absence or inability to act.

4. If a director becomes unable or unwilling to serve, the Board may appoint a new director to serve in his place until the next annual meeting.

5. The Board may meet from time to time as the directors themselves shall decide, and the chairman may call meetings of the Board at any time. Notice of such meetings shall be given in accordance with such rules as the Board itself adopts from time to time. Four (4) members of the Board shall constitute a quorum.

6. The Board shall have the authority to establish valuations and to survey any vessel entered in the Fund. The Board shall have the authority to limit the amount a member may enter in the Fund.

7. Upon written application by a member, the Board shall have authority to decide whether or not to cover a vessel operating south of Latitude 12° North down to Latitude 5° South. The Board shall also have authority to increase rates as it deems necessary on vessels authorized to operate in these waters.

8. The Board shall appoint a Business Manager, whose duties shall be as hereinafter provided. In case of the death, disability or resignation of the Manager the vacancy thus created shall be filled at once. The Manager need not be a member of the organization, nor shall the Board appoint an insurance agent as Manager.

ARTICLE VIII

Business Manager

1. The Business Manager shall furnish a Fidelity Bond in an amount of at least $50,000.00 which shall be raised as the Fund increases, guaranteeing the faithful performance of all his duties.

2. The Manager shall be custodian of all funds belonging to the Fund. He shall deposit receipts in such depository or depositories as the Board of Directors shall designate. He shall disburse funds as approved by the Board.

3. The Manager shall keep an accurate record of all business transacted for this organization.

4. The Manager shall give the notices required for meetings of the Board of Directors and of the membership, and shall act as secretary at all such meetings.

5. The Manager shall be paid compensation in the amount of 5% of receipts of the organization.

ARTICLE IX

Rules for Conduct of Business

1. In all instances the Fund will record the agreed value of a vessel and also that part of the agreed value entered with the Fund. No entry with the Fund shall exceed $100,000.00. That part of the agreed value of a vessel entered with the Fund shall be the basis upon which contributions are assessed and losses are prorated and reimbursed.

2. Losses of members shall be adjusted and reimbursed in accordance with the terms of the American Hulls Pacific [1938] form, but with the limitations otherwise stated in these Bylaws.

3. Members shall not be reimbursed for loss of power skiffs whether on board the member's vessel or otherwise.

4. The right to reimbursement under these Bylaws is subject to the following warranties, to the same effect as though they were incorporated in the American Hulls Pacific [1938] form:

(a) Territorial Limits. Vessels shall trade only from Latitude 12° North to Latitude 65° North, and east of Longitude 172° East.

(b) Stability Test. Vessels equipped with fish holding tanks must have aboard a current, approved stability letter or report from an approved naval architect.

(c) Bilge Alarm. All vessels shall be equipped with a bilge alarm system installed to warn of water entry above a safe level.

(d) Fire Alarm. All vessels shall be equipped with at least one fire alarm system.

(e) Survey. All vessels shall engage a professional surveyor every second year to survey the vessel and will provide the Fund with a copy of the survey. All of the surveyor's recommendations must be complied with.

5. Warranted free from particular average under $10.00 per foot of the Vessel's registered length, but nevertheless, if the Vessel shall have been stranded, sunk on fire, or in collision with any other ship or vessel, the Fund shall pay damage occasioned thereby in accordance with Article IX, Section 8, of these Bylaws.

6. In case of accident, the member must notify the Manager or one of the directors promptly and before having repairs made to his own vessel. If another vessel is damaged, the member must notify the Manager or a director promptly so that the Fund can protect its interest.

7. In all cases of loss or damage involving a member's vessel, two of the directors, if available (or two members if no directors are available) may serve as surveyors to determine extent of damage and necessary repairs to be undertaken for the owner's account, and to prepare and approve specifications for repairs. In lieu of survey by directors or members, the Manager may engage a professional marine surveyor.

8. Any member claiming reimbursement for loss shall submit proof of loss, and the Board may require additional proof before taking action on the claim. The Board will notify the member of the action taken by the Board to adjust and approve or disapprove his claim. No member or other person interested in reimbursement shall be entitled to interest upon the amount which may be due from the Fund until 30 days after such notification.

9. Claims for losses shall be adjusted in accordance with the practice of marine underwriters at the port of Seattle at the date of loss. The Fund reserves the right to do its own surveying and adjusting.

10. No reimbursement shall be afforded if a vessel shall be sold, assigned, pledged, chartered or placed under new management, whether voluntary or otherwise, without prior notification to the Manager and written approval executed by him.

11. Contribution rates for members shall be five percent (5%) per year, with no allowance for layup time.

Each member who enters this organization before February 1, 1987 shall give the Fund a promissory note in the amount of $10,000.00 or ten percent (10%) of that member's entry with the Fund, whichever is less. The note shall be payable to the order of American Marine Fund upon demand within two (2) years of the date of the note. The note shall be signed by the member and his spouse. The form of promissory note is attached hereto as Schedule A.

If the Fund receives payment of the promissory note given by a member as above provided, said payment shall thereupon become an indebtedness of the Fund in favor of the member and shall bear interest thereafter at the prime rate then charged by Seattle-First National Bank. Regardless of whether the Fund demands payment of the promissory note given by a member as above provided, the Fund shall reduce by $500.00 the member's contribution for each of the first two (2) full years of membership following the expiration of the term of the note. The Fund may transfer or negotiate promissory notes made by members in such manner as is approved by the Board. The provisions of these Bylaws shall not be binding upon any holder of the said notes other than the Fund.

If a vessel is sold by a member, the Fund shall return that member's promissory note unless it has been negotiated. If the note has been negotiated, and if the purchaser of the vessel is approved by the Board for membership, the Board shall waive the requirement that the purchaser give a promissory note.

12. If a vessel is sold by a member, the prorated unexpired membership dues shall be refunded, or may be transferred to the new owner upon approval by the Board.

13. Membership contributions shall be paid quarterly in advance no later than the first days of January, April, July and October. Any member more than ninety (90) days delinquent in payment of his contribution shall be automatically canceled as a member.

14. The expiration date of all memberships shall be December 31 of each year. The first year the members to pay dues in full, the unexpired balance on December 31 to be credited to their new membership for the ensuing calendar year.

15. If a vessel is covered for a portion of a year and has a claim during that time, the member is liable for a full year's dues, and any balance due the Fund on account thereof shall be deducted from the amount due under the claim if sufficient to cover, and if not, shall be paid in full by the member.

16. Each member shall promptly notify the Manager or a director of any hull and machinery insurance which he carries on his vessel beyond the protection afforded under these rules.

17. Should the United States of America or any of its instrumentalities be deemed a member of this organization because of an interest as mortgagee, mortgage guarantor, or otherwise, in any vessel entered in this organization and be afforded reimbursement as a payee under these Bylaws, this organization shall have full rights of subrogation against the United States of America to the extent of any loss paid for which any member other than the United States of America could bring suit against the United States of America under the Suits in Admiralty Act, Public Vessels Act, Federal Tort Claims Act, or Tucker Act to recover for such loss, and notwithstanding the fact that the United States of America may be deemed to be a member of this organization and as payee for reimbursement of a loss, such loss shall be considered to have been paid to and sustained by any member other than the United States of America in the first instance.

ARTICLE X

Overhead Expenses

The directors are not allowed to exceed five percent (5%) on contributions to the Fund to defray necessary expense.

ARTICLE XI

Surplus

All surplus from contributions shall be credited to each individual member at the end of each year in proportion to his contribution to the Fund for the year. If any member has received any payment from the Fund during a year on account of losses, the amount to be credited to him from the surplus under the foregoing provisions shall be reduced by the amount or amounts so paid to him for losses, but no payments for losses for preceding years shall be so deducted. Each year's surplus shall at all times, until withdrawn as hereinafter provided, be available as a part of the Fund for the purpose of paying losses sustained by members, without regard to such credits; provided, however, that such surplus shall not be available for payment of future losses or any other disbursements in any year until the current year's contributions and income have been exhausted, and if in any year there is no current surplus, and further funds are required to pay claims, such further payments shall be charged against the yearly surpluses from the preceding four years in the inverse order of their establishment. Withdrawals from a year's surplus may be made after the fifth year of its establishment to such an extent as two-thirds of the membership in good standing shall decide.

The net earnings from investment of the members' current contributions and surplus shall be used to pay claims, expenses and taxes and the excess of such net earnings, if any, shall be set aside for the payment of future claims, expenses and taxes and shall not be credited or paid to the members. Upon a dissolution of the Fund, any net earnings remaining after the payment of all outstanding claims, expenses and taxes shall be distributed to such charitable, religious, educational, scientific and literary organizations (contributions to which are deductible for federal and State of Washington income tax purposes) and in such amounts as the directors shall select.

ARTICLE XII

Expulsion

1. The Board of Directors shall have full and complete authority to expel any member and thereby cancel all rights afforded by these Bylaws when in its sole discretion any member is detrimental to or does not abide by the purposes of the organization.

2. Expulsion of a member and cancellation of his membership shall be made in the following manner: The Board of Directors shall prepare specifications of any charge made against the member. A copy of such specifications together with a notice of hearing thereon before the Board of Directors shall be mailed by registered mail, return receipt requested, postage prepaid, to the member in question at his last address appearing on the books of the organization. Said notice shall be mailed at least ten (10) days before the hearing. It shall request the member to be present at the hearing. The member in question shall be given full opportunity to respond to the charge, and thereafter the Board of Directors shall vote by secret ballot upon expulsion. Expulsion shall require the votes of at least five (5) directors. If expulsion is approved by the Board of Directors the same shall become effective ten (10) days from the date of the vote thereon.

3. Any money due an expelled member shall be paid in accordance with the provisions of Article XI of these Bylaws.

ARTICLE XIV

Losses

No member, director, agent, servant, or attorney of this organization shall be liable for any loss suffered by any member, and no assessment shall be levied on any of them under any circumstances for the purpose of paying losses or for any other purpose, either directly or indirectly. If the fund created does not suffice to

reimburse for the aggregate losses during a year, the deficiency shall be prorated among all proven claims for the year during which the deficiency occurs after application of the surplus provided in Article XI. No insurance business of any kind must be done as such business is understood under the statutes of the State of Washington.

ARTICLE XV

Amendments

These Bylaws may be amended at the annual meeting of the members, or at any special meeting called for that purpose, by a majority of a quorum of the whole membership.

Schedule A

PROMISSORY NOTE

Dated at Seattle, Washington, _____, 198___. $10,000.00

FOR VALUE RECEIVED, the undersigned promises to pay to the order of American Marine Fund upon demand made on or before two years from the date of this note, the sum of TEN THOUSAND DOLLARS ($10,000.00), in lawful money of the United States. Payment to be made at such place as the holder may direct in writing.

If payment is not made promptly upon demand as above provided, this note shall bear interest at the rate of twelve percent (12%) per annum from the date of demand until paid, and if this note shall be placed in the hands of an attorney for collection or if suit shall be brought to collect any of the principal or interest of this note, the undersigned promises to pay any reasonable attorneys' fees and agrees that venue of suit may be laid in King County, State of Washington. The maker of this note executes the same as a principal and not as a surety and waives presentment, demand, protest, notice of protest, notice of dishonor, and notice of nonpayment. If this note is signed by more than one person the obligations of the signers shall be joint and several.

_____

_____

PACIFIC MARINE FUND
1977 to 1984

YEAR	PREMIUM	INTEREST	EXPENSES	INC. TAX	CLAIMS	DIVIDEND	YEAR PAID FEBRUARY	% RETURN TO MEMBERS W/O CLAIMS
1977	71,000	1,762	5,061	0	13,020	27,986	1981	48
1978	123,750	5,755	9,315	282	119,907	0		0
1979	125,000	9,244	6,644	1,017	37,289	74,648	1983	85
1980	111,340	18,778	6,896	1,597	0	111,340	1984	100
1981	134,510	26,980	10,052	3,036	10,071	122,935	1985	99
1982	136,375	49,632	9,648	4,331	5,475	130,899	1986	100
1983	154,028	52,793	13,687	8,223	5,000	149,028	1987	100
1984	311,337	64,478	24,445	7,993	15,834	295,503	1988	100
							AVERAGE	79

NOV 27 1985

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November 19, 1985

A. W. Hall
Renewable & Natural Resources Advisor
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Bill:

It was a pleasure to meet you in Anchorage on November 14th. The "twilight zone" can reasonably effectively be removed from the Alaska Workers' Compensation Act by the addition of the following language.

> No compensation under this Act shall be payable in respect of the death or disability of a master or member of a crew of any vessel.

This language is taken from the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Section 903(a)(1). If accompanied by appropriate legislative history concerning the intent of this language, it should clearly remove coverage for those engaged in the fishing industry who retain numerous federal maritime rights and whose remedies are only extended under the Alaska Act during such times as their vessels are tied up to wharves.

I would be delighted to assist in this project if any additional help is necessary.

Very truly yours,

FAULKNER, BANFIELD,
DOOGAN & HOLMES

By: _____
Michael A. Barcott

MAB:kl
05601

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

5

CSSSHB 5(Fin)am -- Additional Backup Material
for
Senate Labor and Commerce Committee

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* Assorted articles from periodicals and newspapers

STATE OF ALASKA

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FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES

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REPRESENTATIVE JOHNE BINKLEY

MEMORANDUM

March 22, 1985

TO: Representative Al Adams

From: Representative Johne Binkley
Chair of Subcommittee on HB 5

RE: House Bill 5

The subcommittee on House Bill 5 is recommending that the full committee adopt the proposed House Finance Committee Substitute with a revised fiscal note dated March 21, 1985.

This fiscal note would increase the contractual line item in order to hire two industrial hygienist for a two year period to carry out the survey program, particularly in small school districts, as the large districts have for the most part complied. Personal Services would be provided to hire a temporary industrial hygienist for the certification program for ten months to do regulations and start the program.

The Department of Labor will try to run the program with the FY87 amounts indicated in the fiscal note. The subcommittee indicated that if that amount was not sufficient additional funds should be requested in the FY 87 budget.

BREAKDOWN OF ASBESTOS PROJECTS
FUNDED FROM CHAPTER 24, SLA 1984

Cordova City Schools - $48,870.79- Asbestos Removal from Mt. Eccles Elementary School basement. PROJECT COMPLETE.

Delta/Greely School District - $99,500 - Survey & Removal of asbestos at Delta Junction and Ft. Greely Schools. Final inspection and reinsulation.

Tanana City School District - $285,104.25 - Removal of asbestos in main boiler room, classrooms, teachers lounge, bathroom, and fan room , above ceiling tiles, water lines and heating pipes . Reinsulation with fiberglass. Encapsulation of asbestos in hallway boiler room. Clean up and final inspections. PROJECT COMPLETE.

Petersburg City Schools - $107,000 - Removal of asbestos from old high school building.

Alaska Gateway School District - $75,206.26 - Specifications, technical, and professional services for the removal and encapsulation of asbestos containing material at Tok School. Final inspection. PROJECT COMPLETE.

Lake & Peninsula School District - $6995.00 - Inspection of 14 school sites and abatement at three sites where asbestos was identified.

Kodiak Island Borough Schools - $89,673.76 - Funds were spent as follows:
Kodiak Jr. High - demolition phase of remodel for asbestos removal.
Port Lions School - Removal of asbestos pipe insulation at elementary school.
Old Main Elementary - Removal of asbestos pipe insulation.
Kodiak High School - Removal of asbestos fireproofing from roof beam above Gym and cost estimate and analysis for total high school project.
ALL OF THE ABOVE PROJECTS ARE COMPLETE

Sitka Borough Schools - $150,000 - Asbestos removal from boiler rooms at Sitka High School, Blatchley Jr. High and Etolin St. Elementary School.

Juneau Borough Schools - $400,000 - Survey of 11 schools in the district and removal of all asbestos found.

Fairbanks North Star Borough School District - $697,000 - Removal of all asbestos containing structural materials throughout the school district. Fairbanks has requested an additional $500,000 for completion of this project.

Mat-Su Borough Schools - $225,000 - Funds applied for 3/85 for asbestos abatement.

OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROL

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

ALASKA DEPARTMENT OF LABOR
Division of Labor Standards and Safety

Jim Robison, Commissioner
Department of Labor

Bill Sheffield, Governor

BILL SHEFFIELD
Governor of Alaska

Jim Robison
Commissioner, Department of Labor
P.O. Box 1149, Juneau, Alaska 99802

DIVISION OF LABOR STANDARDS AND SAFETY

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P.O. Box 1546, Kodiak, Alaska 99615

110 Trading Bay, Drawer 1091
Kenai, Alaska 99611

The standards prescribed in this subchapter are effective as of June 30, 1973, as amended February 19, 1984. Alaska safety codes and standards apply to all places of employment. Information relative to the safety codes will be furnished by the above offices.

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04.0102 Asbestos. (a) Definitions, for the purpose of 04.0102.

(1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophylite, and actinolite.

(2) "Asbestos fibers" means asbestos fibers longer than five micrometers.

(b) Permissible exposure to airborne concentrations of asbestos fibers.

(1) Standard effective July 7, 1972. The 8-hour time weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed five fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(e).

(2) Standard effective July 1, 1976. The 8-hour time weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(e).

(3) Ceiling concentration. No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(e).

(c) Methods of compliance.

(1) Engineering methods.

(A) Engineering controls. Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in 04.0102(b).

(B) Local exhaust ventilation

(i) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2-1971, which is incorporated by reference herein.

(ii) See 1910.8 of the Federal Occupational Safety and Health Act concerning the availability of ANSI Z9.2-1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in 04^109.

(C) Particular tools. All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with 04.0102(c)(1)(B).

(2) Work practices.

(A) Wet methods. Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in 04.0102, unless the usefulness of the product would be diminished thereby.

(B) Particular products and operations. No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in 04.0102.

(C) Spraying, demolition, or removal. Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with 04.0102(d)(2)(C) and with special clothing in accordance with 04.0102(d)(3).

(d) Personal protective equipment.

(1) Compliance with the exposure limits prescribed by 04.0102(b) may not be achieved by the use of respirators or shift rotation of employees, except:

(A) During the time period necessary to install the engineering controls and to institute the work practices required by 04.0102(c);

(B) In work situations in which the methods prescribed in 04.0102(c) are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by 04.0102(b); or

(C) In emergencies.

(D) Where both respirators and personnel rotation are allowed by 04.0102(d)(1)(A), (B) or (C), and both are practicable, personnel rotation shall be preferred and used.

(2) Where a respirator is permitted by 04.0102(d)(1), it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 F.R. 6244, Mar. 25, 1972), and shall be used in accordance with 04.0102(d)(2)(A), (B), (C) and (D).

(A) Air purifying respirators. A reusable or single use air purifying respirator, or a respirator described in 04.0102(d)(2)(B) or (C), shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(B) Powered air purifying respirators. A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in 04.0102(d)(2)(C), shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(C) Type "C" supplied-air respirators, continuous flow or pressure-demand class. A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(D) Establishment of a respirator program.

(i) The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2–1969, which is incorporated by reference herein.

(ii) See 1910.6 of the Federal Occupational Safety and Health Act concerning the availability of ANSI Z88.2–1969 and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in 04.0108.

(iii) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, the examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) Special clothing. The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in 04.0102(b).

(4) Change rooms.

(A) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), the employer shall provide change rooms for employees working regularly at the place.

(B) Clothes lockers. The employer shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(C) Laundering.

(i) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in 04.0102(b).

(ii) Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement in 04.0102(d)(4)(C)(i) to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in 04.0102(b).

(iii) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with 04.0102(g).

(e) Method of measurement. All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400–450 X (magnification) (4 millimeter objective) with phase contrast illumination.

(f) Monitoring.

(1) Initial determinations. Within six months of the publication of 04.0102 every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in 04.0102(b). If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with 04.0102(c).

(2) Personal monitoring.

(A) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open- face filter holder. Samples shall be taken for the determination of the 8-hour time weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(B) Sampling frequency and patterns. After the initial determinations required by 04.0102(f)(1), samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than six months for employees whose exposure to asbestos may reasonably be foreseen to exceed the limits prescribed by 04.0102(b).

(3) Environmental monitoring.

(A) Samples shall be collected from areas of a work environment which are representative of the airborne concentration of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(B) Sampling frequency and patterns. After the initial determinations required by 04.0102(f)(1), samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than six months for employees whose exposures to asbestos may reasonably be foreseen to exceed the exposure limits prescribed in 04.0102(b).

(4) Employee observation of monitoring. Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by 04.0102 and shall have access to the records thereof.

(g) Caution signs and labels.

(1) Caution signs.

(A) Posting. Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in 04.0102(b). Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(B) Sign specifications. The warning signs required by 04.0102(g)(1)(A) shall conform to the requirements of 20 inches by 14 inches vertical format signs specified in 02.0105 and to 04.0102(g)(1)(B). The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in 04.0102(g)(1)(B).

Legend	Notation
Asbestos	1 in. Sans Serif, Gothic or Block
Dust hazard	½ in. Sans Serif, Gothic or Block
Avoid breathing dust	¼ in. Gothic
Wear assigned protective equipment	¼ in. Gothic
Do not remain in area unless your work requires it.	¼ in. Gothic
Breathing asbestos dust may be hazardous to your health	14 point Gothic

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) Caution labels.

(A) Labeling. Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b) will be released.

(B) Label specifications. The caution labels required by 04.0102(g)(2)(A) shall be printed in letters of sufficient size and contrast as to be readily visible and legible. The label shall state:

CAUTION

Contains Asbestos Fibers
Avoid Creating Dust
Breathing Asbestos Dust May Cause
Serious Bodily Harm

(h) Housekeeping.

(1) Cleaning. All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) Waste disposal. Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation, airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(i) Recordkeeping.

(1) Exposure records. Every employer shall maintain records of any personal or environmental monitoring required by 04.0102. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) Employee access. Every employee and former employee shall have reasonable access to any record required to be maintained by 04.0102(i)(1) which indicates the employee's own exposure to asbestos fibers.

(3) Employee notification. Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in 04.0102(b) shall be notified in writing of the exposure as soon as practicable but not later than five days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) Medical examinations.

(1) General. The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by 04.0102(j).

(2) Preplacement. The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior–anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_{1.0}$).

(3) Annual examinations. On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior–anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_{1.0}$).

(4) Termination of employment. The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior–anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_{1.0}$).

(5) Recent examinations. No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with 04.0102(j) within the past one-year period.

(6) Medical records.

(A) Maintenance. Employers of employees examined pursuant to 04.0102(j) shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(B) Access. The contents of the records of the medical examinations required by 04.0102(j) shall be made available, for inspection and copying, to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of NIOSH, to authorized physicians and medical consultants of either of them, and, upon the request of an employee or former employee, to his physician. Any physician who conducts a medical examination required by 04.0102 (j) shall furnish to the employer of the examined employee all the information specifically required by 04.0102(j) and any other medical information related to occupational exposure to asbestos fibers.

04.0103 Ventilation. (a) Abrasive blasting.

(1) Definitions applicable to 04.0103.

(A) Abrasive. A solid substance used in an abrasive blasting operation.

(B) Abrasive-blasting respirator. A continuous flow air-line respirator constructed so that it will cover the wearer's head, neck, and shoulders to protect him from rebounding abrasive.

(C) Blast cleaning barrel. A complete enclosure which rotates on an axis, or which has an internal moving tread to tumble the parts, in order to expose various surfaces of the parts to the action of an automatic blast spray.

(D) Blast cleaning room. A complete enclosure in which blasting operations are performed and where the operator works inside of the room to operate the blasting nozzle and direct the flow of the abrasive material.

(E) Blasting cabinet. An enclosure where the operator stands outside and operates the blasting nozzle through an opening or openings in the enclosure.

(F) Clean air. Air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time.

(G) Dust collector. A device or combination of devices for separating dust from the air handled by an exhaust ventilation system.

(H) Exhaust ventilation system. A system for removing contaminated air from a space, comprising two or more of the following elements: (a) enclosure or hood, (b) duct work, (c) dust collecting equipment, (d) exhauster, and (e) discharge stack.

(I) Particulate-filter respirator. An air purifying respirator, commonly referred to as a dust or a fume respirator, which removes most of the dust or fume from the air passing through the device.

(J) Respirable dust. Airborne dust in sizes capable of passing through the upper respiratory system to reach the lower lung passages.

(K) Rotary blast cleaning table. An enclosure where the pieces to be cleaned are positioned on a rotating table and are passed automatically through a series of blast sprays.

(L) Abrasive blasting. The forcible application of an abrasive to a surface by pneumatic pressure, hydraulic pressure, or centrifugal force.

(2) Dust hazards from abrasive blasting.

(A) Abrasives and the surface coatings on the materials blasted are shattered and pulverized during blasting operations and the dust formed will contain particles of respirable size. The composition and toxicity of the dust from these sources shall be considered in making an evaluation of the potential health hazards.

(B) The concentration of respirable dust or fume in the breathing zone of the abrasive-blasting operator or any other worker shall be kept below the levels specified in 04.0101.

SUBCHAPTER 1 - GENERAL SAFETY CODE

ARTICLE 4 - PERSONAL PROTECTIVE EQUIPMENT

01.0401 General requirements. (a) Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremeties, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(b) Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(1) Other personal safety equipment or clothing, such as rubber gloves, rubber boots, leggings, aprons, hand pads, safety belts, life lines, buoyant vests, shall be furnished to the employees who are exposed to hazards where such device may be expected to prevent injury.

(c) Design. All personal protective equipment shall be of safe design and construction for the work to be performed.

(d) Sterilization. Goggles, rubber gloves, respirators and other protectors shall not be interchanged among employees unless they have been sterilized.

01.0402 Eye and face protection. (a) General.

(1) Protective eye and face equipment shall be required where there is a reasonable probability of injury that can be prevented by such equipment. In such cases, employers shall make conveniently available a type of protector suitable for the work to be performed, and employees shall use such protectors. No unprotected person shall knowingly be subjected to a hazardous environmental condition. Suitable eye protectors shall be provided where machines or operations present the hazard of flying objects, glare, liquids, injurious radiation, or a combination of these hazards.

(A) An employer must provide all employees working with acids, protective clothing, as well as any other equipment needed for safety purposes.

(B) Goggles, hard hats, masks, shields, or other prescribed face, eye and head protection shall be worn by employees who are engaged in welding, grinding, torch cutting, snagging or chipping, handling molten metals, caustics, or who are exposed to harmful rays, dust or flying materials of any kind.

(2) Protectors shall meet the following minimum requirements.

(A) They shall provide adequate protection against the particular hazards for which they are designed.

(B) They shall be reasonably comfortable when worn under the designated conditions.

(C) They shall fit snugly and shall not unduly interfere with the movements of the wearer.

(D) They shall be durable.

(E) They shall be capable of being disinfected.

(F) They shall be easily cleanable.

(G) Protectors shall be kept clean and in good repair.

(3) Persons whose vision requires the use of corrective lenses in spectacles, and who are required by this standard to wear eye protection, shall wear goggles of one of the following types:

(A) Spectacles whose protective lenses provide optical correction.

(B) Goggles that can be worn over corrective spectacles without disturbing the adjustment of the spectacles.

(C) Goggles that incorporate corrective lenses mounted behind the protective lenses.

(4) Every protector shall be distinctly marked to facilitate identification only of the manufacturer.

(5) When limitations or precautions are indicated by the manufacturer, they shall be transmitted to the user and care taken to see that such limitations and precautions are strictly observed.

(6) Design, construction, testing, and use of devices for eye and face protection shall be in accordance with American National Standard for Occupational and Educational Eye and Face Protection, Z87.1-1968.

01.0403 Respiratory protection. (a) Permissible practice.

(1) In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective

shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to the following requirements.

(2) Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employees. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protective program which shall include the requirements outlined in 01.0403(b).

(3) The employee shall use the provided respiratory protection in accordance with instructions and training received.

(b) Requirements for a minimal acceptable program.

(1) Written standard operating procedures governing the selection and use of respirators shall be established.

(2) Respirators shall be selected on the basis of hazards to which the worker is exposed.

(3) The user shall be instructed and trained in the proper use of respirators and their limitations.

(4) Where practicable, the respirators should be assigned to individual workers for their exclusive use.

(5) Respirators shall be regularly cleaned and disinfected. Those issued for the exclusive use of one worker should be cleaned after each day's use, or more often if necessary. Those used by more than one worker shall be thoroughly cleaned and disinfected after each use.

(6) Respirators shall be stored in a convenient clean, and sanitary location.

(7) Respirators used routinely shall be inspected during cleaning. Worn or deteriorated parts shall be replaced. Respirators for emergency use, such as self-contained devices shall be thoroughly inspected at least once a month and after each use.

(8) Appropriate surveillance of work area conditions and degree of employee exposure or stress shall be maintained.

(9) There shall be regular inspection and evaluation to determine the continued effectiveness of the program.

(10) Persons should not be assigned to tasks requiring use of respirators unless it has been determined that they are physically able to perform the work and use the equipment. The local physician shall determine what health and physical conditions are pertinent. The respirator user's medical status should be reviewed periodically (for instance, annually.)

(11) Approved or accepted respirators shall be used when they are available. The respirators furnished shall provide adequate respiratory protection against the particular hazard for which it is designed in accordance with standards established by competent authorities. The U.S. Department of Interior, Bureau of Mines, and the U.S. Department of Agriculture are recognized as such authorities. Although respirators listed by the U.S. Department of Agriculture continue to be acceptable for protection against specified pesticides, the U.S. Department of the Interior, Bureau of Mines, is the agency now responsible for testing and approving pesticide respirators.

(c) Selection of respirators. Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.1-1969.

(d) Air quality.

(1) Compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Oxygen shall meet the requirements of the United State Pharmacopoeia for medical or breathing oxygen. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association, Commodity Specification G-7.1-1966. Compressed oxygen shall not be used in supplied-air respirators or in open circuit self-contained breathing apparatus that have previously used compressed air. Oxygen must never be used with air line respirators.

(2) Breathing air may be supplied to respirators from cylinders or air compressors.

(A) Cylinders shall be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR Part 178.)

(B) The compressor for supplying air shall be equipped with necessary safety and standby devices. A breathing air-type compressor shall be used. Compressors shall be constructed and situated so as to avoid entry of contaminated air into the system and suitable in-line purifying sorbent beds and filters installed to further assure breathing air quality. A receiver of sufficient capacity to enable the respirator wearer to escape from a contaminated atmosphere in event of compressor failure, and alarms to indicate compressor failure and overheating shall be in-

stalled in the system. If an oil-lubricated compressor is used, it shall have a high-temperature or carbon monoxide alarm, or both. If only a high-temperature alarm is used, the air from the compressor shall be frequently tested for carbon monoxide to insure that it meets the specifications in 01.0403(d)(1).

(3) Air line couplings shall be incompatible with outlets for other gas systems to prevent inadvertent servicing of air line respirators with nonrespirable gases or oxygen.

(4) Breathing gas containers shall be marked in accordance with American National Standard Method of Marking Portable Compressed Gas Containers to Identify the Material Contained, Z48.1-1954; Federal Specification BB-A-1034a, June 21, 1968, Air, Compressed for Breathing Purposes; or Interim Federal Specification GG-B-00675b, April 27, 1965, Breathing Apparatus, Self-Contained.

(e) Use of respirators.

(1) Standard procedures shall be developed for respirator use. These should include all information and guidance necessary for their proper selection, use and care. Possible emergency and routine uses of respirators should be anticipated and planned for.

(2) The correct respirator shall be specified for each job. The respirator type is usually specified in the work procedures by a qualified individual supervising the respiratory protective program. The individual issuing them shall be adequately instructed to insure that the correct respirator is issued. Each respirator permanently assigned to an individual should be durably marked to indicate to whom it was assigned. This mark shall not affect the respirator performance in any way. The date of issuance should be recorded.

(3) Written procedures shall be prepared covering safe use of respirators in dangerous atmospheres that might be encountered in normal operations or in emergencies. Personnel shall be familiar with these procedures and the available respirators.

(A) In areas where the wearer, with failure of the respirator, could be overcome by a toxic or oxygen-deficient atmosphere, at least one additional man shall be present. Communications (visual, voice, or signal line) shall be maintained between both or all individuals present. Planning shall be such that one individual will be unaffected by any likely incident and have the proper rescue equipment to be able to assist the other(s) in case of emergency.

(B) When self-contained breathing apparatus or hose masks with blowers are used in atmospheres immediately dangerous to life or health, standby men must be present with suitable rescue equipment.

(C) Persons using air line respirators in atmospheres immediately hazardous to life or health shall be equipped with safety harnesses and safety lines for lifting or removing persons from hazardous atmospheres or other and equivalent provisions for the rescue of persons from hazardous atmospheres shall be used. A standby man or men with suitable self-contained breathing apparatus shall be at the nearest fresh air base for emergency rescue.

(4) Respiratory protection is no better than the respirator in use, even though it is worn conscientiously. Frequent random inspections shall be conducted by a qualified individual to assure that respirators are properly selected, used, cleaned and maintained.

(5) For safe use of any respirator, it is essential that the user be properly instructed in its selection, use and maintenance. Both supervisors and workers shall be so instructed by competent persons. Training shall provide the men an opportunity to handle the respirator, have it fitted properly, test its facepiece-to-face seal, wear it in normal air for a long familiarity period, and, finally, to wear it in a test atmosphere.

(A) Every respirator wearer shall receive fitting instructions including demonstrations and practice in how the respirator should be worn, how to adjust it, and how to determine if it fits properly. Respirators shall not be worn when conditions prevent a mask to skin face seal. To assure proper protection, the facepiece fit shall be checked by the wearer each time he puts on the respirator. This may be done by following the manufacturer's facepiece fitting instructions. Conditions which could prevent a mask to skin face seal may be a growth of beard, sideburns, a skull cap that projects under the facepiece, or temple pieces on glasses. Also the absence of one or both dentures can affect the fit of a facepiece. The worker's diligence in observing these factors shall be evaluated by periodic check.

(B) Providing respiratory protection for individuals wearing corrective glasses is a serious problem. A proper seal cannot be established if the temple bars of eye glasses extend through the sealing edge of the full facepiece. As a temporary measure, glasses with short temple bars or without temple bars may be taped to the wearer's head. Wearing of contact lenses in contaminated atmosphere with a respirator shall not be allowed. Systems have been developed for mounting corrective lenses inside full facepieces. When a workman must wear corrective lenses as part of the facepiece, the facepiece and lenses shall be fitted by qualified individuals to provide good vision, comfort, and a gas-tight seal.

(C) If corrective spectacles or goggles are required, they shall be worn so as not to affect the fit of the facepiece. Proper selection of equipment will minimize or avoid this problem.

(f) Maintenance and care of respirators.

(1) A program for maintenance and care of respirators shall be adjusted to the type of plant, working conditions, and hazards involved, and shall include the following basic services:

(A) Inspection for defects (including a leak check.)

(B) Cleaning and disinfecting.

(C) Repair, and

(D) Storage

Equipment shall be properly maintained to retain its original effectiveness.

(2) Inspection of respirators.

(A) All respirators shall be inspected routinely before and after each use. A respirator that is not routinely used but is kept ready for emergency use shall be inspected after each use and at least monthly to assure that it is in satisfactory working condition.

(B) Self-contained breathing apparatus shall be inspected monthly. Air and oxygen cylinders shall be fully charged according to the manufacturer's instruction. It shall be determined that the regulator and warning devices function properly.

(C) Respirator inspection shall include a check of the tightness of connections and the condition of the facepiece, headbands, valves, connecting tube, and canisters. Rubber or

elastomer parts shall be inspected for pliability and signs of deterioration. Stretching and manipulating rubber or elastomer parts with a massaging action will keep them pliable and flexible and prevent them from taking a set during storage.

(D) A record shall be kept of inspection dates and findings for respirators maintained for emergency use.

(3) Routinely used respirators shall be collected, cleaned, and disinfected as frequently as necessary to insure that proper protection is provided for the wearer. Each worker should be briefed on the cleaning procedure and be assured that he will always receive a clean and disinfected respirator. Such assurances are of greatest significance when respirators are not individually assigned to workers. Respirators maintained for emergency use shall be cleaned and disinfected after each use.

(4) Replacement or repairs shall be done only by experienced persons with parts designed for the respirator. No attempt shall be made to replace components or to make adjustment or repairs beyond the manufacturer's recommendations. Reducing or admission valves or regulators shall be returned to the manufacturer or to a trained technician for adjustment or repair.

(5) Storage of respirators.

(A) After inspection, cleaning, and necessary repair, respirators shall be stored to protect against dust, sunlight, heat, extreme cold, excessive moisture, or damaging chemicals. Respirators placed at stations and work areas for emergency use should be quickly accessible at all times and should be stored in compartments built for the purpose. The compartments should be clearly marked. Routinely used respirators, such as dust respirators, may

be placed in plastic bags. Respirators should not be stored in such places as lockers or tool boxes unless they are in carrying cases or cartons.

(B) Respirators should be packed or stored so that the facepiece and exhalation valve will rest in a normal position and function will not be impaired by the elastomer setting in an abnormal position.

(C) Instructions for proper storage of emergency respirators, such as gas masks and self-contained breathing apparatus, are found in "use and care" instructions usually mounted inside the carrying case lid.

(g) Identification of gas mask canisters.

(1) The primary means of identifying a gas mask canister shall be by means of properly worded labels. The secondary means of identifying a gas mask canister shall be by a color code.

(2) All who issue or use gas masks falling within the scope of 01.0403 shall see that all gas mask canisters purchased or used by them are properly labeled and colored in accordance with these requirements before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters have completely served their purpose.

(3) On each canister shall appear in bold letters the following:

(A) Canister for _____
or Type N Gas Mask Canister.

SUBCHAPTER 1 - GENERAL SAFETY CODE

Article 1 - General Safety and Health Considerations

01.0101 Purpose and Scope. (a) This subchapter sets forth the occupational safety and health standards adopted by the Commissioner of Labor for the purpose of providing the Alaskan work force with a healthful and safe place to work.

01.0102 Employer Requirements. (a) The employer shall furnish to each of his employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. This shall be implemented by the employer by complying with these regulations.

(b) The employer shall initate and maintain accident prevention programs for the prevention of occupational illness and disease.

(c) Employers shall display a poster, furnished by the Alaska Department of Labor, in places where notices to employees are generally posted. The poster will outline appropriate provisions of AS 18.60.010 to AS 18.60.105.

01.0103 Employee Requirements. (a) Each employee shall comply with all regulations contained in this chapter which are applicable to his own actions while on the job.

(b) Employees shall conscientiously use all safety devices, procedures, and personal protective equipment required by these regulations.

01.0104 Reporting of Injuries. Occupational injuries shall be reported in accordance with AS 18.60.058.

01.0105 Accident-Prevention Program. (a) Program organization.

(1) Every employer shall start and maintain an accident prevention program. The program shall provide that personnel knowledgeable in the field of occupational safety and health shall make daily inspections of on the job equipment and activities. The employer shall insure that immediate action be taken to eliminate all hazards.

(2) Each employer shall adopt a code of safe practices and procedures which applies to his operation and which embraces the applicable provisions of these regulations. It shall be the obligation of the employer to have the safe practices code posted in a conspicuous location at each job site office.

(3) Each employer shall insure that the supervisory personnel shoulder their share of the responsibility for accidents. It is suggested that a written report be submitted by each supervisor associated with an accident. These reports should suggest a feasible means of avoiding future accidents of a similar nature.

(b) Recommendations.

(1) Each employer should display an interest in safety matters by:

(A) The display of safety posters and warning signs. A sign indicating how many consecutive accident free days have passed is often worthwhile.

(B) Considering the advisability of posting a list of all foremen who have kept their crews accident free for a certain period of time.

(C) Considering the advisability of establishing various forms of safety competition, including suitable rewards or recognition to individuals and crews with good records.

(c) General safety requirements.

(1) Anyone known to be under the influence of intoxicating liquor, narcotics or drugs shall not be allowed on the job while in that condition. Further, horseplay, scuffling, and other acts which tend to have an adverse influence on the safety or well-being of the employees shall be prohibited.

(2) No one shall knowingly be permitted or required to work while his ability and alertness is impaired by fatigue, illness, or other causes that might unnecessarily expose him or others to injury.

STATE OF ALASKA

DEPARTMENT OF LABOR

BILL SHEFFIELD, GOVERNOR

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

January 31, 1985

The Honorable Max Gruenberg
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

In response to your request during the January 25, 1985 hearing on Sponsor Substitute for House Bill No. 5, An Act Establishing an Asbestos Health Hazard Abatement Program, the department is providing you with the following information:

1. A copy of the State and Federal OSHA asbestos regulations dealing with worker protection.

2. We have contacted the states of Maryland and New Jersey which have requirements for certification of asbestos workers and asked them to send us copies of their laws, regulations and guidelines on this subject. We will send you copies as soon as we receive this material. We plan to study these materials to determine what type of guidelines should be adopted in Alaska.

3. There are some private training/consultation firms that will provide, for a fee, training in asbestos handling and abatement that employers could use to certify their workers. During the past 12 months, the department has been contacted by Sam Summeg who represents Polytechnic of 2023-2, Blueberry, Fairbanks, and by Phil Pleasant of 4437 East 7th Avenue, Anchorage, who represents Tenn-Tex Co., Inc. offering to provide asbestos health hazard training.

   We have also contacted Alaska Health Project, a non-profit training and information provider, and they have indicated a willingness to provide such training. Lawrence D. Weiss, Executive Director of Alaska Health project, indicated that his organization would need approximately a $80,000 grant or loan to properly develop such training. According to Mr. Weiss these monies would be needed for front end costs to hire a trainer and to procure the training materials necessary to develop the course. After the course is developed, Alaska Health Project, could recover most of these costs by charging a fee from those attending the course.

07-G6LH

All of the above training would be available to both non-union and union employers and employees.

Several other organizations such as the Association General Contractors (AGC), the Laborer's Union and the Asbestos Workers Union also put on asbestos training. These courses, however, may be available only to members of these organizations. Another potential source of such training is the American Society of Safety Engineers who have sponsored various safety and health training courses in the past.

Also, the department as well as other government agencies such as EPA provide, on a very limited basis, training on asbestos. This training would, of course, be open to all interested persons.

4. We can assure you that all interested parties will have an opportunity to provide recommendations to the department when it develops its guidelines for the certification program. We will need the help of organizations such as AGC to come up with an effective, yet reasonable set of guidelines that will assure the protection of the worker, the student, the teacher, and the public when asbestos is identified and the hazard is abated in Alaska's school buildings.

5. The department will enter into an agreement with EPA so that it can assist school districts to comply with EPA regulations. No revision of the current legislation is required for the department and EPA to enter into such an agreement.

We appreciate the opportunity to work with you on this important bill and if there is any further information you require, please let us know.

Sincerely,

Robert W Jordan, Deputy Comm.

for Jim Robison
Commissioner

Enclosure

TABLE Z-3—MINERAL DUSTS—Continued

Substance	Mppcf[a]	Mg/M³
Amorphous, including natural diatomaceous earth	20	80mg/M³
		%SiO₂
Silicates (less than 1% crystalline silica):		
Mica	20	
Soapstone	20	
Talc (non-asbestos-form)	20[e]	
Talc (fibrous). Use asbestos limit		
Tremolite (see talc, fibrous)		
Portland cement	50	
Graphite (natural)	15	
Coal dust (respirable fraction less than 5% SiO_2)		2.4mg/M³ or 10mg/M³
For more than 5% SiO_2		%SiO_2+2
Inert or Nuisance Dust:		
Respirable fraction	15	5mg/M³
Total dust	50	15mg/M³

NOTE: Conversion factors—mppcf × 35.3 = million particles per cubic meter = particles per c.c.

[a] Millions of particles per cubic foot of air, based on impinger samples counted by light-field technics.

[d] The percentage of crystalline silica in the formula is the amount determined from air-borne samples, except in those instances in which other methods have been shown to be applicable.

[e] Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

[f] Containing <1% quartz; if 1% quartz, use quartz limit.

Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

The measurements under this note refer to the use of an AEC instrument. The respirable fraction of coal dust is determined with a MRE; the figure corresponding to that of 2.4 Mg/M³ in the table for coal dust is 4.5 Mg/M³.

(Secretary of Labor's Order No. 8-76 (41 CFR Part 25059); 29 CFR Part 1911)

[39 FR 23502, June 27, 1974. Redesignated and amended at 40 FR 23073, May 28, 1975; 42 FR 22525, May 3, 1977; 43 FR 2600, Jan. 17, 1978; 43 FR 5963, Feb. 10, 1978; 43 FR 13567, Mar. 31, 1978; 43 FR 19624, May 5, 1978; 43 FR 27394, June 23, 1978; 43 FR 45809, Oct. 3, 1978; 43 FR 53007, Nov. 14, 1978; 43 FR 57602, Dec. 8, 1978; 46 FR 32022, June 19, 1981]

§ 1910.1001 Asbestos.

(a) *Definitions.* For the purpose of this section, (1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(b) *Permissible exposure to airborne concentrations of asbestos fibers*—(1) *Standard effective July 7, 1972.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed five fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(2) *Standard effective July 1, 1976.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) *Ceiling concentration.* No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) *Methods of compliance*—(1) *Engineering methods.* (i) *Engineering controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (a) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2-1971, which is incorporated by reference herein.

(b) See § 1910.6 concerning the availability of ANSI Z9.2-1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in § 1910.100.

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws,

scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with subdivision (ii) of this subparagraph.

(2) *Work practices*—(i) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in paragraph (b) of this section, unless the usefulness of the product would be diminished thereby.

(ii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in paragraph (b) of this section.

(iii) *Spraying, demolition, or removal.* Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with paragraph (d)(2)(iii) of this section and with special clothing in accordance with paragraph (d)(3) of this section.

(d) *Personal protective equipment*—(1) Compliance with the exposure limits prescribed by paragraph (b) of this section may not be achieved by the use of respirators or shift rotation of employees, except:

(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section;

(ii) In work situations in which the methods prescribed in paragraph (c) of this section are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by paragraph (b) of this section; or

(iii) In emergencies.

(iv) Where both respirators and personnel rotation are allowed by paragraphs (d)(1) (i), (ii), or (iii) of this section, and both are practicable, personnel rotation shall be preferred and used.

(2) Where a respirator is permitted by paragraph (d)(1) of this section, it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 F.R. 6244, Mar. 25, 1972), and shall be used in accordance with subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(i) *Air purifying respirators.* A reusable or single use air purifying respirator, or a respirator described in paragraphs (d)(2) (ii) or (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(ii) *Powered air purifying respirators.* A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in paragraph (d)(2)(iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(iii) *Type "C" supplied-air respirators, continuous flow or pressure-demand class.* A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

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(iv) *Establishment of a respirator program.* (*a*) The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2-1969, which is incorporated by reference herein.

(*b*) See § 1910.6 concerning the availability of ANSI Z88.2-1969 and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in § 1910.100.

(*c*) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) Special clothing: The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in paragraph (b) of this section.

(4) Change rooms: (i) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, the employer shall provide change rooms for employees working regularly at the place.

(ii) Clothes lockers: The employer shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(iii) Laundering: (*a*) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of air-borne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(*b*) Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (d)(4)(iii)(*a*) of this section to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(*c*) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with paragraph (g) of this section.

(e) *Method of measurement.* All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400-450 × (magnification) (4 millimeter objective) with phase contrast illumination.

(f) *Monitoring*—(1) *Initial determinations.* Within 6 months of the publication of this section, every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in paragraph (b) of this section. If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with paragraph (c) of this section.

(2) *Personal monitoring*—(i) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) Sampling frequency and patterns. After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than 6 months for employees whose exposure to asbestos may reasonably be foreseen to exceed the

limits prescribed by paragraph (b) of this section.

(3) *Environmental monitoring.* (i) Samples shall be collected from areas of a work environment which are representative of the airborne concentrations of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than 6 months for employees whose exposures to asbestos may reasonably be foreseen to exceed the exposure limits prescribed in paragraph (b) of this section.

(4) *Employee observation of monitoring.* Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by this paragraph and shall have access to the records thereof.

(g) *Caution signs and labels*—(1) *Caution signs*—(i) *Posting.* Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in paragraph (b) of this section. Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(ii) *Sign specifications.* The warning signs required by paragraph (g)(1)(i) of this section shall conform to the requirements of 20" × 14" vertical format signs specified in § 1910.145(d)(4), and to this subdivision. The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in this subdivision.

Legend	Notation
Asbestos	1" Sans Serif, Gothic or Block.
Dust Hazard	1" Sans Serif, Gothic or Block.
Avoid Breathing Dust	1" Gothic.
Wear Assigned Protective Equipment.	1" Gothic.
Do Not Remain In Area Unless Your Work Requires It.	1" Gothic.
Breathing Asbestos Dust May Be Hazardous To Your Health.	14 point Gothic.

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) *Caution labels*—(i) *Labeling.* Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section will be released.

(ii) *Label specifications.* The caution labels required by paragraph (g)(2)(i) of this section shall be printed in letters of sufficient size and contrast as to be readily visible and legible. The label shall state:

CAUTION

Contains Asbestos Fibers

Avoid Creating Dust

Breathing Asbestos Dust May Cause Serious Bodily Harm

(h) *Housekeeping*—(1) *Cleaning.* All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably fore-

seeable use, handling, storage, processing, disposal, or transportation airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(i) *Recordkeeping*—(1) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) *Access.* Employee exposure records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i).

(3) *Employee notification.* Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in paragraph (b) of this section shall be notified in writing of the exposure as soon as practicable but not later than 5 days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) *Medical examinations*—(1) *General.* The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph.

(2) *Preplacement.* The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 × 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(3) *Annual examinations.* On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 × 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(4) *Termination of employment.* The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 × 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(6) *Medical records*—(i) *Maintenance.* Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(ii) *Access.* Records of the medical examinations required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i). These records shall also be provided upon the request to the Director of NIOSH. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer of the examined employee all the information specifi-

cally required by this paragraph, and any other medical information related to occupational exposure to asbestos fibers.

(Secs. 6(b), 8(c) and 8(g) (84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657), the Secretary of Labor's Order 8-76 (41 FR 25059) and 29 CFR Part 1911, Ch. XVII of Title 29)

[39 FR 23502, June 27, 1974. Redesignated at 40 FR 27073, May 28, 1975, and amended at 41 FR 11505, Mar. 19, 1976; 45 FR 35281, May 23, 1980]

§ 1910.1002 Coal tar pitch volatiles; interpretation of term.

[illegible] used in § 1910.1000 (Table Z-1), tar pitch volatiles include the polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum, wood, and other organic matter.

(Sec. 8(g), 84 Stat. 1600, 29 U.S.C. 657)

[39 FR 23502, June 27, 1974. Redesignated and amended at 40 FR 23073, May 28, 1975]

§ 1910.1003 4-Nitrobiphenyl.

(a) *Scope and application.* (1) This section applies to any area in which 4-Nitrobiphenyl, Chemical Abstracts Service Registry Number 92933 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of 4-Nitrobiphenyl.

(b) *Definitions.* For the purposes of this section: (1) "Absolute filter" is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4-Nitrobiphenyl. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) "Closed system" means an operation involving 4-Nitrobiphenyl where containment prevents the release of 4-Nitrobiphenyl into regulated areas, non-regulated areas, or the external environment.

(5) "Decontamination" means the inactivation of 4-Nitrobiphenyl or its safe disposal.

(6) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health, Education, and Welfare to act for the Director.

(7) "Disposal" means the safe removal of 4-Nitrobiphenyl from the work environment.

(8) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4-Nitrobiphenyl which may result in exposure to or contact with 4-Nitrobiphenyl.

(9) "External environment" means any environment external to regulated and nonregulated areas.

(10) "Isolated system" means a fully enclosed structure other than the vessel of containment of 4-Nitrobiphenyl, which is impervious to the passage of 4-Nitrobiphenyl, and which would prevent the entry of 4-Nitrobiphenyl into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) "Laboratory type hood" is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4-Nitrobiphenyl within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) "Open-vessel system" means an operation involving 4-Nitrobiphenyl in an open vessel, which is not in an iso-

04.0102 Asbestos. (a) Definitions, for the purpose of 04.0102.

(1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophylite, and actinolite.

(2) "Asbestos fibers" means asbestos fibers longer than five micrometers.

(b) Permissible exposure to airborne concentrations of asbestos fibers.

(1) Standard effective July 7, 1972. The 8–hour time weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed five fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(e).

(2) Standard effective July 1, 1976. The 8–hour time weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(e).

(3) Ceiling concentration. No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(e).

(c) Methods of compliance.

(1) Engineering methods.

(A) Engineering controls. Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in 04.0102(b).

(B) Local exhaust ventilation.

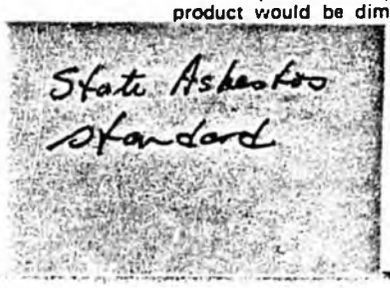
(i) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2–1971, which is incorporated by reference herein.

(ii) See 1910.6 of the Federal Occupational Safety and Health Act concerning the availability of ANSI Z9.2–1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in 04.0109.

(C) Particular tools. All hand–operated and power–operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with 04.0102(c)(1)(B).

(2) Work practices.

(A) Wet methods. Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in 04.0102, unless the usefulness of the product would be diminished thereby.



(B) Particular products and operations. No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in 04.0102.

(C) Spraying, demolition, or removal. Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with 04.0102(d)(2)(C) and with special clothing in accordance with 04.0102(d)(3).

(d) Personal protective equipment.

(1) Compliance with the exposure limits prescribed by 04.0102(b) may not be achieved by the use of respirators or shift rotation of employees, except:

(A) During the time period necessary to install the engineering controls and to institute the work practices required by 04.0102(c);

(B) In work situations in which the methods prescribed in 04.0102(c) are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by 04.0102(b); or

(C) In emergencies.

(D) Where both respirators and personnel rotation are allowed by 04.0102(d)(1)(A), (B) or (C), and both are practicable, personnel rotation shall be preferred and used.

(2) Where a respirator is permitted by 04.0102(d)(1), it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 F.R. 6244, Mar. 25, 1972), and shall be used in accordance with 04.0102(d)(2)(A), (B), (C) and (D).

(A) Air purifying respirators. A reusable or single use air purifying respirator, or a respirator described in 04.0102(d)(2)(B) or (C), shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(B) Powered air purifying respirators. A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in 04.0102(d)(2)(C), shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(C) Type "C" supplied-air respirators, continuous flow or pressure-demand class. A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(D) Establishment of a respirator program.

(i) The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2–1969, which is incorporated by reference herein.

(ii) See 1910.6 of the Federal Occupational Safety and Health Act concerning the availability of ANSI Z88.2–1969 and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in 04.0109.

(iii) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, the examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) Special clothing. The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in 04.0102(b).

(4) Change rooms.

(A) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), the employer shall provide change rooms for employees working regularly at the place.

(B) Clothes lockers. The employer shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(C) Laundering.

(i) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in 04.0102(b).

(ii) Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement in 04.0102(d)(4)(C)(i) to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in 04.0102(b).

(iii) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with 04.0102(g).

(e) Method of measurement. All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400–450 X (magnification) (4 millimeter objective) with phase contrast illumination.

(f) Monitoring.

(1) Initial determinations. Within six months of the publication of 04.0102 every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in 04.0102(b). If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with 04.0102(c).

(2) Personal monitoring.

(A) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(B) Sampling frequency and patterns. After the initial determinations required by 04.0102(f)(1), samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than six months for employees whose exposure to asbestos may reasonably be foreseen to exceed the limits prescribed by 04.0102(b).

(3) Environmental monitoring.

(A) Samples shall be collected from areas of a work environment which are representative of the airborne concentration of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(B) Sampling frequency and patterns. After the initial determinations required by 04.0102(f)(1), samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than six months for employees whose exposures to asbestos may reasonably be foreseen to exceed the exposure limits prescribed in 04.0102(b).

(4) Employee observation of monitoring. Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by 04.0102 and shall have access to the records thereof.

(g) Caution signs and labels.

(1) Caution signs.

(A) Posting. Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in 04.0102(b). Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(B) Sign specifications. The warning signs required by 04.0102(g)(1)(A) shall conform to the requirements of 20 inches by 14 inches vertical format signs specified in 01.1202(d)(4), Subchapter 1, General Safety Code, AOSAHS, and to 04.0102(g)(1)(B). The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in 04.0102(g)(1)(B).

Legend	Notation
Asbestos	1 in. Sans Serif, Gothic or Block
Dust hazard	3/4 in. Sans Serif, Gothic or Block
Avoid breathing dust	¼ in. Gothic
Wear assigned protective equipment	¼ in. Gothic
Do not remain in area unless your work requires it.	¼ in. Gothic
Breathing asbestos dust may be hazardous to your health	14 point Gothic

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) Caution labels.

(A) Labeling. Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b) will be released.

(B) Label specifications. The caution labels required by 04.0102(g)(2)(A) shall be printed in letters of sufficient size and contrast as to be readily visble and legible. The label shall state:

CAUTION

Contains Asbestos Fibers
Avoid Creating Dust
Breathing Asbestos Dust May Cause
Serious Bodily Harm

(h) Housekeeping.

(1) Cleaning. All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) Waste disposal. Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation, airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(i) Recordkeeping.

(1) Exposure records. Every employer shall maintain records of any personal or environmental monitoring required by 04.0102. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Commissioner of Labor, the Director of the Division of Occupational Safety and Health, and to authorized representatives of either.

(2) Employee access. Every employee and former employee shall have reasonable access to any record required to be maintained by 04.0102 (l)(1) and 8 AAC 61.270 which indicates the employee's own exposure to asbestos fibers.

(3) Employee notification. Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in 04.0102(b) shall be notified in writing of the exposure as soon as practicable but not later than five days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) Medical examinations.

(1) General. The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by 04.0102(j).

(2) Preplacement. The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior–anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_{1.0}$).

(3) Annual examinations. On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior–anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_{1.0}$).

(4) Termination of employment. The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior–anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_{1.0}$).

(5) Recent examinations. No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with 04.0102(j) within the past one-year period.

(6) Medical records.

(A) Maintenance. Employers of employees examined pursuant to 04.0102(j) shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(B) Access. The contents of the records of the medical examinations required by 04.0102 (j) shall be made available, in accordance with 8 AAC 61.270 for inspection and copying, to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of NIOSH, to authorized physicians and medical consultants of either of them, and, upon the request of an employee or former employee, to his physician. Any physician who conducts a medical examination required by 04.0102 (j) shall furnish to the employer of the examined employee all the information specifically required by 04.0102 (j) and any other medical information related to occupational exposure to asbestos fibers.

04.0103 Ventilation. (a) Abrasive blasting.

(1) Definitions applicable to 04.0103.

(A) Abrasive. A solid substance used in an abrasive blasting operation.

(B) Abrasive-blasting respirator. A continuous flow air-line respirator constructed so that it will cover the wearer's head, neck, and shoulders to protect him from rebounding abrasive.

(C) Blast cleaning barrel. A complete enclosure which rotates on an axis, or which has an internal moving tread to tumble the parts, in order to expose various surfaces of the parts of the action of an automatic blast spray.

(D) Blast cleaning room. A complete enclosure in which blasting operations are performed and where the operator works inside of the room to operate the blasting nozzle and direct the flow of the abrasive material.

(E) Blasting cabinet. An enclosure where the operator stands outside and operates the blasting nozzle through an opening or openings in the enclosure.

(F) Clean air. Air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time.

(G) Dust collector. A device or combination of devices for separating dust from the air handled by an exhaust ventilation system.

(H) Exhaust ventilation system. A system for removing contaminated air from a space, comprising two or more of the following elements: (a) enclosure or hood, (b) duct work, (c) dust collecting equipment, (d) exhauster, and (e) discharge stack.

(I) Particulate-filter respirator. An air purifying respirator, commonly referred to as a dust or a fume respirator, which removes most of the dust or fume from the air passing through the device.

(J) Respirable dust. Airborne dust in sizes capable of passing through the upper respiratory system to reach the lower lung passages.

(K) Rotary blast cleaning table. An enclosure where the pieces to be cleaned are positioned on a rotating table and are passed automatically through a series of blast sprays.

(L) Abrasive blasting. The forcible application of an abrasive to a surface by pneumatic pressure, hydraulic pressure, or centrifugal force.

(2) Dust hazards from abrasive blasting.

(A) Abrasives and the surface coatings on the materials blasted are shattered and pulverized during blasting operations and the dust formed will contain particles of respirable size. The composition and toxicity of the dust from these sources shall be considered in making an evaluation of the potential health hazards.

(B) The concentration of respirable dust or fume in the breathing zone of the abrasive-blasting operator or any other worker shall be kept below the levels specified in 04.0101.

Asbestos Abatement Fact Finding Committee

I Introduction

Commissioner Robison to satisfy many petitions to approve asbestos abatement training programs, such as described by the following excerpt from a "Request for Proposals" by the Municipality of Anchorage:

> "Contractor shall provide notarized certification by name and social security (number) certifying that all employees involved in asbestos removal have been thoroughly instructed through an Asbestos Removal Training Program as approved by the State of Alaska Department of Labor in the hazards of exposure to asbestos fibers; proper care and use of protective clothing; decontamination procedures and all other conditions and requirements as reviewed under relevant DOSH, EPA, and OSHA standards."

and a response by the purchasing officer to the members of the request for proposal evaluating committee to wit: That eight of the nine proposers offered training programs of varying scope and strength. "Not withstanding inferences to the contrary, no federal, state, or municipal guidelines exist against which specific training programs can be objectively evaluated. Absent such guidelines, the adequacy of individual programs remain in question."

The Commissioner recognizing the need as identified above and his responsibility to lead the way in this critical area of worker safety and health, appointed our industry (government, labor and management) task force to act as a fact finding committee for asbestos abatement and related problems.

The committee represents all aspects of this industry with over 125 years combined experience in asbestos-related work.

The committee includes:

1. Chair, Ambrose Bittner - State Director
   U.S. Department of Labor - Bureau of Apprenticeship and Training; Member, Alaska Safety Advisory Council

2. Co-Chair, Ron Cunningham - Safety and Health Director
   Alaska General Construction Company
   Member AGC Safety Committee

3. Ray Jorgensen - Chief of Industrial Health Compliance
   Alaska Department of Labor, Division of Labor Standards and Safety, Occupational Safety and Health Section

4. Dan Middaugh - Member Asbestos Workers Local 97
   Joint Apprenticeship and Training Committee
   Asbestos Abatement Instructor
   President, Board of Directors, Alaska Health Project

5. Leonard Limtiaco - Occupational Safety & Health Manager
   U.S. Department of Labor, Occupational Safety and
   Health Administration

6. Joe Churchill - Manager
   E. J. Bartell Company
   Secretary - Asbestos Workers Joint Apprenticeship and
   Training Committee
   President, Alaska Chapter, Western Insulation
   Contractors Association
   Secretary-Treasurer - Western Insulation Contractors
   Association

7. Les Lauinger - Training Director
   AGC - Laborers Training Trust
   Instructor - Asbestos Abatement

8. Nancy Cannington - Special Assistant to the Commissioner
   Executive Assistant - Alaska Safety Advisory Council

The Committee in its collective wisdom did not attempt to reinvent a wheel, but rather outline and describe existing practices and procedures. The committee report outlines procedures and programs to deal with the safety and health concerns of those involved in an asbestos abatement project.

Our report follows.

II Scope

This report is intended to describe recommended rules which are in existence and to establish minimum content for an acceptable training program, provide for certification of trainers, recognition of trainers, and to establish the requirements for a presurvey and provide disposal procedures while performing demolition, removal, enclosure, remodeling and disposal of asbestos contaminated materials.

III Asbestos Abatement Safety and Health Standards, Rules and Regulations

A. Agencies

There are many regulations that must be followed to implement an effective asbestos abatement program. There are, for the most part, four agencies that are responsible for administering asbestos related regulation:

1. U.S. Environmental Protection Agency (EPA)

2. Alaska Department of Environmental Conservation (DEC)

3. U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

4. Alaska Department of Labor, Labor Standards and Safety Division, Occupational Safety and Health Section (DOSH)

B. Regulations

EPA and DEC regulation covers non-work related exposures, transportation and disposal of asbestos containing material. Municipalities have set up procedures and areas for the disposal sites. Virtually all of the OSHA regulations are mirrored by DOSH regulation. The State Department of Labor has enforcement jurisdiction at most places of employment in Alaska (exceptions are navigable water ways and federal/ military employees). The regulations and/or industry standards are:

1. EPA 40 CFR Part 61 Subpart M

The Environmental Protection Agency's 40 CFR Part 61 is the national emission standard for hazardous air pollutants. Subpart M is the national emission standard for asbestos.

2. Occupational Safety and Health Standards Subchapter 4, Article 1, Occupational Health and Environmental Control (OH & EC)

Occupational SAfety and Health Standards Subchapter 4, Article 1, Occupational Health and Environmental Control (OH & EC) Section 04.0102 specifically lists the requirements to abate exposure to asbestos. It defines the permissible exposure to airborne concentrations of asbestos fibers, methods of compliance, monitoring and medical records.

3. Occupational Safety and Health Standards Subchapter/General Safety and Health Code (GSC) Articles/Section 01.0101 to Article 15

   Occupational Safety and Health Standards Subchapter/General Health Safety Code Articles/ Section 01.0101 to Article 15.15.0101(j)(14) lists the requirements for establishing an accident prevention program, work platforms, hazardous materials and operations, personal protective equipment including respiratory protection, medical and first aid, fire protection, etcetera on to hazard communication (the right to know and be informed of hazardous substances in the work places).

4. 30 CFR Part II (37F.R. 6244, Mar. 25, 1972)

   Provides for the approval of respirators by NIOSH.

5. Alaska Statutes (AS) Section 1860.010-18.60.105

   Alaska Statutes Secs. 18.60.010-18.60.105 Alaska Department of Labor, Division of Labor Standards and Safety "Prevention of Accident and Health Hazards". This statute lists the duties of the Department of Labor. Some of the duties described enable the Department of Labor to (a) plan and execute safety programs, including educational campaigns, (b) establish and enforce occupational safety and health standards, (c) participate in occupational safety and health programs, and (d) assist employers to identify and obtain information on toxic and hazardous substances and develop employee education programs.

6. Alaska Administrative Code (AAC) Title 8 8AAC60.010-8AAC 80.010.

   Alaska Administrative Code Title 8 8AAC60.010-8AAC80.010 Alaska Department of Labor Division of Labor Standards and Safety charge the division with the responsibility and the authority to:

   a. Enforce all laws and lawful orders requiring work and work places to be safe and healthful;

   b. Investigate disabling or fatal occupational injuries and illnesses;

   c. Develop occupational safety and health standards which, after adoption, have the affect of law and,

d. Establish special orders, or rules and regulations, to cover a specific place of employment or process or work.

Section 8 AAC 61.270 provides for the access to records of employee's past or present exposure to toxic substances or harmful physical agents and job duties or working conditions by the Department of Labor and employees or their representatives.

7. American National Standards (ANSI) 288.2-1969 and 1980 are adopted by reference in the GSC and OH & EC.

American National Standards 288.2 - 1969 and 1980 cover the use of respiratory protection.

288.2 - 1980 section 7.2 requires the respirator issuer and wearer be given adequate training by a qualified person and describes training subjects (topics).

288.2 - 1969 section 7.4 requires the supervisors and workers be so instructed by competent persons and lists minimum training (topics).

American National Standards 29.2 - 1971 addresses the design and operation of local exhaust systems required to control exposure to asbestos.

In addition to enforced regulations, the agencies have enforcement policies and regulation interpretations that affect the owner/operator, contractor/employer, and worker/employee of asbestos abatement/compliance programs.

IV Asbestos Abatement Project Responsibilities

A review of the standards and regulations in Section III of this report revealed a need for the assignment of specific responsibilities of owners/operators, contractors/employers and workers/employees prior to the initiation or commencement of work on any asbestos abatement project. Therefore, this Fact Finding Committee has determined that specific responsibilities be assigned:

A. Owners/Operators

1. Ensure that a survey is conducted to identify the presence of asbestos materials and the actual location of these materials prior to the preparation of bid specifications for the abatement project.

2. Include in the bid specifications the designated disposal site and methods/procedures for disposal.

3. Provide in the bid specifications the requirements for inspection and monitoring of the work performance during the abatement project.

B. Contractor/Employer

1. Provide a skilled workforce of qualified workers who have received safety and health training prior to commencement of any asbestos abatement work.

2. Provide adequate material and equipment to safely perform the asbestos abatement project such as: approved respirators, personal protective equipment and clothing, work clothing change rooms, disposal packaging materials and monitoring equipment. (Reference - Attachment 1)

3. Ensure that trainers/instructors and supervisors are familiar with Safety and Health Rules and Regulations and Environmental Protection Agency Standards.

4. Provide a written training program for workers and maintain documentation of the completed training of each worker.

C. Workers/Employees

1. Be familiar with and abide by Safety and Health requirements and procedures when working with asbestos materials.

2. Be familiar with personal protective equipment and ensure that equipment and protective clothing are used and worn when working with asbestos materials.

V Recommended Procedures for Abatement Projects

In Alaska, the magnitude of the asbestos problem is just now being uncovered. Recently, many of our schools, military structures, and other public and private buildings have been found to contain asbestos. Legislation has been introduced this year to determine in more detail the extent of the asbestos problem in Alaska. At issue is the actual and potential dangers from "intermittent" asbestos exposure Alaskan construction workers face as they remodel and/or demolish these structures. In order to combat this problem and prevent future unsuspected asbestos exposure to Alaskan

workers, a proper survey of any building and plant prior to remodel or demolition is the most important first step.

Such a survey would check all materials in a building or plant that are known to possibly contain asbestos. Materials found to contain asbestos would then be charted as to type and amount (percentage) of asbestos present. This would allow the survey personnel to recommend removal/handling techniques to keep exposure at a minimum. (Reference Attachment 2)

A. Owner/Operator

1. Have survey performed by appropriate agency. (Reference Attachment 3)

Only properly trainined personnel should pre-survey remodel/demolition operations for asbestos-bearing materials. Survey personnel must be familiar with building construction, as well as be acquainted with all materials that may contain asbestos. Such persons should be capable of locating the suspect materials, collecting bulk samples, checking the samples and following them through the lab procedure and making recommendation on how to handle these materials during demolition/remodel.

The training of survey technicians is very important. These persons are the key in preventing unnecessary exposure to asbestos. Survey personnel must be proficient in self protection, removal, encapsulation, monitoring, lab techniques, basic building construction and identification of asbestos bearing materials.

2. Disposal Site

It is recommended that each owner/operator be required to identify, in the bid specifications of all asbestos abatement projects, the location of the disposal site and provide disposal procedures to include as a minimum : (Reference Attachment 3)

a. The geographical area or locale which the disposal facility will accept materials from.

b. The time and dates that the facility will accept asbestos materials for disposal.

c. Procedures for making arrangements for disposal to include contact points and telephone numbers.

d. Procedures for packaging, transporting, labeling and processing of the materials for acceptance at the disposal facility.

3. Specifications for Worker Safety-Health and Environmental Concerns.

The following general specifications are recommended for demolition, removal, disposal, enclosure and remodeling of asbestos abatement projects. If these recommended specifications are incorporated into contracts and strictly enforced, the exposure of asbestos to both public and employees will avoid unsafe and unhealthful exposures. Contractors must receive training and must train their workers in safe work practices. Owners/operators of buildings must identify projects with asbestos contained materials prior to issuance of bids. (Reference Attachment 4)

a. Regulations

Contractors shall comply with the requirements of the EPA regulations, OSHA regulations on asbestos, and any applicable State and Local Government regulations which are incorporated by reference.

b. Scope of Work

1. The contractor shall furnish all labor, materials, services, insurance, and equipment necessary to carry out the operation in accordance with the EPA and OSHA regulations (and any applicable State and Local Government regulations).

2. The contractor shall be responsible for obtaining approval for a waste disposal site in compliance with section 61.25 of the EPA regulations.

3. Contractors shall post the EPA, OSHA, State DOSH and any applicable Local Government regulations at the job site.

c. Workers Protection (any and all personnel entering contaminated area)

1. The contractor shall provide workers with approved respirators as determined by the exposure level (filtration or air supplied) as applicable. The contractor shall provide a sufficient quantity of filters approved for asbestos so that workers can change filters

during the work day. Filters shall not be used any longer than one (1) work day. The respirator filters shall be stored at the job site in the change room and shall be totally protected from exposure to asbestos prior to their use.

2. Workers shall always wear a respirator properly fitted on the face in the work area.

3. Contractors shall instruct and train workers in proper respirator use.

4. Workers shall wear disposable, full-body coveralls and disposable head and foot wear in the work area. Footwear may be disposable. Non-disposable footwear shall be left in the work area at all times until disposal at job completion.

5. The contractor shall set up a decontamination facility to include a shower outside of the work area. (Example: Reference Attachment 5)

6. All workers without exception shall:

   a. Remove street clothes in the change room and put on the disposable coveralls and head covers and respirator before entering the work area.

   b. Remove the disposable coveralls, head covers and footwear in the work area before leaving the work area. Still wearing their respirators, proceed to the showers and remove their respirators while showering with soap and water.

   c. Shower at the end of each day's work before entering the change room to change into street clothes.

7. Workers shall not eat, drink, smoke, chew gum, or chew tobacco in the work area. To eat, drink or smoke, workers shall remove the disposable work clothes and footwear in the work area before leaving the work area. Still wearing their respirators, workers shall proceed to the showers and remove respirators while showering with soap and water. Workmen shall then dress into new, clean, disposable coverall to eat, smoke, or drink. The new coverall can be worn to reenter the work area.

8. The contractor shall provide a respirator and disposable coveralls, head cover, and footwear to any official representative who inspects the job site.

9. All persons entering the work area shall wear an approved respirator and disposable coveralls, head cover, and footwear.

d. Work Area Preparation

1. The Contractor shall set up a decontamination facility outside of the work area which will consist of a change room, shower area, and equipment area. (Reference Attachment 5)

2. The contractor shall isolate the work area for the duration of the work by completely sealing off all openings and fixtures in the work areas including, but not limited to, heating and ventilation ducts, doorways, corridors, windows, skylights, and lighting with plastic sheeting taped securely in place.

3. The contractor shall build double barriers of plastic sheeting at all entrances and exits to the work area so that the work area is always closed off by one barrier when workers enter or exit.

4. All floor and wall surfaces in the work area shall be covered with plastic sheeting taped securely in place to protect from water damage (or damage by sealants).

5. Before the work has begun, the contractor shall wet clean all removable items and equipment, remove them from the work area, and then return these items and equipment to the work area after the job has been completed and the area has been decontaminated.

6. The contractor shall cover all non-removable items and equipment in the work area with plastic sheeting taped securely in place.

7. After work area isolation the contractor shall take out detachable electrical heating, ventilation equipment, and other items located on the asbestos material, clean them before covering with plastic sheeting taped securely in place, and return them to their proper places after the job has been completed and the work area has been decontaminated.

8. The contractor shall remove all heating, ventilation, and air conditioning system filters, pack them in sealable plastic bags (6-mil minimum) for burial in the approved waste disposal site and replace them with new filters.

9. The contractor shall establish emergency and fire exits from the work area. Emergency procedures shall have priority.

e. Method of Removal

1. The asbestos material shall be sprayed with water containing a wetting agent to enhance penetration. A fine spray of the amended water shall be applied to reduce fiber release preceeding removal of the asbestos material. The material shall be sufficiently saturated to prevent emission of airborne fibers in excess of the exposure limits prescribed in the OSHA and State regulations referenced in these specifications.

2. The asbestos material shall be removed in small sections by two-man teams on staging platforms. Before beginning the next section, the material shall be packed while still wet into sealable plastic bags (6-mil minimum) and placed into fiber or metal drums or skips for transport. Bags, drums, and skips shall be marked with the OSHA/State DOSH label prescribed by the OSHA/State DOSH regulations referenced in these specifications. The outside of all containers shall be clean before leaving the work area.

3. All plastic sheeting, tape, cleaning material, clothing and all other disposable material or items used in the work area shall be packed into sealable plastic bags (6-mil minimum) and placed into metal or fiber drums or skips for transport. The drums and skips shall be marked with the OSHA/State DOSH label prescribed by the OSHA/State DOSH regulations referenced in these specifications.

4. The contractor shall transport the sealed drums or skips to the approved waste disposal site. The sealed plastic bags may be dumped from the drums into the burial site unless the bags have been broken or damaged. The damaged bags shall be left in the drum and the entire contaminated drum shall be buried. Uncontaminated drums may be recycled.

5. As a highly recommended engineering control method and as an industrywide practice whenever feasible, HEPA filtered air exhaust should be used to create a negative pressure and allow for thorough cleanup.

f. Decontamination of Work Area

1. The contractor shall completely decontaminate all tools before removal from work area. The contractor shall clean all surfaces with a HEPA filtered vacuum (HEPA - High Efficiency Particulate Absolute) and/or water. (HEPA vacuums fail when used on wet material.) After cleaning the work area, the contractor shall wait 24 hours to allow for settlement of dust and then wet-clean all surfaces in the work area. After completion of wet-cleaning and when all surfaces are completely, dry, the contractor shall take two air samples, minimum six hours duration each, within 48 hours and 24 hours apart. Such air samples shall be taken while activities normal to the use of the area are simulated i.e., sweeping floor, dusting counters, vacuuming with standard vacuum, air handling system functioning, or any other air disturbing activity that would normally take place in the area after takeover by owner/operator.

2. If the air samples results show that the work area has not been decontaminated, the contractor shall repeat the cleaning and air monitoring until the work area is in compliance.

3. After the work area is found to be in compliance, all entrances and exits are unsealed and the plastic sheeting, tape, and any other trash and debris is disposed of in sealable plastic bags (6-mil minimum) and buried in the approved waste disposal site.

g. Air Monitoring

1. Air monitoring shall be conducted by a certified agency/laboratory to ensure compliance with the OSHA/State DOSH regulations.

2. Air monitoring will be conducted according to the method prescribed by OSHA/State DOSH regulations.

3. Air monitoring shall be performed to provide the following samples during the period of asbestos operations.

Area to be Sampled	Minimum Number of Samples for each Work Day	Each Sample Minimum Time
Work Area	2	6 Hrs.
Personnel	Each Job Title	6 Hrs.
Outside Building	1	6 Hrs.
Outside Work Area	1	6 Hrs.

B. Contractor/Employer

1. Provide Asbestos Abatement Training Program

The Committee recommends a minimum three-day asbestos training program, as outlined in Attachment 6.

2. Provide Qualified Supervisors and Instructors

The Committee recommends the following minimum requirements:

a. Recognize distinction between legal vs. recommended practices.

b. Capable of reading analyses between bulk and air samples.

c. Know requirements of OSHA, State DOSH, EPA and DEC in regards to asbestos.

d. Knowledge of jurisdictional issues between regulatory agencies listed in item C.

e. Knowledgeable in respirator requirements.

C. Worker/Employee

1. The employee should receive instruction pertaining to aforementioned training. (Health effects, respirator program, abatement procedures, engineering controls, waste disposal, and any applicable regulations.)

2. Follow procedures outlined in the training program.

3. Participate in on-the-job safety meetings.

4. Work with the contractor to identify and participate in any corrective actions deemed necessary.

5. Avoid shortcuts in work procedures involving safety.

6. Be a productive and safe worker by following recommended practices.

VI. Conclusions - Committee Recommendations to the Commissioner

1. Require pre-surveys for asbestos containing materials in demolition and remodeling projects. Pre-survey should be performed by competent person using a check list of prominent asbestos containing materials.

2. Identify appropriate sites and provide operational guidelines for disposal of asbestos containing materials consistent with VA2, page 7.

3. Adopt minimum training standards for asbestos abatement (Reference Attachment 6)

4. Establish instructor qualifications for Asbestos Abatement training (Reference VB2, page 8)

5. Require workers to successfully complete minimum training program prior to employment in hazardous or contaminated work areas, (Reference VC2 Page 9)

We further recommend that the Commissioner adopt certification procedures for standards of training, instructor qualifications and worker skills.

Respectfully Submitted:

Ambrose Britton II — Chairman

Ronald E. Cunningham — Co-Chairman

Daniel McClanahan — Member

Lloyd L. Churchill — Member

Leslie H. Jennings — Member

Leonardo P. Fuentes — Member

Raymond L. Jefferson — Member

Nancy E. Carrington — Member

Attachment 1

ASBESTOS ABATEMENT

EQUIPMENT MANUFACTURERS

Mention of trade names of specific products does not constitute endorsement by the committee.

1. High Efficiency Particulate Air (H.E.P.A.) Vacuum

    a. Nilfisk
    b. Pullman-Holt

2. Protective Clothing

    a. Durafab
    b. Tyviek
    c. Best Manufacturing

3. Respirators

    a. Filtered Face Masks

        1. HSC
        2. Norton
        3. Wilson

    b. Self Contained Air Supplied Systems

        1. 3M
        2. Aqualung-Safety Division
        3. Scott

    c. Grade "D" Air Supplied Systems

        1. Racal
        2. Scott

4. Negative Air Pressure Systems With H.E.P.A. Filters

    a. Nilfisk
    b. Pullman-Holt

5. Removal Bags

    a. Profo
    b. Durafab
    c. Safe-T-Strip

6. Disposal Bags

    a. Profo
    b. Associated Bag
    c. DuraFab

ASBESTOS ABATEMENT

EQUIPMENT MANUFACTURERS

7. Warning Signs

   a. Sa-So
   b. National Marker Co.

8. Decontamination Trailers

   a. Mators Mobile Detox

9. Surfactant Wetting Application Sprayer

   a. Hudson

ASBESTOS ABATEMENT

EQUIPMENT SUPPLIERS

Sahlberg Equipment Inc.
1702 Ship Ave.
Anchorage, Alaska 99501

E. J. Bartells Co.
601 Whitney Rd.
Anchorage, Alaska 99501

Reynolds Equipment Co., Inc.
1537 E 5th Ave
Anchorage, Alaska 99501

Safety and Supply Co.
901 Orca
Anchorage, Alaska 99502

EQUIPMENT NEEDED FOR ASBESTOS ABATEMENT

1. On Site Decontamination

   a. Portable Trailer
   b. Visqueen Enclosure

2. Scaffolding

3. Showers

4. H.E.P.A. Vacuum

TOOLS REQUIRED

1. Saws

2. Nippers (Wire Cutters)

3. Scissors

4. Scrapers

5. Knife and Sharpener

MATERIALS NEEDED

1. Framing Lumber

2. Visqueen Walls and Ceilings 4 Mil; Floors 6 Mil

3. Respirators

4. Protective Clothing

5. H.E.P.A Filters

6. Removal and Disposal Bags

7. Warning Signs

8. Tape

Attachment 2

ASBESTOS ABATEMENT
WHERE TO LOOK IN A BUILDING FOR ASBESTOS BEARING MATERIALS

1. Floors

   Vinyls
   Linoleum
   Underlayment for Sheet Type Flooring

2. Ceilings
   Accoustic Tiles
   Sprayed/Non-Sprayed Textures
   Paints

3. Outer Walls (Outside)

   Sidings

4. Above Ceilings

   Sprayed Fireproofing
   Insulation Products - Asbestos Insulation
   Asbestos Insulation Cement, i.e., Grease Ducts
   Mud Fittings, Mud Seams on Air Ducts with Canvas
   Covers Over Insulation

5. Walls

   Drywall Seam Filler (Taping Mud)
   Asbestos Wallboard (Cement Asbestos Board)
   Asbestos Millboard (At Fireplaces or Around Furnaces)
   Paints (Masonry or Concrete Filler Type)
   Wall Texture
   Felt Type Vapor Barriers (Under Drywall)
   Chalkboards (Schools)
   Plaster

6. Mechanical Rooms

   Electrical Switchboards
   Insulations on any Mechanical Appliance or Piping System
   Mud Seams on Ductwork with Canvas over Insulation
   Insulation on Flues
   Insulation on Emergency Generator
   Exhaust Systems

7. Roofs

   Fire Retardant Cedar Underlayment
   Shingles
   Felt Type Vapor Barrier
   Built-Up Roofing Membrane
   Roofing Felt
   Asphalt/Asbestos Roof Coatings

8. Laboratories

   Furniture
   Hoods/Vents for Corrosive Chemicals
   Gas Vapor Ducts for Corrosive Compounds
   Table Pads/Heat Protective Mats
   Fire proof Draperies

9. Theaters

   Curtains
   Sprayed Accoustic Materials

Attachment 3

MUNICIPALITY OF ANCHORAGE
SOLID WASTE SERVICES

OPERATIONS PROCEDURE

TITLE: ASBESTOS DISPOSAL

EFFECTIVE DATE:

1. Only asbestos generated within the Municipality will be accepted for disposal.

2. Asbestos will be accepted at the Merrill Field Landfill on a scheduled basis. (The time and dates will be established by the department.)

3. Prior arrangements, by the asbestos generator/disposer, will be made with the Processing and Disposal General Foreman before asbestos is accepted.

4. Asbestos must be transported, packaged, and marked in accordance with all federal, state, and municipal regulations. These regulations include, as a minimum:

   -transport in a closed vehicle
   -asbestos must be thoroughly wetted and placed in a water tight container before burial. Containers may be barrels, drums, or doubled 6 mil or thicker plastic bags. All asbestos containers will display the following label:

   CAUTION
   CONTAINS ASBESTOS
   AVOID OPENING OR BREAKING CONTAINER
   BREATHING ASBESTOS IS HAZARDOUS TO YOUR HEALTH

   -all containers will be hand placed in designated area.
   -any asbestos containers determined by Solid Waste Services to be inadequate will be repackaged or removed, by the disposer, from the Merrill Field Landfill immediately.

5. All asbestos will be covered on a daily basis by at least six inches of soil.

6. Cost for disposal of asbestos will be based on actual time and materials and will include but not be limited to equipment rental, equipment operator's time, administrative time and cover material as required.

Attachment 4

GENERAL INSTRUCTIONS AND GUIDELINES FOR ASBESTOS REMOVAL

1. Notify proper authorities of intent to remove asbestos

2. Seal off work area, put up caution signs and build change areas and transition area.

3. If possible, have adequate "wet down" water supply available. If a pressure system is not available, provide sprayer cans.

4. Provide each employee with duplicate copies of the Asbestos Removal Instructions. Retain employee-signed copy in files.

5. Have all equipment necessary, i.e., disposable coveralls, respirators, etc., available.

6. Have air monitoring equipment in position.

7. Proceed with the removal and bagging procedure.

8. Dispose of waste. The dump area should be checked out prior to actual haouling to be sure it will accept asbestos waste.

9. Provide to each employee, by hand or mail, duplicate copies of the medical examination form. Retain employee-signed copy in files.

10. Records of all medical examinations shall be retained for the required 20 years storage.

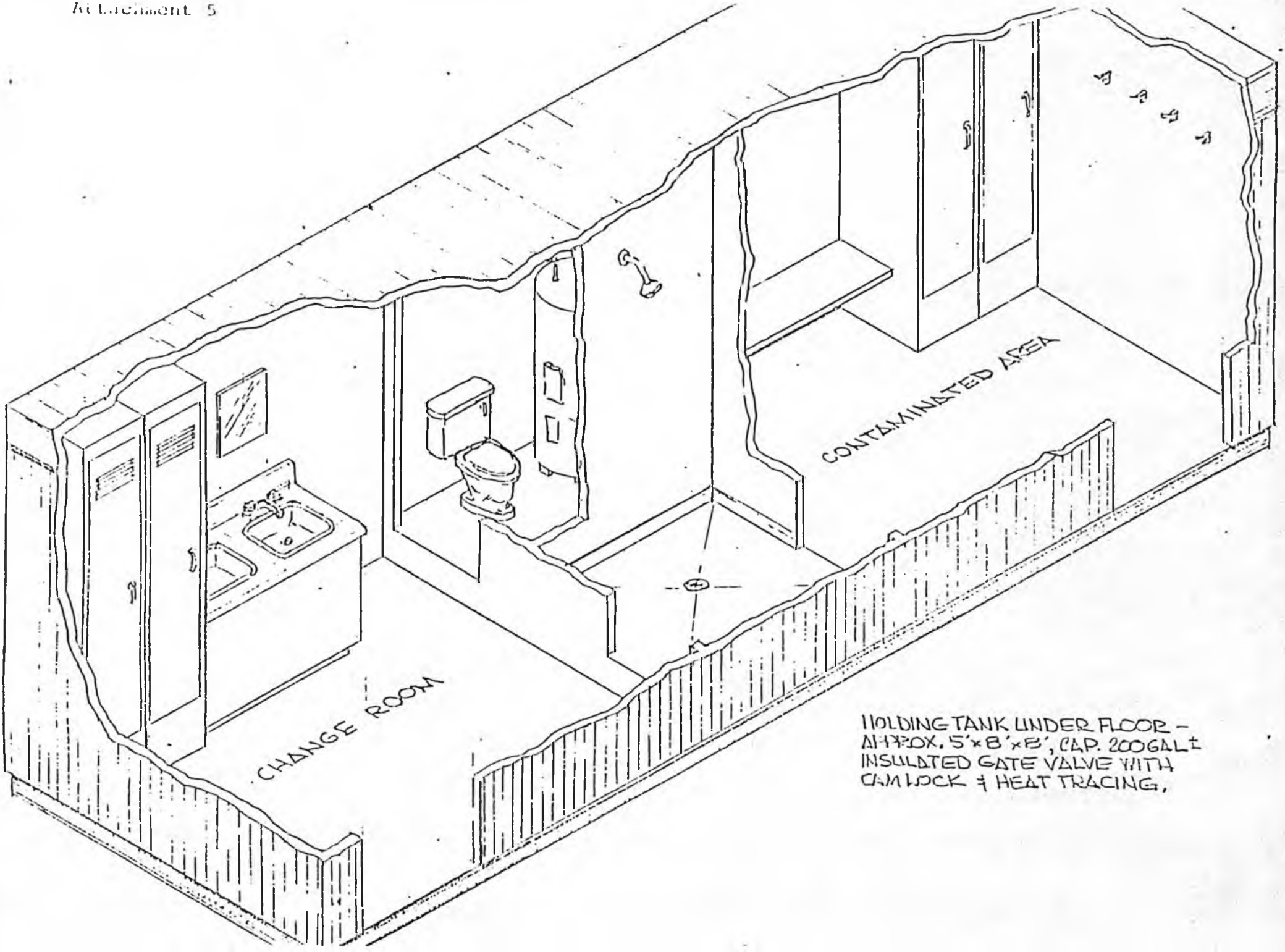
11. Monitoring records will also be retained for the required 20 years storage.

12. Any employee found to have been exposed to airborne concentrations of asbestos fibers in excess of the limits set in paragraph (b) of the)SHA standards shall be notified in writing within five (5) days.

13. The key to a successful operation is the keep the fiber count down. This means containment of the fibers either by water or encapsulation.

14. Check local EPA or State requirements.

Attachment 5



Attachment 6

MINIMUM ASBESTOS ABATEMENT TRAINING

DAY 1

8:00 - 12:00	INTRODUCTIONS - Asbestos History Health Affects (Lecture, film, slides, materials, speakers) "More Than A Paycheck" "A Way To A Dusty Death"
12:30 - 1:30	Federal Asbestos Standards State Asbestos Standards (Each Student Should Receive A Copy Of The Current Standards And The Class Should Go Through It In Its Entirety)
1:30 - 3:30	Respirator Protection/Standards (Different Types, Uses, Fit Testing, What A Respirator Program Consists Of, Filters, Maintenance)
3:30 - 4:30	Respirator Lab (Part Of The Class Does Fit Testing With Different Masks)

MINIMUM ASBESTOS ABATEMENT TRAINING

DAY 2

8:00 - 12:00	Engineering Controls
	(Lowering Fiber Count With Encapsulation, Negative Air Pressure, HEPA Vacuums, Decontamination Rooms, Protective Clothin Wet Methods, House Keeping.)
12:30 - 1:30	Air Monitoring
	(Instructional Film, Practical Applicatio:
1:30 - 2:30	Work Area Preparation - Hazard Recognitio:
	(Taping, Planning, Draw Schematic of Actu Work Site) Ask Students to Outline How T Proceed With This Particular Project.
2:30 - 3:30	Waste Disposal
	(EPA Regulations, Labeling, Double Baggin Land Fills)
3:30 - 4:30	Respirator Fit Testing
	(Other Half of Group Doing Fit Testing Wi Different Masks)

MINIMUM ASBESTOS ABATEMENT TRAINING

DAY 3

8:00 - 10:00	Working With Scaffolding (Setting Up, Tearing Down, Safety Regulation, Asbestos Abatement Applicatior
10:00 - 12:00	Actual Work Area Preparation (Scaffold Setting, Taping, Setting Up Change Rooms)
12:30 - 2:30	Continuing Hands On Work Area Preparation (Switch Tasks, Suit Up In Asbestos Abatement Gear, Using Respirators, And Perform Work Area Preparation.)
2:30 - 3:30	Review and Give Final Test on Material Covered

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue
Pouch 6-614
Anchorage, Alaska 99502
[907] 333-9561

RECEIVED
MAY 17 1984
Josephson,

SCHOOL BOARD

Jean Buchanan
President

Brent Wadsworth
Vice-President

Vi Schellenberg
Clerk

Bettye Davis
Clerk Pro Tem

Alyce Hanley
Treasurer

Jim Robinson
Assistant Treasurer
Past President

Lee Gorsuch
Parliamentarian
Immediate Past President

SUPERINTENDENT

E.E.(Gene) Davis, Ed.D.

May 14, 1984

The Honorable Joe P. Josephson
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Josephson:

The Anchorage School District has been monitoring the asbestos fiberous material that is located within 55 schools since 1979. This requirement was federally mandated by the Environmental Protection Agency (EPA). In June, 1983, we were again mandated by the EPA to post each school that contained asbestos and to notify all occupants of the building of its location.

The Anchorage School District structured a formal process by which prequalified bidders were selected and given the opportunity to bid on six abatement projects. Bartlett-Begich Junior/Senior High School was a separate item due to the magnitude of asbestos within the school. The five other schools were bid as a unit which includes West, East, and Dimond High Schools, Clark Junior High School, and Mt. Spurr Elementary School.

The bids were opened on Wednesday, May 9, 1984. The base bid for Bartlett had a low $13,005,300 and a high of $22,166,000. We received three bids for this project. We received two bids for the five school project with a high of $1,980,000 to a low of $1,538,240.

We will be approximately $10 million short from awarding a contract for the removal of asbestos at Bartlett. At the present time the District is very appreciative of the approximately $6.5 million which was awarded in HB 403.

The low bid, if accepted, is $14,543,540. This bid indicates that Bartlett would have to be closed for at least one semester. The District is analyzing some of the options for Bartlett's 2,000 students which would not impact on the educational program.

If Bartlett was to be completed over two summers, it would require an additional $4 million. This, however, does not include storage for all of the furniture and equipment housed in Bartlett's 324,000 square feet.

The options available to us is to reject all bids, rebid the five schools by themselves, or reject Bartlett because of lack of funds. This question comes to the School Board on May 21, 1984, and it is imperative that the District receive the funding for this very important program.

We have appreciated all your efforts on behalf of the Anchorage community, its children, and their future.

Sincerely,

E. E. (Gene) Davis

E. E. (Gene) Davis, Ed.D.
SUPERINTENDENT

cl
CIP.3

cc Bill Miles

P.S. Enclosed is an article from "What's Happening In Washington", published by The National PTA.

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue
Pouch 6-614
Anchorage, Alaska 99502
[907] 333-9561

SCHOOL BOARD

Jean Buchanan
President

Brent Wadsworth
Vice-President

Vi Schellenberg
Clerk

Bettye Davis
Clerk Pro Tem

Alyce Hanley
Treasurer

Jim Robinson
Assistant Treasurer
Past President

Lee Gorsuch
Parliamentarian
Immediate Past President

SUPERINTENDENT

E.E. (Gene) Davis, Ed.D.

March 7, 1984

RECEIVED

Honorable Joe Josephson
Alaska State Legislature
Pouch V (MS 3100,
Juneau, Alaska 99811

Dear Senator Josephson:

Subject: Asbestos Abatement Program For The Anchorage School District

The following information has been gathered to provide you with backup knowledge of the asbestos problem facing the Anchorage School District.

The Anchorage School District has not moved hastily into its decision on asbestos. The District began by implementing the EPA's voluntary asbestos identification program in 1979, and continued with the EPA's mandatory asbestos identification and notification program in 1982. The School Board appointed a Technical Advisory Panel which included local and state health officials, outside medical consultants with expertise and knowledge of asbestos health hazards, School Board members, and local government and civic leaders. This Panel was Chaired by School Board Member Jim Robinson. The Panel did not just debate the issue, but researched it on their own, attended educational and informational seminars, and solicited advice and information from knowledgeable and experienced sources, before making their recommendations.

Enclosed is School Board Memorandum #534 (82-83), May 23, 1983, which approved the recommendations by the Panel and authorized the Superintendent to search for a competent firm to assist the District in designing the abatement program. The firm of Gobbell Hays Pickering was approved by the School Board on July 11, 1983, ASD Memorandum #9 (83-84). The firm is from Nashville, Tennessee. It was chosen to do the design work and the monitoring of the abatement project. This firm has done over 500 school buildings and over 140 hospitals and government-type buildings. They have over 230 personnel in their firm and are well versed on the current state of the art of asbestos removal and replacement processes.

Also enclosed is the U. S. Attorney General's Asbestos Liability Report to the Congress and it states "Congress has determined that 'medical science has not established any minimum level of exposure to asbestos fibers which is considered to be safe to individuals exposed to fibers' and 'the presence in school buildings of friable or easily damaged asbestos creates an unwarranted hazard to the health of the school children and school employees who are exposed to such materials.'"

Enclosed is some medical research data which indicates that there are no safe lower limits of exposure. A letter from Mr. Wayne Tansil, Gobbell Hays Pickering, is enclosed which outlines encapsulation problems versus removal, and other information indicating the hazards of asbestos.

There are numerous reported examples of premature deaths from low-level exposure. Steve McQueen died of mesothelioma--his only reported exposure was a summer as a dock worker. A similar situation was reported with a Georgia Tech football coach. A Yale librarian was reported to have died of mesothelioma after seven years working in a library with deteriorating asbestos fireproofing above a dropped ceiling. A thirteen year old boy died of mesothelioma developed from exposure to asbestos while helping his father work on brake linings.

I believe the information contained within this booklet outlines the compounding health hazard to school children of asbestos exposure. This means children exposed to friable asbes[illegible] at an early age have the possibility of being affecte[illegible]y an asbestos-related disease in the prime of life, given the 20-30 year latency period of such diseases.

If I could be of further assistance, please let me know.

Sincerely,

L. T. Freeman
Assistant Superintendent
for Business Management

cl
BM5.33

Enclosure



KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT

Darroll Hargraves
SUPERINTENDENT

ASBESTOS HAZARD ABATEMENT in the KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT

INTRODUCTION:

Asbestos hazard abatement and rehabilitation of existing schools is a recognized need in Ketchikan. The situation leaves planners anxious to create safe and adequate abatement. Hazard abatement efforts require considerable financial backing. State involvement in funding efforts is an essential component of asbestos hazard abatement. The asbestos dilemma is a serious one, with no easy solution. Some Alaskan communities have experienced considerable expense in asbestos abatement programs. Excessive expense and unsafe removal are situations that Ketchikan wants to avoid.

PRUDENT PLANNING:

Good planning for asbestos removal is prudent, necessary and will allow for a variety of options to be investigated. The planning stage is a vital, necessary and cost saving effort. It is initially inexpensive when compared to the long term inconvenience of a poorly planned hazard abatement program.

POUCH Z • KETCHIKAN, ALASKA 99901 • (907) 225-2118

COMMUNITY PRIORITY:

Education is a high priority in Ketchikan. Local taxpayers have recently passed a 16.9 million dollar bond issue which will enable the District to meet construction and maintenance needs.

Impending growth due to the anticipated opening of a new molybdenum mine near Ketchikan has forced the community to pay close attention to the current and future needs of public schools in Ketchikan, and make improvements as needed. The threat of asbestos means that state dollars are needed for study and subsequent asbestos hazard abatement.

BUDGET REQUIREMENTS:

A minimum of $1.5 million will be required to begin hazard abatement procedures in the Ketchikan schools. Limited study of the asbestos problem indicates that asbestos is present in some schools. Continued investigation is required to fully identify the extent of the problem.

Some asbestos hazard abatement and code upgrades will be in order subsequent to the initial study. Administration of the study and subsequent remedy is also a necessary expense.

CONCLUSION:

State sponsored allocation of the necessary funds to put adequate plans in place will help provide for an organized plan for encapsulation, containment or removal of asbestos throughout School District facilities. Such action will put Ketchikan in a position to "plan for the future" and deal with asbestos in a well organized, safe manner.

FUND: 01
LOCATION: 190 - District Wide
FUNCTION: ASBESTOS ABATEMENT

310	MANAGERIAL	9,000
330	CLASSIFIED	3,000
351	INSURANCE	1,200
353	UNEMPLOYMENT	50
354	WORKMAN'S COMPENSATION	5
355	FICA	270
356	RETIREMENT - TRS	750
357	RETIREMENT - PERS	550
359	OTHER EMPLOYEE BENEFITS	150
400	PROFESSIONAL & TECHNICAL SERVICES	100,000
426	TRAVEL	925
502	BUILDINGS	
	502-1 ARCHITECTS/ENGINEERS	130,000
	502-2 CONTRACTORS	1,250,000
530	OTHER EXPENSES	4,100
		$1,500,000.00

INFORMATION FOR NANCY BENNETT, Health Education and Social Services Committee.

The following information augments Les Riedlinger's January 25th's testimony regarding the need to ensure that the $26,000,000.00 proposed by HB57 has sufficient provision to accommodate $2,000,000.00 in additional funding for asbestos removal at the Fairbanks North Star Borough School District.

ITEM 1

Of the 31 major buildings managed by FNSBSD, 11 remain to be addressed in terms of asbestos removal. The amounts needed for each of the eleven is as follows:

$247,000	- Barnette Elementary School
160,000	- University Park Elementary School
342,000	- Hunter Elementary School
209,000	- Hutchison Career Center
37,000	- Joy Elementary School
915,000	- Lathrop High School
397,000	- Main School
229,000	- Nordale Elementary
214,000	- North Pole Elementary
257,000	- Ryan Junior High School
10,000	- West Valley High School
$3,017,000	- Total Cost
1,052,000	- LESS: Funds on hand from prior Legislative Appropriations
$1,965,000	- Additional Asbestos Removal Need. This amount takes into account total project costs, i.e. sampling, bid documents, construction award, consultants, etc.

ITEM II

With respect to a gross cost estimating guide for asbestos removal, the FNSBSD has developed the following format. It is based upon bid experience; advice from consultants and in-house technical expertise.

It can be applied, however, only in those instances where the need is to remove insulation from pipe, conduits, ducts, boilers, etc. It can not be used for costing asbestos removal associated

with its use as an acoustical control, fire protection, or any other spray application.

The format works as follows:

- Calculate the total number of linear feet of pipe insulation and the total number of square feet associated with boiler, hot water tank wrapping, etc.

- Each of these linear and square feet than is assigned the value of one unit.

- For each unit that is openly accessible, calculate $45.00/unit for total removal, replacement and all other project related costs such as bid documents, sampling, monitoring, consultant fees, contingencies, etc.

- For each unit that concealed, i.e. inaccessible without first demolishing rigid barriers such as floors, ceilings, and walls, calculate $75.00/unit. This amount covers all associated project related costs including replacement.

ITEM III

Finally, Mr. Riedlinger addressed that Fairbanks in conjunction with its consultants had developed a model set of asbestos removed technical specifications which incorporated all EPA rules and guidelines. They are attached.

ALASKA FEDERATION OF NATIVES, INC.
1984 ANNUAL CONVENTION

RESOLUTION NO. 84-32

TITLE: ASBESTOS ABATEMENT IN ALASKA SCHOOLS

WHEREAS, Believing that friable asbestos, similar to that which was discovered in schools in the Anchorage School District, exists in numerous other schools in school districts throughout the State; and

WHEREAS, Knowing that an Asbestos Technical Panel, convened in Anchorage by the Anchorage School Board, reviewed thoroughly health hazards associated with asbestos in Anchorage schools; and as a result, recommended that friable asbestos be removed from Anchorage schools as an unacceptable health hazard; and

WHEREAS, Believing that many Alaskan school children in school districts other than Anchorage may be exposed to health hazards from asbestos that are preventable,

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives urges the Governor to form a special task force with representatives of the Department of Health and Social Services, Department of Labor, Department of Education, Department of Transportation and Public Facilities, Department of Environmental Conservation, appropriate federal agencies, parents of school children, and teachers to implement an asbestos abatement program in all Alaska schools, including those under Bureau of Indian Affairs jurisdiction, in accordance with recognized standard for asbestos abatement and

BE IT FURTHER RESOLVED that the Alaska Federation of Natives urges implementation of an asbestos abatement program which will include the following tasks:

1. Implement and insure completion of a comprehensive survey to identify and categorize asbestos in all Alaska schools.

2. Evaluate health hazards associated with any asbestos (friable asbestos and asbestos in other forms) discovered in the survey and make recommendations for appropriate medical surveillance of students, teachers and workers exposed to asbestos.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

January 25, 1985

Honorable Max F. Gruenberg, Jr.
Co-Chair
House Committee on Health, Education
and Social Services
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

I am responding to your letter of January 23, 1985, inquiring whether inclusion of the proposed provisions of section 1 of SSHB 5 is necessary, in light of certain advice provided by this office to the Commissioner of Education last summer. A copy of that Memorandum of Advice is attached for your information.

While probably not necessary to deal with the most egregious asbestos situations, I suspect there still could be a variety of situations arising which, although not qualifying as a "emergency" under the general provisions of AS 14.03.030(2), would nonetheless fall within the scope of the proposed language in section 1 of SSHB 5. Consequently, I believe it would be advisable to include that language in the bill, both to assure that these lower-level asbestos problems are encompassed within the "emergency closure" provisions and to clarify the Commissioner of Education's authority in this regard.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:
Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Honorable Harold Raynolds
Commissioner
Department of Education

MEMORANDUM State of Alaska

TO: The Honorable Harold Reynolds
Commissioner
Department of Education

DATE: August 29, 1984

FILE NO: 366-017-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

By: Ronald W. Lorensen
Deputy Attorney General
Department of Law

SUBJECT: Emergency school closures under AS 14.03.030(2)

This confirms our conversation on Thursday, August 23, 1984.

Upon further review and analysis, I believe some clarification of my May 28, 1984, */ letter to Senator Joe Josephson regarding the scope of the "emergency school closure" provision of AS 14.03.030(2) is in order. In that letter I indicated in fairly absolute terms that planned activities such as an asbestos abatement program could never qualify as adequate grounds for an "emergency school closure."

The May 28 letter does not adequately acknowledge the discretion which AS 14.03.030(2) vests in you, as Commissioner of Education, to determine what constitutes an "emergency" justifying deviation from the normal 180-day school term. Under the law, "emergency closure days" may only be substituted for days in session with your approval. Since the legislature did not define "emergency" under AS 14.03.030(2), it is left to you to apply the appropriate standard and conditions for granting an "emergency school closure" based on the general policy and purposes underlying the school laws. See, e.g., Kenai Peninsula Fishermen's Co-op Association v. State, 628 P.2d 897, 907 (Alaska 1981).

As I indicated in my May 28 letter, pre-planned construction or maintenance activities would not normally be considered to constitute a situation covered by AS 14.03.030(2). However, that general conclusion should not be taken as implying that you may never approve a closure for a pre-planned activity when, in the exercise of your discretion in reviewing a specific case, you conclude that an emergency situation exists.

RWL:vrb

cc: Honorable Joe Josephson
Alaska State Senator

*/ Redated for printing July 1, 1984: 1984 Inf. Op. Att'y Gen. (July 1; 366-017-85).

02-001A/Rev. 10/79

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

MAR 14 1985

REPLY TO ATTN OF: M/S 524

MAR 1 1985

Jim Robison, Commissioner
Alaska Department of Labor
P. O. Box 1149
Juneau, Alaska 99802

Dear Mr. Robison:

The U.S. Environmental Protection Agency (EPA) has been given the responsibility for implementation of the Asbestos School Hazard Abatement Act of 1984 (ASHAA). This Act addresses asbestos abatement procedures and the disbursement of financial assistance for schools performing asbestos abatement projects. It does not include identification, recordkeeping and notification requirements for friable asbestos in school buildings. These tasks are incorporated in the Asbestos-in-Schools Identification and Notification Rule promulgated in accordance with the Toxic Substance Control Act (TSCA).

The Asbestos Action Program in the EPA Office of Pesticides and Toxic Substances has been given the authority to fund cooperative agreements with some states whose projects fall within the funding limits imposed by ASHAA. The disbursement of funds under this program is contingent upon a 25% match by the respective recipient.

Projects which are eligible for funding include: 1) development of a state license/certification program for asbestos abatement contractors and maintenance personnel (EPA can provide a model abatement contract specification, and a model state contractor licensing regulation for state use), 2) asbestos abatement training for contractors and supervisory personnel, 3) voluntary technical assistance to schools in assessing hazards and deciding on abatement strategies, 4) dissemination of asbestos information to school employees, teachers, school administrators, and parents.

If the State of Alaska intends to request federal funding under this program, a pre-application proposal (Enclosure A) should be submitted to EPA as soon as possible. The project(s) identified in your pre-application will be reviewed. If the projects are approved you will be requested to submit completed application forms to EPA by April 15, 1985. The application forms can be obtained from our EPA Juneau Office (907) 586-7619.

Both the pre-application and the ensuing completed application proposals should be submitted to: Asbestos Action Program, U.S. EPA, TS-788A, 401 M Street S.W., Washington, D. C. 20460, Attn: Stephen Schanamann. Copies of the proposal should be sent to Kathryn Pazera, EPA, Alaska Operations Office, 3200 Hospital Drive, Suite 101, Juneau, Alaska 99801, and John Seitz, Office of Compliance Monitoring, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460.

If you should have any questions on this material, please contact Kathryn Pazera, 586-7619.

Sincerely,

Anita Frankel

Anita Frankel, Chief
Pesticides and Toxic Substances Branch

Enclosure

cc: Bill Ross, Department of Environmental Conservation
Rich Arab, Department of Labor

STATE OF MARYLAND

HARRY HUGHES
GOVERNOR

DOMINIC N. FORNARO
COMMISSIONER

DEPARTMENT OF LICENSING AND REGULATION
DIVISION OF LABOR AND INDUSTRY
OCCUPATIONAL SAFETY AND HEALTH
501 ST. PAUL PLACE . BALTIMORE, MARYLAND 21202-2272
301/659-4195

NANCY B. BURKHEIMER
DEPUTY COMMISSIONER

FREDERICK L. DEWBERRY
SECRETARY

RAYMOND E. LLOYD
ASSISTANT COMMISSIONER
MOSH

January 31, 1985

RECEIVED
FEB 04 1985

Mr. Richard Arab
P. O. Box 1149
Juno, Alaska 99802

Dear Mr. Arab:

As per our telephone conversation, a copy of Asbestos Licensing and Control Regulations is forwarded for your information. Please note that these regulations are enforced by the Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland, 21201 and not this Agency.

Please contact us if we can be of further service.

Sincerely,

Raymond E. Lloyd

Raymond E. Lloyd
Assistant Commissioner

REL/js

BALTIMORE METRO AREA 659-4195
OUTSIDE BALTIMORE METRO AREA
TOLL-FREE 1-800-492-6226

TTY FOR DEAF
BALTO. AREA 383-7555
D.C. METRO 565-0451

Asbestos

State of Maryland

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201 • Area Code 301 • 383-3245

Harry Hughes, Governor

Charles R. Buck, Jr., Sc.D. Secretary

January 24, 1983

TO: Interested Persons

SUBJECT: Asbestos Licensing and Control Regulations

I have enclosed a copy of the Asbestos Licensing and Control Regulations. Final changes were published in the Maryland Register on January 7, 1983.

The regulations were approved by Secretary Buck on December 27, 1982. The regulations will become effective on February 25, 1983. However, in order to provide time for businesses to train employees and apply for licenses, the Department is delaying the effective date of the licensing regulations until April 1, 1983.

Inquiries concerning applications for licenses to conduct asbestos projects should be directed to Mr. Frank Whitehead, Air Management Administration, 201 West Preston Street, Baltimore, Maryland 21201 (301-383-2776).

Inquiries concerning application for approval of training courses should be directed to Dr. Katherine Farrell, Division of Environmental Disease Control, 201 West Preston Street, Baltimore, Maryland 21201 (301-383-2759).

Yours Truly,

Joel H. Cooper
Air Management Administration

Enclosure

Maryland State Department of Health and Mental Hygiene
201 West Preston Street
Baltimore, Maryland 21201

(As amended through: December 27, 1982)

10.18.15 Toxic Air Pollutants
.01 Definitions
.02 Control of NESHAP Sources
.03 Control of Asbestos

.01 DEFINITIONS

A. "Asbestos project" means any activity involving the demolition, renovation, or encapsulation of friable asbestos materials.

B. "Demolition" means the wrecking or taking out of any load-supporting structural member and any related removing or stripping of friable asbestos materials.

C. "Encapsulate" means to coat, bind, or resurface walls, ceilings, pipes, or other structures to prevent friable asbestos from becoming airborne.

D. "Friable asbestos material" means any material that contains more than 1 percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder, when dry, by hand pressure.

E. "National Emission Standards for Hazardous Air Pollutants source" (NESHAP source) means any source of mercury, beryllium, vinyl chloride, or asbestos (as defined in 40 CFR §61.21), which is subject to the provisions of 40 CFR Part 61, 1981 edition.

F. "Renovation" means the removal or stripping or friable asbestos materials used on any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member. Operations in which load-supporting structural members are wrecked or taken out are excluded.

G. "Structural member" means any load-supporting member, such as beams and load-supporting walls, or any non-supporting member, such as ceilings and non-load-supporting walls.

.02 CONTROL OF NESHAP SOURCES

A person may not construct, modify, or operate, or cause to be constructed, modified, or operated any NESHAP source which results or will result in violation of any provisions of 40 CFR Part 61, 1981 edition.

.03 CONTROL OF ASBESTOS

A. Applicability.

(1) This regulation applies to any person engaged in an asbestos project within Maryland.

(2) If a provision of Regulation .03 conflicts with Regulation .02, Regulation .02 takes precedence.

B. Control of Emissions from an Asbestos Project which is a NESHAP Source.

(1) Any Asbestos Project which is a NESHAP Source.

A person engaged in any asbestos project in which more than 260 feet (80 meters) of pipe covered or coated with asbestos materials are stripped or removed, or 160 square feet (15 square meters) of asbestos materials used to cover or coat any duct, boiler, tank, reactor, turbine, or structural member are stripped or removed shall comply with the following:

(a) Caution Signs.

Display 20-inch by 14-inch caution signs wherever airborne asbestos fibers may be present, in accordance with MOSH Regulation 29 CFR 1910.1001.

(b) Surfactant.

Wet asbestos materials to be stripped or removed with a solution containing one fluid ounce of surfactant mixed with five gallons of water. Surfactants containing 50 percent polyoxyethylene ester and 50 percent polyoxyethylene ether or equivalent are acceptable.

(c) Waste Disposal.

(i) Deposit all asbestos wastes, sealing tape, plastic mop heads, sponges, filters, and disposable clothing in clearly labeled containers and seal.

(ii) Wet large structural components containing asbestos material that cannot be placed in containers before loading and cover before transporting to the disposal site.

(iii) Transport and dispose of asbestos waste in a manner to prevent asbestos from becoming airborne. If disposing of asbestos waste within the State, use a landfill or site approved by the Department.

(d) Cleaning and Monitoring.

(i) For buildings or structures which are to be completely demolished: After removing any asbestos materials, clean the work area until no residue of asbestos material is visible.

(ii) For any other asbestos project which is subject to §B(1) above: After removing any asbestos materials, clean all surfaces in the work area using the water and surfactant solution prescribed in §B(1)(b). When the surface has dried, vacuum any remaining dry residue on all surfaces using a vacuum equipped with a high efficiency particulate air (HEPA) filter. Repeat the sequence of wet mopping and vacuuming in 24-hour intervals until no residue is visible and the airborne concentration of asbestos fibers longer than 5 microns is less than 0.1 fibers per cubic centimeter (8-hour time-weighted average).

(iii) For monitoring required by §B(1)(d)(ii) above, use procedures specified in the National Institute for Occupational Safety and Health (NIOSH) Analytical Method #P&CAM 239, Asbestos Fibers in Air, or equivalent.

(e) Enclosing and Sealing Materials.

Plastic sheeting shall be 6 mils thick or equivalent. Tape shall be either duct tape or equivalent waterproof tape.

(2) Demolition.

A person subject to §B(1) and engaged in demolition shall also comply with the following:

(a) Before beginning any demolition project, cover all windows, doors, and other openings with plastic sheeting and seal with tape.

(b) If a structure or building is to be partially demolished, construct a barrier of plastic sheeting sealed with tape to prevent asbestos from entering any portion of the structure or building not to be demolished, and seal ducts, including air conditioning and heat ducts, before wetting and removal.

(c) Wet all components that contain or may contain asbestos before stripping the asbestos or before removing those portions or supports which are to be removed.

(d) Wet the structure and components as necessary to assure that the asbestos materials remains wet during removal, loading, and transportation.

(3) Renovation.

A person subject to §B(1) and engaged in renovation shall also comply with the following:

(a) Before beginning any renovation project, remove all movable objects from the work area and cover all non-movable objects with plastic sheeting taped securely in place. Cover floors, other large areas such as walls, and all windows in the work area with plastic sheeting sealed with tape. Shut down all forced-air ventilation to the work area and seal exhaust and intake ducts.

(b) Construct double barriers of plastic sheeting at all entrances and exits to work area. Construct a decontamination area within the work area to be used for removal of contaminated protective clothing and for storage of contaminated items and tools. Provide a clean room where workers obtain clean protective clothing and respirators before entering the work area.

(c) Wet all areas or surfaces that contain or may contain friable asbestos. Assure that the asbestos-containing materials remain wet during the removal process.

C. Control of Asbestos from any other Asbestos Project.

(1) A person engaged in any other asbestos project not subject to Regulation .03B shall take reasonable precautions to prevent asbestos from becoming airborne.

(a) Wetting any asbestos (except asbestos to be encapsulated);

(b) Taking measures such as sealing the work area and using appropriate work practices to minimize the dispersal of particulate asbestos;

(c) Leaving no visible residue of asbestos after completing the project;

(d) Sealing asbestos waste in an appropriate container; and

(e) Disposing of the asbestos at a site or landfill approved by the Department in a manner that prevents asbestos from becoming airborne.

D. Exemptions.

(1) The Department may, on a case-by-case basis, approve an alternative procedure for control of emissions from an asbestos project provided that the person submits the alternative procedure to the Department in writing and demonstrates to the satisfaction of the Department that compliance with the prescribed procedures is not practical or not feasible, or that the proposed alternative procedure provides equivalent control of asbestos. The Department, following its review, may approve an alternative procedure if it determines that it will minimize the emissions of asbestos into the air.

(2) A person may not be exempt from the requirements of 40 CFR Part 61, 1981 edition except as provided there.

..Maryland State Department of Health and Mental Hygiene
201 West Preston Street
Baltimore, Maryland 21201

(As amended through: December 27, 1982)

10.18.23 License to Remove or Encapsulate Asbestos

.01 Definitions
.02 General Requirement
.03 Request for Determinations of Applicability
.04 Worker Protection Requirement
.05 License Application
.06 Action on an Application
.07 Reprimands, Suspensions, and Revocation
.08 Duration and Renewal of a License
.09 Notification
.10 Records
.11 Health and Safety Training
.12 Penalties

.01 DEFINITIONS

A. "Asbestos project" means any activity involving the demolition, renovation, or encapsulation of friable asbestos materials.

B. "Business entity" means a partnership, firm, association, corporation, sole proprietorship, or other business concern.

C. "Demolition" means the wrecking or taking out of any load-supporting structural member and any related removing or stripping of friable asbestos materials.

D. "Encapsulate" means to coat, bind, or resurface walls, ceilings, pipes, or other structures to prevent friable asbestos from becoming airborne.

E. "Friable asbestos material" means any material that contains more than 1 percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder, when dry, by hand pressure.

F. "License" means any authorization issued by the Department to encapsulate or remove asbestos.

G. "Renovation" means the removal or stripping of friable asbestos materials used on any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member. Operations in which load-supporting structural members are wrecked or taken out are excluded.

H. "Structural member" means any load-supporting member, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.

.02 GENERAL REQUIREMENT

A business entity may not engage in any asbestos project unless it is licensed by the Department under this chapter.

.03 REQUEST FOR DETERMINATION OF APPLICABILITY

A. A business entity may request that the Department determine whether a project is an asbestos project subject to this chapter. The Department will make the determination in writing not later than 30 days after it has received a written request describing the asbestos-containing materials, the proposed project, and the business entity.

B. An erroneous determination by the Department that a project is not subject to this chapter only relieves the business entity from the requirements of this chapter to the extent that the Department was provided with the appropriate information to make a correct determination.

.04 WORKER PROTECTION REQUIREMENTS

A. Respiratory Protection Program.

A business entity, before it engages in any asbestos project, shall prepare a written respiratory protection program as defined in MOSH regulation at 29 CFR 1910.134 and make the program available to the Department and workers at the job site.

B. Physical Examination.

The business entity shall ensure that each worker who will be involved in an asbestos project has been examined within the preceding year and has been declared by a physician to be physically capable of working with [while] wearing a respirator.

C. Training.

The business entity shall ensure that each employee or agent of the business entity who will come in contact with asbestos or will be responsible for an asbestos project receives the following training:

(1) An initial course approved by the Department, completed before engaging in any asbestos projects; and

(2) An annual review course approved by the Department.

D. Protective Clothing and Equipment.

The business entity shall provide workers with protective clothing and equipment including the items listed below and ensure that workers involved in any esbestos project use the items:

(1) Disposable clothing, including hair cover, foot covers, and gloves, as appropriate; and

(2) Respirators approved by the National Institute of Occupational Safety and Health (NIOSH), and at a minimum, capable of being qualitatively fit tested using positive and negative methods.

E. No Smoking, Eating, or Drinking.

The business entity shall ensure that there is no smoking, eating or drinking in the work area.

F. Alternative Procedures.

The Department may, on a case-by-case basis, approve an alternative to a worker protection requirement in §§A-E for an asbestos project provided that the business entity submits the alternative procedure to the Department in writing and demonstrates to the satisfaction of the Department that the proposed alternative procedure provides equivalent worker protection.

.05 LICENSE APPLICATION

A. To apply for or to renew a license, a business entity shall:

(1) Submit a completed application to the Department on forms provided by the Department; and

(2) Pay the fee in §B below by certified check made payable to the Department of Health and Mental Hygiene.

B. License Fee.

Number of Employees to be Engaged in Asbestos Projects	License Fee
2 or less	$ 50
3 to 5	$200
6 or more	$300

.06 ACTION ON AN APPLICATION

A. Within 15 work days after receiving an application, the Department will acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within 60 calendar days after receiving a completed application, including all additional information requested by the Department, the Department will issue a license or deny the application.

B. Denial.

(1) The Department will deny an application if it determines that the applicant has not demonstrated the ability to comply fully with applicable requirements, procedures, and standards established by the:

(a) Department in this chapter and in COMAR 10.18.15;

(b) U.S. Environmental Protection Agency in 40 CFR Part 61; and

(c) Maryland Occupational Safety and Health Program in 29 CFR Part 1910.1001 and .134

(2) If the Department denies a license, the Department will return to the applicant the application fee, less $25.

(3) The Department will send the denial of an application by certified mail. The applicant may request a hearing within 10 days after receipt of the certified mail. If it receives a timely request, the Department will hold a hearing in accordance with Article 41, §251 et seq., Annotated Code of Maryland.

C. Conditions and Generic Alternative.

(1) In granting a license, the Department may impose reasonable terms and conditions to ensure continuous compliance with the requirements of this chapter.

(2) In granting a license, the Department may approve an alternative procedure for controlling emissions from a specified type of asbestos project provided that the following conditions are satisfied:

(a) The business entity submits in writing a specific, detailed description of the type of asbestos project and the alternative procedure;

(b) The business entity demonstrates to the satisfaction of the Department that compliance with a procedure prescribed in COMAR 10.18.15.03 is not practical or not feasible or that the proposed alternative procedure provides equivalent control of asbestos; and

(c) The Department determines that compliance with the proposed alternative procedure will minimize the emission of asbestos in the air.

.07 REPRIMANDS, SUSPENSIONS, AND REVOCATION

As provided in Sections §§6-415 and 6-416 of the Health-Environmental Article, Annotated Code of Maryland, and subject to applicable hearing requirements, the Department may reprimand any licensee or revoke or suspend any license.

.08 DURATION AND RENEWAL OF A LICENSE

A. Unless the Department revokes or suspends a license, the license shall remain in effect for 1 year from the date of issuance.

B. The Department may renew a license annually if the business entity:

(1) Submits a completed application for a renewal on forms provided by the Department no sooner than 90 days and no later than 30 days before the license expires;

(2) Pays to the Department by certified check a renewal application fee as specified in Regulation .05B; and

(3) Has complied fully with all applicable requirements.

.09 NOTIFICATION

A. NESHAP Sources.

A person who intends to engage in an asbestos project which is a NESHAP source shall notify the Department in accordance with the requirements of 40 CFR Part 61, 1984 edition.

B. All Other Asbestos Projects.

After obtaining or renewing a license, a business entity shall notify the Department at least 3 days before beginning each of its first two planned asbestos projects. A business entity shall notify the Department of additional asbestos projects upon request by the Department.

.10 RECORDS

A. Eached licensed business entity shall maintain records of all asbestos projects which it performs, and shall make these records available to the Department upon request. The business entity shall retain the records for at least 6 years.

B. The business entity shall record the following information for each project:

(1) Name and address of supervisor responsible for the project;

(2) The location and description of the project, and the estimated amount of asbestos removed or estimated area encapsulated at each project;

(3) Starting and completion dates;

(4) Summary of the procedures used to comply with applicable requirements; and

(5) Name and address of the waste disposal site where the asbestos waste was deposited.

.11 HEALTH AND SAFETY TRAINING

A. Application for Approval of a Training Course.

A person may apply for approval of a course on the health and safety aspects of asbestos demolition, renovation, and encapsulation for purposes of Regulation .04C by submitting a written application on forms provided by the Department.

B. Criteria for Initial Course.

In order to obtain or retain Department approval, a person sponsoring a course shall substantially satisfy the following criteria:

(1) Provide at least 5 hours of instruction on the following topics:

(a) Recognition of asbestos, including its physical characteristics and uses;

(b) Health hazards, including the relationship between asbestos exposure, smoking, and diseases;

(c) Worker protection, including respiratory protection, protective clothing, safety equipment, air monitoring, medical surveillance, and personal hygiene;

(d) Work practices, including area preparation, decontamination, and waste disposal;

(e) A detailed description of respirators and their use and care, including the degree of protection afforded, fitting and testing procedures, and maintenance and cleaning;

(f) Requirements, procedures, and standards established by the:

(i) U.S. Environmental Protection Agency at 40 CFR Part 61, Subparts A and B,

(ii) Maryland Occupational Safety and Health Program at 29 CFR Part 1910.134, and

(iii) Department in this chapter and in COMAR 10.18.15

(2) Provide each student at least 15 minutes of individual instruction consisting of individual respirator fit tests and an opportunity to use respirators.

(3) Ensure that instruction is given or supervised by:

(a) An industrial hygienist who is at least Core certified by the American Board of Industrial Hygiene; or

(b) An individual with equivalent education and experience as determined by the Department.

(4) Maintain lists of students trained and the dates on which training occurred, and make this information available to the Department upon request.

(5) Provide an opportunity for students to complete written course evaluations.

(6) Issue to each student who completes the course a certification of attendance containing information required by the Department.

C. Criteria for Review Course.

In order to obtain or retain Departmental approval, a person sponsoring a review course shall provide at least 2 hours of instruction adequately addressing the topics in §B(1) and shall substantially satisfy the criteria in §B(2)-(6).

D. Action on an Application for Course Approval.

(1) The Department will acknowledge receipt of an application within 10 working days after receiving the application.

(2) The Department will act on an application within 90 days after it is complete.

(3) The Department will approve a course if the Department determines the course substantially satisfies or will substantially satisfy the criteria in §B or C.

.12 PENALTIES

A person who violates any provision of this chapter or any regulation in this chapter is liable to the criminal or civil penalties under the Health-Environmental Article, §6-422, Annotated Code of Maryland.

ROUTE SLIP 191

TO: NAME: Richard Arad Date:

OFFICE OR ROOM NUMBER: N.J. LABOR

To return to sender, write "TO" below, and fold back on dotted line

FROM: Wm N Van Arnum

[ ]	Take Necessary Action	[ ]	Reply For My Signature
[ ]	See Me	[ ]	For Your Signature
[ ]	Telephone Me	[ ]	For Your Approval
[ ]	Initial and Circulate	[ ]	For Your Comment
[ ]	Note and Return	[ ]	For Your Information
[ ]	Note and File	[X]	Per Your Request

REMARKS

AD-69 (R-10-84) N.J. DEPARTMENT OF LABOR

RECEIVED FEB 04 1985

P. L. 1984, CHAPTER 173, *approved October 31, 1984*

1984 Assembly No. 1820 (*Official Copy Reprint*)

AN ACT concerning the application, removal, and encapsulation of asbestos, and making an appropriation.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds that the application, **enclosure,** removal and encapsulation of asbestos when improperly performed creates unnecessary health and safety hazards which are detrimental to the State's interest, and that of its citizens, in terms of wage loss, insurance, medical expenses, disability compensation payments, family life, preservation of human resources and unfair competition to craftspersons, their unions and their employers.

2. The Legislature declares it to be its purpose and policy to reduce asbestos-related hazards by:

a. Encouraging contracting parties, citizens and insurance companies in their efforts to reduce disabling asbestos hazards and to stimulate initiation of new and to perfect existing programs for controlling the application, use and removal of asbestos, an extremely dangerous substance;

b. Creating a climate for developing innovative methods, techniques and approaches for dealing with life-destroying asbestos materials;

c. Encouraging competence, knowledge and reduced exposure to asbestos through the licensing of contractors and workers;

d. Providing for the adoption of standards for the application,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly Amendments adopted in accordance with Governor's recommendations September 20, 1984.

RECEIVED FEB 04 1985

OSB/JUDICIAL

enclosure, removal, encapsulation, storage, sale, disposal and use of asbestos and asbestos-containing material; and

e. Establishing an enforcement program for these standards, which shall include reporting procedures.

3. As used in this act:

a. "Asbestos" means the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;

b. "Asbestos-containing material" means any material which contains more than 1% asbestos by weight;

[c. "Commissioner" means the Commissioner of Labor, or his designee;]

[d.] *c.* "Employee" means any person suffered or permitted to work by an employer;

[e.] *d.* "Employer" means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work. This term shall apply to private employers and to the State, its political subdivisions and any boards, commissions, schools, institutions or authorities created or recognized thereby*[;*

f. "Journeyman" means a person who has served a four-year apprenticeship in the asbestos and frost-worker field].

4. Any private or public agency letting contracts for application, *enclosure,* removal or encapsulation of asbestos shall include in these contracts specifications that these contracts are to be performed by contractors and subcontractors licensed by the *[commissioner]* *Commissioner of Labor*.

5. No employer shall either directly or indirectly perform any of the functions of application, *enclosure,* removal, or encapsulation of asbestos without first obtaining a license from the *[commissioner]* *Commissioner of Labor*. This license shall be in writing, shall be dated when issued, shall contain an expiration date, and shall be signed by the commissioner. It shall give the name and address of the employer to whom it is issued. Licensed employers shall post a sign indicating, in letters more than four inches in height, "LICENSED BY THE STATE OF NEW JERSEY FOR ASBESTOS WORK," readily visible outdoors at the work site. The actual license shall be readily available at the work site for inspection by reprsentatives of the *[commissioner]* *Commissioners of Labor and Health* and the contracting agency.

6. Every employee, performing functions of application, *enclosure,* removal, or encapsulation of asbestos shall first procure from the *[commissioner]* *Commissioner of Labor* a perfor-

mance permit. *No permit shall be issued unless the employee has taken a course of training in asbestos control and removal, passed an examination thereon, and demonstrated the ability to perform asbestos control and removal safely, in accordance with the current state-of-the-art technology. The Commissioner of Health shall certify the course of training necessary.* This permit shall be in writing, shall be dated when issued, shall contain an expiration date, and shall be signed by the *[commissioner]*. **Commissioner of Labor*. It shall give the name and address of the employee to whom it is issued. The permit shall be carried upon the worker's person and be readily available for inspection by representatives of the *[commissioner]* **Commissioners of Labor and Health** and the contracting agency.

7. Beginning not later than one year following the effective date of this act, licenses and permits shall be issued by the *[commissioner]* **Commissioner of Labor*, or his designee, and shall be valid for at least 12 months, in accordance with regulations promulgated under provisions of the "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.). Fees for these licenses shall not exceed, for a 12-month period, $100.00 for a license and $25.00 for a permit, in accordance with a fee schedule contained in the regulations.

8. Not later than six months after the effective date of this act, the *[commissioner]* **Commissioners of Labor and Health jointly** shall, in consultation with the *[Commissioner of Health, and the]* Commissioner of Environmental Protection, adopt all standards and regulations which *[he deems]* **they deem* necessary for the proper administration and enforcement of this act. These standards and regulations shall include, but shall not be limited to, protective equipment specifications; application, **enclosure,* removal, and encapsulation procedures; administrative penalties; waste disposal; self-monitoring; cleanup; health checkup; license and permit issuance and revocation; fee charges; experience necessary for license or permit qualification; general subject matter of qualifying examinations; and continuing education. License and permit qualification standards shall include provision for *[asbestos and frost-worker foremen and journeymen, with at least one year in journeyman status at the effective date of this act,]* **experienced asbestos workers** to apply for and receive a permit without examination for a period not in excess of one year from the effective date of this act.

9. This act, and its standards and regulations, shall be enforced by the *[commissioner]* **Commissioners of Labor and Health*,

who *[has]* *have* the right-of-entry to all pertinent premises and records for purposes of inspection and information. In the event *[the]* *that either* commissioner believes that an imminent hazard exists, he is empowered to apply to a court of competent jurisdiction to restrain and cause to cease the activity which is the cause of the hazard.

10. Any person who hinders or delays the *[commissioner]* *Commissioner of Labor or Health*, or *[his]* *the* authorized representative *thereof*, in the performance of *[his duties in enforcing]* *the duty to enforce* this act, or fails to obtain licenses or permits required by the provisions of this act, or refuses to make these licenses or permits accessible to *[the]* *either* commissioner, or *[his]* *the* authorized representative *thereof*, or otherwise violates any provision of this act or any regulation adopted under this act, is guilty of a disorderly persons offense and liable to a fine of $1,000.00 or imprisonment not in excess of six months, or both. As an alternative, or in addition to, the fines and imprisonment specified by this section, *[the]* *either* commissioner, or *[his]* *the* designee *thereof* may impose, after granting an opportunity to be heard, an administrative penalty, not to exceed $1,000.00 for each offense, in accordance with a schedule promulgated by regulation.

11. Any employer who discriminates against or otherwise sanctions an employee who complains or cooperates with the *[commissioner]* *Commissioner of Labor or Health*, or *[his]* *the* designee *thereof*, in administering this act is a disorderly person and upon conviction is subject to the penalties specified in section 10 of this act.

12. There is appropriated *[the sum of $75,000.00]* from the General Fund *$75,000.00* to the Department of Labor *and $75,000.00 to the Department of Health* for the first-year administration of this act.

13. This act shall take effect immediately.

January 18, 1984

MEMORANDUM

To: HESS Committee members

From: Nancy Bennett, Committee staff

Re: Asbestos history/Alaska information

IN YOUR FOLDER:

A copy of SSHB 5, asbestos health hazard enabling legislation, and HB 57, the companion appropriation bill.

A section analysis of SSHB 5 and memorandum from DOTPF on the costs of inspecting state buildings for asbestos.

School district information on asbestos.

Relevant periodical and newspaper articles.

Information from the EPA/Alaska specific.

Alaska Health Project asbestos packet.

Packet of materials from the Association of General Contractors

ALASKA SCHOOLS INFORMATION:

The EPA has estimated from their Alaskan survey that only half of the school districts have inspected their facilities for asbestos, leaving approximately 220 buildings for review. By regulation, all schools in the USA were to be tested by June 30, 1983, parents and school boards were to be notified of the findings, school employees were to be instructed on minimization of health risks and records were to be maintained on testing and notification.

District needs in Alaska for asbestos abatement:

Kodiak	$ 1,138,507	
Petersburg	107,000	
Delta Greely	99,700	
Cordova	120,000	
Nenana	15,000	
Anchorage	11,000,000	(Phase II)
Skagway	25,000	
Kuspuk	5,296	
Mat-Su	105,959	
Juneau	300,000	(expended, estimate the possiblility of several million)

Ketchikan (unknown, estimates the possiblity of several million)

HISTORY

Following World War II, asbestos was widely recognized as a miracle fiber - it was an excellent insulator and would not burn - and was therefore widely used in construction during the "Baby Boom" period.

Asbestos was known to be dangerous long before Congressional hearings in the late 1970's, when the Johns-Manville Corporation admitted to paying physicians to down-play the health hazards. Most early reported cases were among pipefitters and shipyard workers who faced heavy exposure in the workplace, but it was soon discovered that family members and people living in close proximity to factories were also affected. Asbestos is an inert material which cannot be removed from the body, and although the symptoms of asbestosis and mesothelioma often take decades to surface, the diseases are always fatal.

Congressional action in 1980 aimed at the removal of asbestos from schools was prompted by the increased susceptibility of children to asbestos because of their higher activity level and elevated respiration.

In 1984, the EPA began applying sanctions to individual school districts for non-compliance, rewrote their regulations for demolition and renovations with asbestos products and have more recently been receiving public pressure to take a more aggressive stance on asbestos in schools. Many speculate that the regulations were designed to bring pressure on states to fund asbestos removal by public notification, placing districts in the precarious position of raising concern about an issue they are unable to address financially. The $172 million authorized by the Asbestos Health Hazard Detection and Control Act of 1980 was never appropriated, although the federal government has made limited funds available in some schools on federal land.

A flurry of lawsuits filed in the last few years against manufacturers, contractors and school districts has pointed out confusion over the issue of liability. In addition, resource limitations of the EPA (they have .1 staff working on asbestos in Alaska) have created difficulty for rural schools districts to receive the type of assistance needed in this technical area

ALASKA CHAPTER

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

Position Statement

on legislation establishing

AN ASBESTOS HEALTH HAZARD ABATEMENT PROGRAM

CSSS HB 5 (FIN)am

APRIL 3, 1985



POSITION PAPER ON CSSS HB 5

The Alaska Chapter, Associated General Contractors of America, Inc. (A.G.C.) represents more than 900 companies, including most of the general contracting companies engaged in Alaska's commercial construction. We appreciate the opportunity to comment on CSSS HB 5 (FIN)am.

The A.G.C. agrees with the intension of this bill - the abatement of asbestos health hazards. Many A.G.C. contractors are or have been involved in this very important safety effort. There is, however, a section of the bill that unnecessarily duplicates existing safety regulations and should, therefore, be deleted.

Before continuing it may be worth noting that the term certification is semantically incorrect. The correct term for government approval or permission is license. Webster's New World Dictionary defines license as; formal permission to do something; especially authorization by law to do some specified thing.

Specifically, we draw your attention to Page 5, Section 18.28.030, Certification Programs. In this section, the Department of Labor is given authority to license contractors and employees who intend to conduct asbestos abatement.

What the bill essentially requires is a State license to do asbestos work. But is there a need for such a license? We think not.

Another serious concern that needs to be addressed is that of liability. Asbestos work is plagued with lawsuits. Through the proposed Department of Labor licensing program, the State may become party to these suits by licensing contractors, employees and labor organizations as competent to undertake this work, the State may have liability if an employer or employee is licensed improperly. We suggest an opinion from the attorney general's office be obtained prior to passage of this bill from committee.

Finally, in examining the fiscal requirements of this proposed licensing program, it appears that millions of dollars would be needed for its administration, rather than the proposed $300,000. It is virtually impossible to competently administer the proposals contained in HB 5 for $300,000. We suggest that an inadequately administered program is worse than no program at all. A realistic fiscal note must be developed so that lawmakers may assess the true costs of proposed legislation.

We believe once the true cost of this program is known, the question will arise: What does a licensing program provide that is not already enforceable under existing DOSH general safety code regulations? The answer is "nothing". Sufficient asbestos health standards already exist, including requirements for employer training and proper respirator usage.

In conclusion, we request this committee to thoroughly determine the fiscal costs of the proposed legislation, including potential State liability and to balance the cost against the benefits received. A.G.C. contends that for the licensing program, the dollar cost will be high and without significant benefits due to the existence of sufficient asbestos health standards presently exist.

We strongly urge the deletion of the licensing section of CSSS HB 5.

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE
BILL/RESOLUTION NO: CS SS for HB 5 (House Labor and Commerce Committee)
TITLE: "An Act relating to establishing asbestos health hazard abatement"
AGENCY AFFECTED: Department of Labor

There are approximately 550 school buildings in Alaska. Of these buildings we know that 140 buildings have been surveyed for asbestos. This is based on information from the U.S. Environmental Protection Agency (EPA), that they have made on-site inspections for compliance with their regulations in the Juneau, Anchorage, Fairbanks, Ketchikan, Sitka and Kodiak school districts. These school districts contain approximately 140 buildings. We are estimating that of the pproximately 410 other school buildings, that a third have been properly surveyed or a school district will use a private consultant to survey their buildings. We estimate therefore, that the department will be required to make physical inspections of approximately 270 buildings that have either not been surveyed or have been improperly surveyed.

It is important that these school districts survey their buildings within two years to allow them time to budget and plan for the work necessary to abate the asbestos health hazards in their school districts.

It is assumed that the responsibility for training and certification outlined in AS 18.38.030 of CS SS HB 5 (L&C) will mainly be with the employer and that the department will only be responsible for establishing training guidelines and certifying training programs.

A lead industrial hygienist, a clerk typist and monies to enter into a contract for surveying and abatement evaluation will be needed for the first year. To assure that the program is implemented without delay, we would need to hire the industrial hygienist and clerk on July 1, 1985. We estimate that it will take two months to set up the schedule for surveying schools and three months to develop the regulations and guidelines for the certification program. Because of difficulties we anticipate in hiring a full-time position for only 10 months, we would enter into a contract by September with two other health specialists to perform the majority of the surveys. It is estimated that by the end of the first year, we would survey and evaluate potential health hazards in approximately 220 of the 270 school buildings yet to be surveyed. In the first year of operation the one time special costs would include:

- Sampling Pumps (3)	$6,000.00
- Training Films/Slides	$4,000.00
- Air Supplied Respirators (3)	$3,000.00
- Protective Clothing (3)	$3,000.00
- Contract for Two Health Specialists	$110,000.00
- Contract to Analyze the Bulk Asbestos Samples (5 per buildings)	$38,500.00

During the second year only the hygienist and clerk would be maintained to monitor the completion of the program and to continue the certification program. These positions will also be retained in FY 88, 89, and 90 to certify, evaluate, and monitor the training programs of contractors who work with asbestos. It is assumed in FY's 88-90 that personal services costs will increase by 3.5% per year and non-personal services will increase by 6% per year.

MEDICAL ASPECTS OF ASBESTOS EXPOSURE

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1984 ASBESTOS SYMPOSIUM
THE GEORGIA INSTITUTE OF TECHNOLOGY
ATLANTA, GEORGIA
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Asbestos-Related Diseases

and

Medical Surveillance

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I Causes of death among 17,800 insulators (1). Estimated exposure approximately 15 fibers/ml. of mostly chrysotile and some amosite throughout working life. Note that almost 10% of deaths were due to asbestosis, but that the major problem is cancer.

TABLE 1 DEATHS AMONG 17,800 ASBESTOS INSULATION WORKERS IN THE UNITED STATES AND CANADA, JANUARY 1, 1967 TO DECEMBER 31, 1976*

Underlying Cause of Death	Expected†	Observed (BE)	Observed (DC)	Ratio, Observed/Expected (BE)	Ratio, Observed/Expected (DC)
Total deaths, all causes	1658 9	2271	2271	1.37	1.37
Total cancer, all sites	319.7	995	922	3 11	2.88
Cancer of lung	105.6	486	429	4.60	4.06
Pleural mesothelioma	‡	63	25	—	—
Peritoneal mesothelioma	‡	112	24	—	—
Mesothelioma, n.o.s	‡	0	55	—	—
Cancer of esophagus	7.1	18	18	2.53	2.53
Cancer of stomach	14.2	22	18	1.54	1.26
Cancer of colon-rectum	38.1	59	58	1.55	1.52
Cancer of larynx	4.7	11	9	2 34	1.91
Cancer of pharynx, buccal	10.1	21	16	2.08	1.59
Cancer of kidney	8.1	19	18	2.36	2.23
All other cancer	131.8	184	257	1.40	1.91
Non-infectious pulmonary diseases, total	59.0	212	188	3.59	3.19
Asbestosis	‡	168	78	—	—
All other causes	1280.2	1064	1161	0 83	0.91

*Number of men 17,800, men-years of observation 166,853

†Expected deaths are based upon white male age-specific U S death rates of the U S National Center for Health Statistics, 1967-1976

‡Rates are not available, but these have been rare causes of death in the general population

(BE) Best evidence Number of deaths categorized after review of best available information (autopsy, surgical, call)

(DC) Number of deaths as recorded from death certificate information only

II Concept of mesothelioma as a "signal" tumor (2). When mesothelioma occurs in the United States, the cause is likely to be past asbestos exposure until proven otherwise. But note that mesothelioma is frequently mis-diagnosed, especially the peritoneal (abdominal) variety, and hence under-reported. Mesothelioma may occur with minimal exposure (bystanders, household contacts, neighborhood cases).

III Lung cancer numerically the most important problem. This burden falls mainly on cigarette smokers (3). Risk of lung cancer among cigarette smoking insulators approximately 53 times risk of non-smoking U.S. white males. However, risk is elevated among non-smoking and ex-smoking insulators as well.

IV Latency Period. Crucial concept for understanding asbestos-related diseases. Note that only a few deaths of lung cancer, mesothelioma, and the other asbestos-related diseases occur prior to 20 years from the time of first exposure (4). However, the duration of exposure need not be long (a few days for mesotheliomas, a few weeks, perhaps, for lung cancer - the lower limits are not entirely known). Note that if exposure begins early, cancers will occur in young adulthood or middle age.

TABLE 2

DEATHS AMONG 17,800 ASBESTOS INSULATION WORKERS IN UNITED STATES AND CANADA, JANUARY 1, 1967–DECEMBER 31, 1976
ANALYSIS BY DURATION FROM ONSET OF EMPLOYMENT

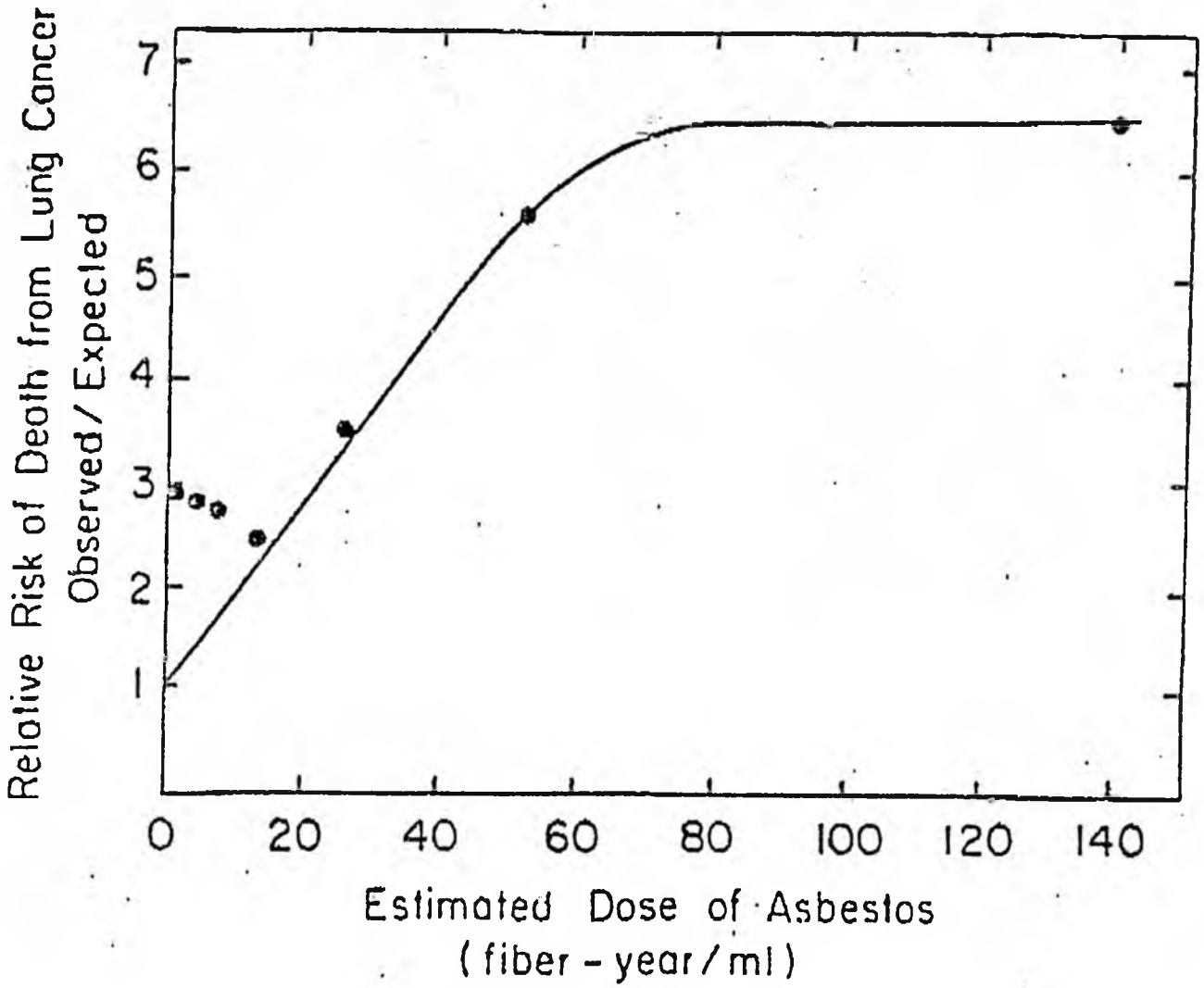
Duration from Onset (Years)	Number of Men	Person-years of Observation	Lung Cancer					Pleural Mesothelioma			Peritoneal Mesothelior		
			Exp.*	Observed (BE)	Observed (DC)	Ratio o/e (BE)	Ratio o/e (DC)	Number (BE)	Number (DC)	No./1000 Person-years (BE)	Number (BE)	Number (DC)	No /1(Perso year (BE
<10	8,190	26,393	0.7	0	0	—	—	0	0	0	0	0	0
10–14	9,063	29,003	2.7	7	5	2.55	1 82	0	0	0	0	0	0
15–19	9,948	34,066	8.5	29	27	3 40	3 17	2	2	0.06	3	0	0.09
20–24	8,887	31,268	17.0	59	57	3 46	3 36	6	4	0 19	3	2	0.10
25–29	6,596	20,657	21 0	105	96	5 00	4 56	13	5	0.63	19	3	0.92
30–34	3,547	11,598	18 4	112	103	6 08	5.59	9	3	0.78	23	6	1.98
35–39	2,020	5,403	11.5	65	57	5 68	4 98	15	4	2.78	19	5	3.52
40–44	1,108	3,160	8.1	40	131	4 93	3 82	4	3	1.27	16	3	5 06
45+	1,448	5,305	17.8	69	53	3.89	2.98	14	4	2 64	29	5	5 47

*Expected deaths are based upon white male age-specific U.S. death rates of the U.S National Center for Health Statistics, 1967–1976 Smo habits not taken into account.

(BE): Best evidence Number of deaths categorized after review of best available information (autopsy, surgical, clinical)

(DC): Number of deaths as recorded from death certificate information only.

V Dose-Response Relationship. Extremely complex subject. All data available are compatible with a linear dose-risk relationship with a levelling-off, or "saturation", of risk at higher levels. The corollary of this is: no known zero-risk exposure level (5).



VI Medical Surveillance of People Exposed to Asbestos. Contents of such a program determined by objective:

A. Objective: to determine whether asbestos exposure has been sufficient in a given population to cause disease. For this objective, medical data are a useful adjunct to dust measurements, engineering specifications and information concerning work practices. Unique advantage of medical data: dust levels in the past cannot be known if no measurements were done, but the human body acts as an "integrator" of exposure over the years. Most useful medical tools here would be chest X-ray, medical history, occupational history and search for mesothelioma deaths among people with sufficient latency period (20 years or more since first exposure).

B. Objective: Minimization of disease among those known to have been exposed and known to be at risk. This objective essentially calls for secondary prevention of disease, early detection, and aggressive treatment of early lesions, especially cancer.

VII Elements of the Port Allegany Asbestos Health Program

A. Establishment of a computerized registry of all those at risk: workers and their household contacts.

1. Maintenance of the registry (address changes, name changes, etc.)

B. Establishment of intensive medical surveillance tailored to each person's degree of risk (cigarette smoking, latency very important). Utilization of standard cancer-detection tests: chest X-rays, sputum cytology, stool blood, examination of mouth, tongue and throat, etc.

C. Health education for those at risk. Necessary to provide a balanced view of the risks; useful in promoting compliance with program, calming unwarranted fears, and promoting good health behavior.

D. Smoking cessation assistance. A powerful intervention.

E. Continuing education for local medical providers concerning asbestos-related diseases.

F. Adjunct measures: influenza and pneumonia vaccines.

G. Review and evaluation.

References

1. Selikoff, I.J. Asbestos-associated disease. In: Maxcy-Rosenau Public Health and Preventive Medicine, pp. 568-598, 11 ed. (John M. Last, Ed), 1980, Appleton-Century-Crofts. A good general review of asbestos-related disease. Very readable.

2. Cochrane, JC and Webster, I. Mesothelioma in relation to asbestos fiber exposure. A review of 70 serial cases. South African Medical Journal, 54:279 (1978). A "model" study, with a good emphasis on important principles and a few useful case histories.

3. Hammond, E.C., Selikoff, I.S., Seidman, H. Asbestos exposure, cigarette smoking and death rates. Ann. N.Y. Acad. Sci. 330: 473-490 (1979). This entire issue of the Annals is devoted to asbestos disease, and is the most useful recent reference volume on the subject. The paper by Hammond et al. is detailed and difficult, but nails down the issues.

4. Selikoff, I.S., Hammond, E.C., Seidman, H. Mortality experience of insulation workers in the United States and Canada, 1943-1976. Ann. N.Y. Acad. Sci., 330: 91-116 (1979). From the same volume and also detailed, difficult and definitive.

5. Nicholson, W.J. Dose-response relationships for asbestos and inorganic fibers. February 15, 1981. This detailed monograph reviews the available world-wide literature on dose-response relationships. Difficult going, but definitely rewarding. Available from the author at the Environmental Sciences Laboratory, Mount Sinai School of Medicine, 10 E. 101st St., N.Y., N.Y. 10009.

ASBESTOS:

ITS HEALTH HAZARDS AND ITS PROBLEMS

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I. ASBESTOS--ITS TYPES, ORIGIN, AND CHARACTERISTICS

Asbestos is a name given to a number of naturally-occurring fibrous silicates, the word asbestos being derived from the Greek word similarly spelled, meaning inextinguishable. There are two main varieties of asbestos; the serpentine form, which is characterized by long, soft, flexible, and finely-polished strands, which may be woven into a cloth, of which chrysotile is the primary representative, and the amphiboles, which occur as straight, needle-like fibers, of which crocidolite, amosite, and anthophyllite, tremolite, and actinolite are the primary examples.

Chrysotile makes up approximately 70% of the world production of asbestos and is mined primarily in Quebec, Canada, which produces 95% of the world production of chrysotile. Chrysotile is also produced in Vermont, the Union of South Africa, Russia, and to a lesser extent, in certain parts of Europe. Its unique characteristic is the fact that the long, white, silky fibers can be woven into cloth, whereas the other types of asbestos do not have this capability. All types of asbestos have the outstanding characteristics of being almost indestructible on exposure to body fluids, highly resistant to heat, and extremely resistant to acid erosion. Chrysotile is especially resistant to heat, being able to withstand 500 degrees centigrade, but is less resistant to acid erosion, and in bodily tissues, for example, the magnesium gradually tends to be leached out over many years.

Crocidolite is blue asbestos is produced primarily in the Cape of South Africa, especially since 1910, and makes up approximately 3.5% of the world production of asbestos. It is more acid resistant and hence is used often in marine insulation and aboard ship, is less resistant to heat, being able to withstand only 200 degrees Centigrade. Its needle-like morphology enable it to penetrate further and deeper than the other types of asbestos in body tissues.

Amosite is produced largely in Transvaal South Africa, primarily since 1907; and has somewhat coarser brownish fibers which have the outstanding characteristic of being more acid-resistant and hence is used primarily in marine insulation and shipbuilding. It was also widely used in pipe and boiler lagging in buildings.

Anthophyllite is mined predominatly in Finland, is the coarsest of the asbestos silicates, is less heat resistant, being able to withstand only 200 degrees Centigrade, and has an inherent tensile strength much less than crocidolite. It is not flexible, and is used primarily in the chemical industry. Its exposure is associated with greater incidence of pleural plaques and rarely, if ever, is mesothelioma seen in men exposed to this type of asbestos. Anthophyllite makes up less than 1% of world usage of asbestos. It is only rarely found in building insulation.

The other two little-used types of asbestos are tremolite and actinolite. Tremolite is a more brittle asbestos, has a fairly good heat resistance, and it, as well as actinolite make up each less than 1% of world asbestos production. Actinolite is rarely used, although it is very acid and heat resistant. Tremolite has been found in some talc mines causing asbestos contamination of certain talc products.

Table 1. Varieties of asbestos[1]

Variety	Colour	Major components (%)			Approximate formulae
		Si	Mg	Fe	
Chrysotile	white	40	38	2	$3MgO.2SiO_2.2H_2O$
Amphiboles					
Amosite	grey brown	60	2	40	$5.5FeO.1.5MgO.8SiO_2.H_2O$
Anthophyllite	white	58	29	6	$7MgO.8SiO_2.H_2O$
Crocidolite	blue	50	–	40	$Na_2O.Fe_2O_3.3FeO.8SiO_2.H_2O$
Tremolite	white	55	15	2	$2CaO.5MgO.8SiO_2.H_2O$
Actinolite	white				$2CaO.4MgO.FeO.8SiO_2.H_2O$

[1] From Hodgson, A. A. (1965) *Fibrous silicates* Lecture Series No 4. The Royal Institute of Chemistry and the Asbestos Information Committee, London

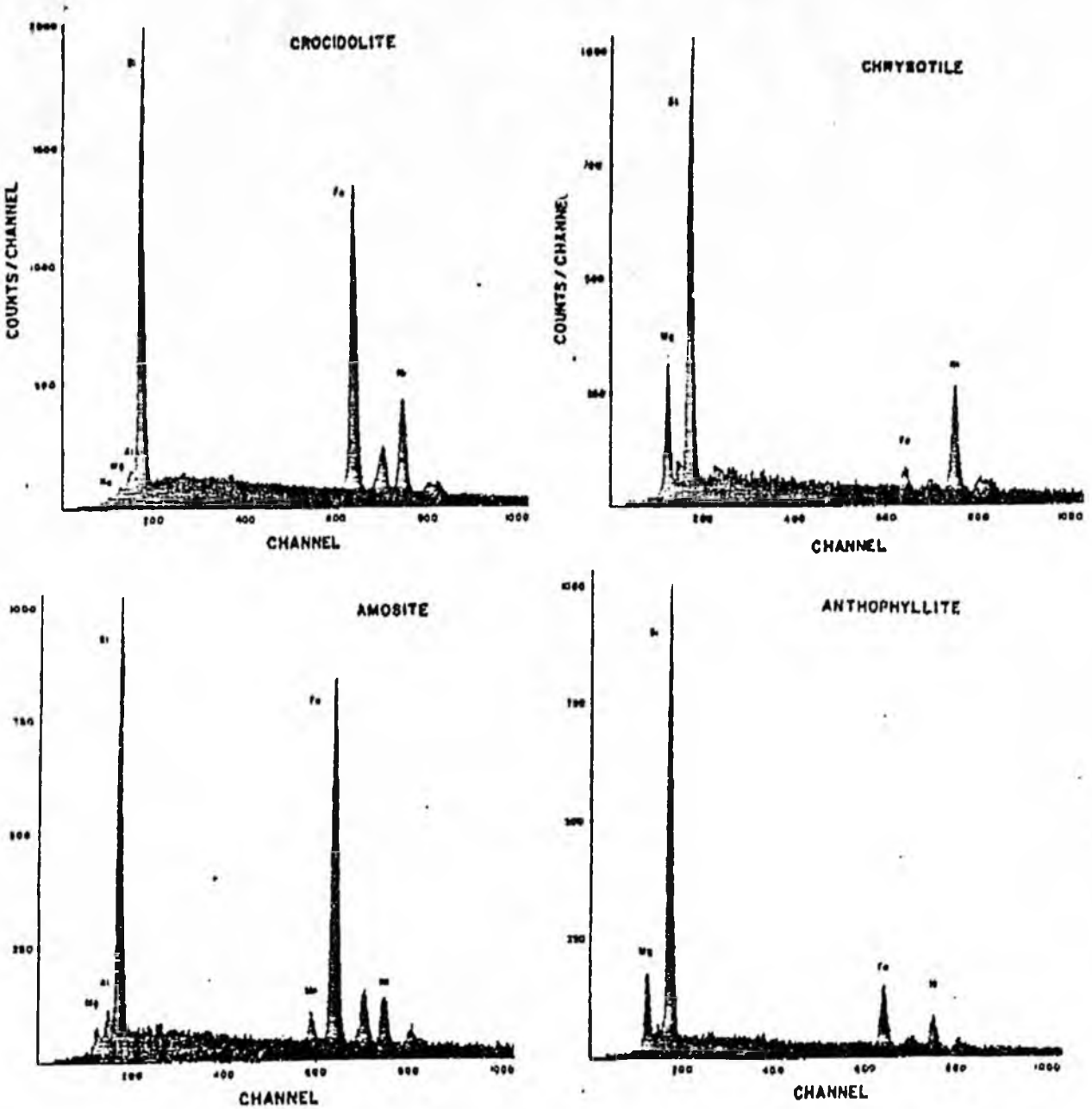


FIGURE 7. Examples of typical spectra from different types of asbestos: amosite; crocidolite; chrysotile; anthophyllite. (The nickel lines are present due to the specimen support.)

Reprinted from: Ivan B. Rubin and Carl J. Maggiore, "Elemental Analysis of Asbestos Fibers by Means of Electron Probe Techniques". Environmental Health Perspectives, Vol. 9, December 1974.

II. THE USES OF ASBESTOS

The United States used over 5 million tons of asbestos yearly in 1974, most of which came from the Quebec mines. Most was used for fire-proofing and insulating materials, especially in the construction industry where it was incorporated into cements, tiles, felts, and garments. In the textile industry, uses are fire-proof draperies and floor tiles, the former as used on theater curtains, asbestos sheets, and in the use of asbestos building boards. Plasterers applied an asbestos mix on steel foundations in order to prevent the steel from buckling in case of fire; this asbestos mix hardened within 8 hours without cracking or shrinking and without interrupting other construction activities. Boats and ships were similarly treated. Formerly, over 3 million pounds of fire-proofing mixture, which contains 30% chrysotile asbestos were used annually, and when sprayed, approximately 25% of the material goes directly into the air rather than being applied to building surfaces, and hence, workers may inhale as much as 50 million fibers in an eight-hour day. For this reason the use of a wet mixture of asbestos applied by trowelling was the preferred method of application. The practice of spraying asbestos-containing insulation in buildings was banned by the EPA in the 70s. In 1982, the United States used less than one-half million tons of asbestos, a significant decrease from the 1974 level referred to above.

Asbestos products resist heat and withstand abrasive forces. Chrysotile makes up 50% of the brake-lining material in brakes, and hence, workers exposed to this use of asbestos in repairing brake linings, are exposed to asbestos dust themselves. If not properly controlled, clouds of the asbestos dust appear in the air in this and other circumstances. Asbestos is also used in certain papers, paints, and plastics, where the positives charge of the chrysotile combines with the filler in pigment to form a more durable product. Similar friction products are used on

railroad cars, airplanes, and industrial machinery. The ship-building industry has been a major user of asbestos because the substance is good for insulating boilers, steam pipes, hot water pipes, nuclear reactors in ships, both in initial fitting and in repairs and refittings. Various sealants and patching tape compounds contain asbestos, and both floor and ceiling insulating tiles in the past often used asbestos.

It is apparent, therefore, that a large number of workers are exposed to asbestos; indeed, somewhere between 18 and 11 million U.S. workmen have been exposed to asbstos dusts during their lifetime in the past 40 years, including approximately 4½ million shipyard workers, 300,000 textile workers, 100,000 insulation workers, and perhaps another 3 to 5 million workers who handle asbestos at some course during its manufacture. It is apparent that individuals exposed include those who mine the asbestos, those who work in the mills in which asbestos is crushed, and those who manufacture the asbestos products-are all at risk in varying degrees. Those who load and truck the asbestos ore as in using it for rock filler on roads, as is the case in at least one area in Maryland are at risk, as well as the people who drive on this particular road. Carpenters are exposed when they cut asbestos board, or when they work in the presences of insulators or other workers working with the asbestos products themselves. Any worker aboard ship or working in shipyards is similarly exposed to asbestos dust, and indeed even families of workers who work in the vicinity of a shipyard or mine are at similar risk, including the families, for example, of shipyard workers, where asbestos dust may be brought home on the clothes of the workers, if proper precautions are not taken. The demolition of buildings containing old asbestos exposes such workers, as well as passers-by, to varying degrees of exposure to the asbestos dust. During the past 15 years it has become increasingly apparent that indirect family exposure, workers and family living near a mine, mill, or shipyard, represent a secondary risk not

previously appreciated. It has been demonstrated beyond a doubt that a period of time as short as one month's exposure to asbestos dust results in a significant risk to the individual from asbestos-associated diseases.

III. FATE AND BIOLOGIC EFFECTS OF INHALED ASBESTOS PARTICLES

It has been shown that the aerodynamic behavior of asbestos particles is a function primarily of the diameter of the fiber. It has been shown that fibers larger than 5 microns in diameter are precipitated out primarily in the nose and bronchi or upper parts of the bronchial tree, while fibers between 1 and 5 microns are capable of descending into the lower portions of the bronchial tree into the respiratory bronchioles. Only fibers less than 1 micron in diameter are capable of entering the air spaces or alveoli, where they may more readily penetrate the lung tissue. It is also apparent with asbestosis that gravity must play a part in the deposition of asbestos particles, as lung scarring is more prominent in the lower lung field suggesting that the weight of the particles tends to allow them to be deposited in the lower lung fields primarily. Once the asbestos fibers enter lung tissue approximately 25% of them become coated or walled off by macrophages, the scavengers of the lung, which try to wall off foreign particles to prevent tissue injury. At least 75% of the smaller fibers are not similarly walled off and remain uncoated and more difficult to see by usual light microscopy, and can only be seen with the higher magnification of electron microscopy.

The coated asbestos fibers, are called asbestos bodies, may be seen by regular light microscopy. These asbestos bodies are probably better called ferruginous bodies, as it has been demonstrated that other foreign particulates in the lung, primarily talc and probably zeolite, as found in certain towns in Turkish Anatolia, also have the capability of forming a similar-appearing coated fiber. The ferrugionous body is a long, beaded, rod-shaped particle of asbestos or talc having clubbed ends, staining darkly with iron stain and very easily picked up, when present, by the light microscope. This coating contains ferritin or iron granules

with some amorphous material of up to 5 microns in diameter, the latter apparently representing the breakdown process of macrophages and containing acid mucopolysaccharide with hemosiderin content. In most instances, however, the ferruginous body is diagnostic of asbestos exposure, while the presence of uncoated asbestos fibers can be confirmed by electron microscopy when necessary, by lung tissue obtained by either open lung biopsy, needle biopsy, or transbronchial biopsy. It is theorized that the physical characteristics of each asbestos fiber plays a distinct part in the type of disease produced in man.

IV. CELLULAR EFFECTS OF ASBESTOS

Once the asbestos fibril has penetrated lung tissue, local irritation there causes increased permeability of cellular membranes and as a result of this over a long period of time the particles are surrounded by macrophages, some chemical leaching or digestion of the magnesium, especially in chrysotile, occurs, macrophage death occurs, and fibrosis or scarring of the lung is stimulated in an effort to wall off these particles and prevent further lung damage. Chrysotile is probably the most potent in causing asbestosis than are the other types of asbestos. It is probable that the degree of the reaction is definitely related to the number of fibers inhaled into the lung as well as the individual's inherent biologic susceptibility or reactivity. It has been shown that both the total years of exposure, the dustiness of the job account for the cumulative dust exposure, and that these exposures are directly related to patient's symptoms, lung function tests, x-ray changes, the development of lung cancer, as well as mortality statistics. It is apparent, however, that mesothelioma needs much less exposure to the asbestos dust than the other diseases associated with asbestos.

In analyzing the presence of coated and uncoated fibers in the lung, it has been demonstrated that in carefully conducted studies almost 98% of all urban dwellers have asbestos fibrils or bodies in their lungs, this being in a higher percentage of men, in a greater number of older people, and in a greater percentage of individuals who work with shipping or docking areas or in industrial sites. The longer one lives in an urban area the higher the percentage and the greater the number of asbestos fibrils and ferruginous bodies have been found. Interestingly, ferruginous bodies are rarely found in the hilar lymph nodes or beyond the lung itself.

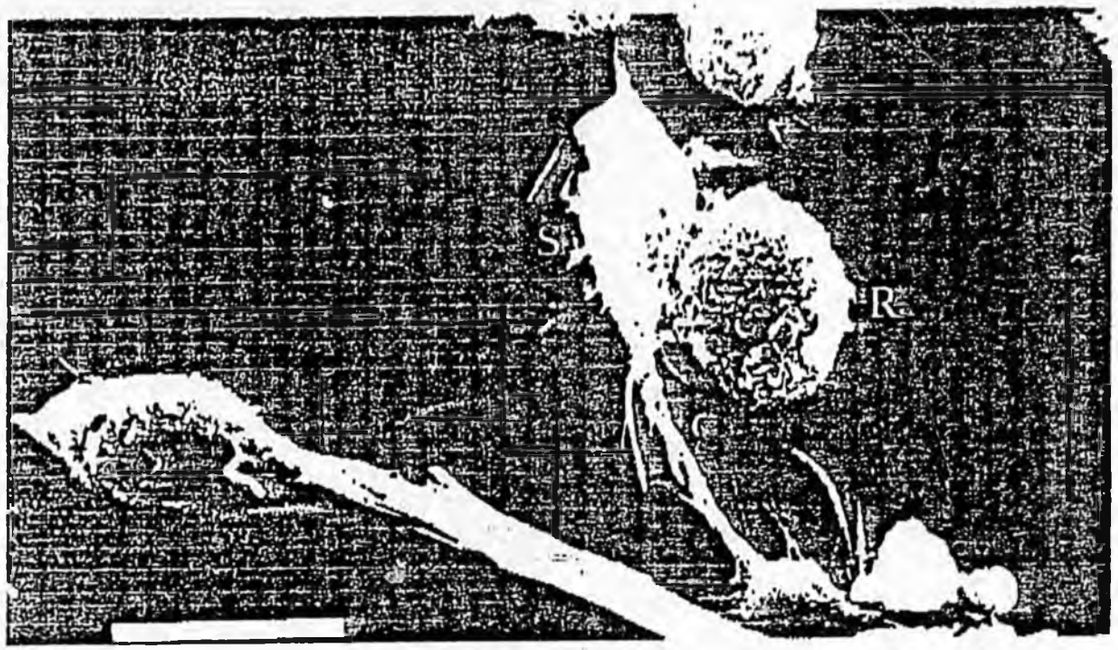


FIGURE 6. Scanning electron micrograph of untreated UICC chrysotile asbestos fibers associated with bovine alveolar macrophages: cells(S) were often observed spread along asbestos fibers with additional rounded macrophages (R) nearby (1940 x , bar = 10 μm).

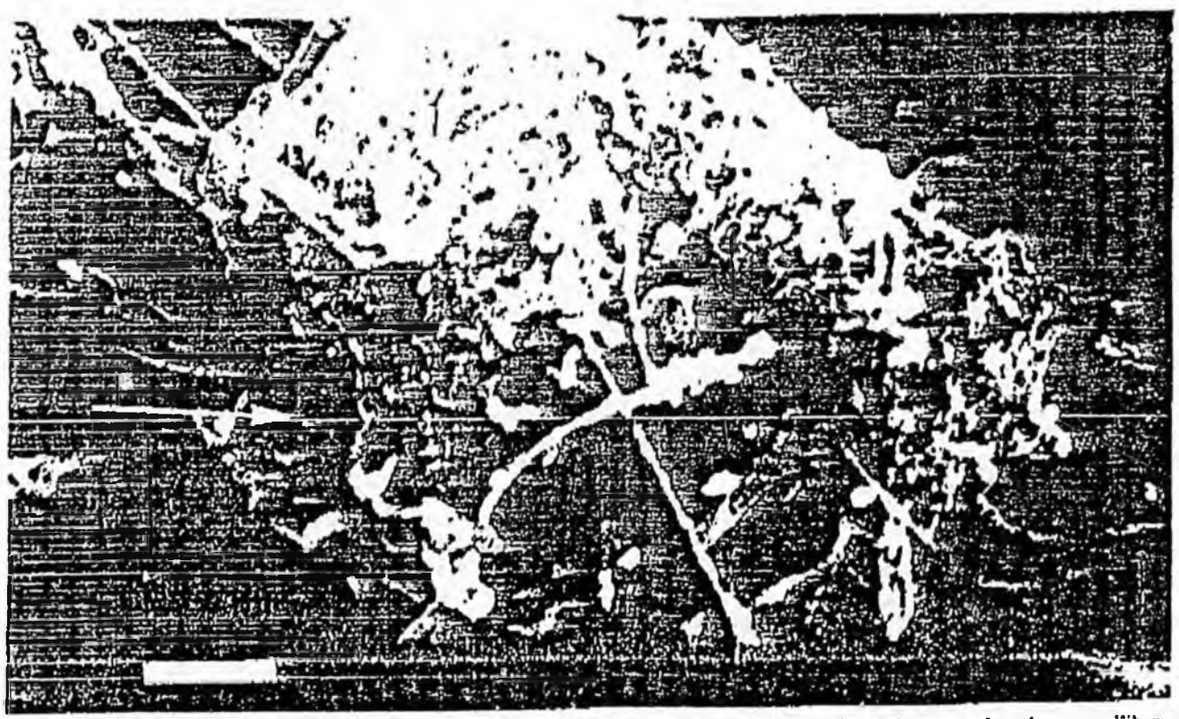


FIGURE 7. Some macrophages appeared mottled with numerous holes and a loss of typical membrane surface features. Fibers, previously X-ray irradiated, are visible (arrow) on such cells (9,700 x , bar = 1 μm).

Micrographs reprinted from: R. Valentine, et. al., "Thermal Modification of Chrysotile Asbestos: Evidence for Decreased Cytotoxicity". Environmental Health Perspectives. Vol. 51, September 1983.

V. ASBESTOS INDUCED OR ASSOCIATED DISEASES

There are six general areas of human disease caused by or at least strongly associated with exposure to asbestos dust. Most important, certainly historically, is that of diffuse interstitial pulmonary fibrosis or asbestosis. In previous years before adequate control of asbestos dust in the air was obtained, approximately 20%, or 1 out of 5 miners, would develop significant pulmonary fibrosis with the characteristic gradually progressive exertional dyspnea or shortness of breath, characteristic of this entity. With better precautions used in the handling of asbestos during more recent years, it is already noted that perhaps up to only 10% or 1 out of 10 miners have been afflicted with interstitial fibrosis of the lungs. Chest x-rays made over the years in a group of asbestos insulation workers have shown a gradually increasing number of abnormal chest x-rays with the passage of time, there being approximately 10% abnormal within 10 years, 44% abnormal within 20 years, 73% abnormal within 30 years, 87% abnormal within 40 years, and practically 94% of all chest x-rays show some abnormality secondary to asbestos dust inhalation in workers who have been exposed for over 40 years. The peak age for the development of disability in asbestos workers occurs after 20 years of exposures, in other words, after the worker has been exposed from 15-25 years. He may indeed have worked only 1-3 years in asbestos dust, and yet, 15-20 years later, full-blown asbestosis of the lung becomes apparent, indicating that the scarring in the lung progresses even after exposure to the asbestos dust per se has stopped. It is also interesting that the progression to moderate or severe pulmonary fibrosis is not related entirely to dosage, but perhaps to some genetic factors not fully understood at this time.

Examination of the lungs of the man who has died of asbestosis shows that there is diffuse fine fibrotic scarring scattered throughout primarily the lower halves of both lung fields, frequently but not usually associated with some degree of centrilobular or bullous emphysema, and with relative retraction or generalized decrease in size of the lung in the involved areas. X-ray changes of these same lungs demonstrate a ground-glass appearance of linear scarring or fibrosis with partial obliteration of the diaphragmatic and heart borders primarily in the lower lung fields. During the worker's lifetime, pulmonary function studies show what is called a restrictive defect, characterized by a decreased vital capacity, diffusing capacity, and arterial oxygen content secondary to the diffuse scarring throughout the lower lung fields. One of the earliest changes that can be discovered, in fact, is that of the decreased vital capacity which can be recognized by doing pulmonary function studies. There are occasions when more complicated pulmonary function tests such as the use of the diffusion capacity, measurement of alveolocapillary oxygen gradients and exercise blood gas tests will show an abnormality before pulmonary function studies, but this is the exception rather than the rule. The use of the chest x-ray coupled with pulmonary function studies, as is required now by OSHA, are reasonable and practical means of measuring and picking up these changes as early as they can in general be.

On occasion, it is desirable or even necessary to prove that a patient or worker has pulmonary asbestosis, and this nowadays can be done without an open lung biopsy which requires a major chest operation. The abbreviated procedure being that of transbronchial bronchoscopy with biopsy of a tiny bit of lung tissue. This tissue, if carefully examined by electron microscopy for uncoated fibers, and for coated fibers or ferruginous bodies by light microscopy can frequently give unequivocal evidence of underlying asbestosis. It must be mentioned, however,

that efficient evaluation of electron microscopy requires the full day of a trained microscopist or pathologist in order to adequately examine a single specimen. Exposure to crocidolite probably accounts for more fibrosis than chrysotile exposure. Although we do not know what the actal fiber level is insofar as the threshold for human disease, in this instance (pulmonary fibrosis) workers are currently living longer, are having less disability due to pulmonary fibrosis, and their disease entities are picked up sooner.

The second most common disease entity related to asbestos dust exposure is that of the pleural plaque. This is a hyalinized and often calcified discrete parietal pleural plaque, not located on the wall of the lung, but on the pleura lining the chest wall and never on the lung itself. These plques are extrapleural and occur most commonly in workers exposed to anthophyllite fibers. The hyaline or calcified plaque is picked up often on routine chest x-ray as an ill-defined modular density along the margin of the lung which is almost pathognomonic of asbestos exposure. Interestingly, only 15% of the plaques are found on chest x-rays that are actually identified at autopsy, illustrating that multiple chest x-rays would need to be done in order to pick up all or most of these densities.

Clinically these plaques are rarely, if ever, symptomatic, and if a plaque is found on the chest x-ray, one can anticipate that individuals with the plaque will have a higher than expected incidence of bronchogenic carcinoma, otherwise they have little significance except for that of a signpost which calls out "asbestos". Another rare and more recently recognized disease apparently induced by asbestos fibers is that of the exudative reaction or pleural effusion of which there have been approximately 70 cases described in the medical literature. These cases are diagnosed partly by exclusion, that is, by ruling out all other causes for pleurisy with effusion, and in some instances, by parietal pleural biopsy in which asbestos

bodies and fibers are found in areas of pleural thickening and associated local pneumonitis or pneumonia. The development of this benign pleural effusion in the worker may occur in as little as 1 or as long as 5 years after exposure to asbestos. There is no specific treatment for this entity.

The malignant mesothelioma of the pleura or peritoneum, which was first described in a case reported in 1946, has become increasingly more common during the past 30 years, primarily in workers exposed to asbestos to the exclusion of other people generally. It is now well accepted that malignant mesothelioma can be induced by asbestos dust inhalation for as short a period of time as 1 or 2 months primarily to crocidolite fibers, less frequently with amosite fibers and least with chrysotile fibers, while anthophyllite fibers have not been known to produce this entity. It is interesting to speculate that the size of the fibers is the most important aspect in explaining this variation, as the crocidolite fibers are the tiniest and most needle-like of all, and therefore can penetrate deep into the tissues lining the lung and the peritoneum in order to produce this cancerogenic effect. It is also interesting that more cases are produced in those workers who are the furthest along the line in the processing of the asbestos ore, the fewest cases of mesothelioma occurring in the workers with the heaviest of the ore exposure. This implies that processing breaks down the asbestos into finer particles which are better able to penetrate deep into the tissues of the lungs. Mesothelioma is more often found, therefore, in industries which use crocidolite and amosite asbestos, as in the shipyard workers, and in workers exposed to manufactured products using these types of asbestos fibers. During the past 10 years, it has become apparent that the wives, sons and daughters of asbestos workers and individuals who live in the vicinity of shipyards where asbestos dust is used, are often the ones who, though they have no direct exposure to asbestos in their work, inhale the particles brought home by their husbands in their work

clothes or breathe in the particles from the air blown from the shipyards where asbestos is being used. Among the seventeen thousand insulation workers in America at this time, approximately one worker every two weeks dies of mesothelioma. This is in contrast to the general association among people at large of only one case of mesothelioma per million persons in the United States.

The mesothelioma usually develops in the pleural or peritoneal surfaces and spreads diffusely around and into the lung or abdominal cavity with death generally occurring within 1 year after the tumor is recognized. Pulmonary fibrosis or asbestosis is usually associated with mesothelioma in varying degrees, and ferruginous bodies are generally found in the lung, although they are not generally found in the mesothelioma itself. Uncoated fibers of asbestos can usually be found by electron microscopy.

The clinical features of mesothelioma are generally insidious with weight loss, lassitude, chest or shoulder pain, abdominal swelling or obstruction of the intestine, with generally rapid progression of the disease with average survival being less than one year. Adequate treatment is not yet available but appropriate chemotherapy is currently being evaluated. The amount of asbestos fibers needed to produce mesothelioma is apparently much less than that necessary to produce asbestosis or pulmonary fibrosis.

Carcinoma of the lung has been associated with asbestos exposure since the early 1930's, definitely confirmed by 1947. During the past ten years it is anticipated that from 15 to 20% of men having significant asbestos exposure die of carcinoma of the lung. There is a greater incidence of adenocarcinoma of the lung in asbestos workers, probably related to the fact that asbestos dust pervades every part of the lung especially in the periphery where the cells which develop into the

adenocarcinoma are more plentiful. The worker's likelihood of developing carcinoma of the lung is slightly greater in the worker who has pleural plaques noted on chest x-ray. Cancer of the lung can be more effectively treated than mesothelioma of the pleura or peritoneum, and for this reason, early diagnosis by chest x-ray or in cetain instances by Pap smears of sputum may be helpful in effecting palliative relief of symptoms and indeed cures in some patients, if they are discovered early enough in their clinical course. For this reason, annual chest x-rays in every asbestos-exposed individual should be carried out for their lifetime. The longer the duration of the asbestos-exposed worker's employment the greater the risk of developing lung cancer. Even 1 month of working with asbestos was enough to increase the instance of bronchogenic carcinoma, in that the instance of cancer was twice as much in such a worker, as in one who has no asbestos exposure. After two years of exposure the instance of lung cancer increases to six times that of the normal person, and after ten years rises markedly. The smaller the dose of asbestos, it has been found, the longer the induction period before the cancer deevelops. In general, when cancer of the lung is first diagosed, 75% of them are inoperable at that time. If the lung cancer can be found as a small peripheral nodule resected by lobectomy, 40 to 50% will survive for as long as 5 years.

The final area of asbestos-associated disease, mainly where the relationship is less positive as to the etiologic agent being asbestos, includes other tumors or cancers which are found to be of greater incidence in workers or people exposed to asbestos. At this time, cancer of the esophagus, larynx, stomach, colon, and more recently the pancrease, are definitely in increased numbers as compared with the general population, and hence pose added risk to the asbestos worker. These entities are, in general, two to five times more common in asbestos workers than in the general populace.

VI. RELATIONSHIP OF SMOKING TO ASBESTOS INDUCED DISEASES

In August 1978, Johns-Manville, the biggest producer of asbestos products in the United States, not only had banned smoking entirely in the company work area, but has since established a policy that no person who smokes will be hired by the company for any operation where there is a possibility of exposure to asbestos, and that applies to the entire plant, including the officers. Even visitors to the plant are prohibited from smoking inside the plant itself. This action is to be strongly commended, and yet it was not enforced without considerable controversy. What in fact are the effects of smoking or not smoking on the health of the asbestos worker?

Insofar as pulmonary fibrosis or asbestosis of the lung, there is little or no effect on the scarring in the lung insofar as whether the worker smokes or does not smoke. There is no question, however, that smoking aggravates and causes to develop a significantly greater obstructive defect in the lung, which further increases the worker's shortness of breath, and especially his amount of cough and expectoration, as compared with the non-smoking worker who develops asbestosis. There is also no apparent statistical role in the development of mesothelioma of the pleura or of the peritoneum in asbestos workers, and the same probably applies to the development of the asymptomatic pleural plaque and the benign pleural effusion. There is, however, a greater incidence of cancer of the stomach and larynx associated with smoking, but it may not have a significant effect insofar as the asbestos worker is concerned.

Wherein, therefore, is the data for forbidding smoking in an asbestos plant? Statistically it has been shown that the non-smoking asbestos worker will develop

cancer of the lung approximately five times more commonly than the non-smoking, non-asbestos worker. This proportion, in itself is relatively mild, but significant. In the smoking asbestos worker, however, there is a multiplicative or synergistic effect in that there is a fifty-four times greater rate of cancer of the lung than in the non-smoking, non-asbestos-exposed individual, and these facts are borne out that approximately 15-20% of all asbestos-exposed workers in previous years will develop carcinoma of the lung, almost one of every five workers. This is in sharp contrast to the one or two out of each hundred to one hundred fifty workers who do not smoke. In other words, the worker's chance of developing cancer of the lung is 20 times greater if he smokes while working in an asbestos environment than if he does not smoke. Unfortunately, banning smoking on company premises does not stop the person from smoking, but an adequate educational program by management, backed up by labor, is the best approach towards reducing the high incidence of lung cancer in these individuals.

VII. DURATION OF EXPOSURE AS RELATED TO DISEASE DEVELOPMENT

TABLE I

ROENTGENOLOGIC CHANGES IN ASBESTOS INSULATION WORKERS

Years of Exposure (yr).	No.	Percent Normal	Percent Abnormal	Asbestosis 1	2	3
40+	121	5.8	94.2	35	51	28
30-39	194	12.9	87.1	102	49	18
20-29	77	27.2	72.8	35	17	4
10-19	379	55.9	44.1	158	9	0
0-9	346	89.6	10.4	36	0	0
	1,117	51.5	48.5	366	126	50

Selikoff et. al.

In general, the initial exposure of the asbestos worker to asbestos dust may be measured in decades for convenience in categorization. For example, in the fibrosis induced by asbestos dust there are few changes noted during the first ten years, but during the second ten years, mild changes occur. These changes moderate from ten to twenty-nine years after the initial exposure, and result in a greater degree of pulmonary scarring during the fourth decade. As shown in Table I, pulmonary fibrosis, as evidenced by x-ray changes, becomes increasingly more prominent the longer the time from initial onset of exposure. Practically every asbestos worker who has worked for over forty years or has had forty years from the initial exposure has some evidence by chest x-ray of lung or pleural abnormality not found in the normal individual. The same applies to the development of disability in these workers, in that the average person who develops asbestosis or pulmonary fibrosis becomes disabled somewhere between the fifteenth and the twenty-fifth year peaking at the twentieth year following initial exposure to the dust.

The same findings are similarly true with mesothelioma and lung cancer, as is shown by the accompanying Figure 2 (below).

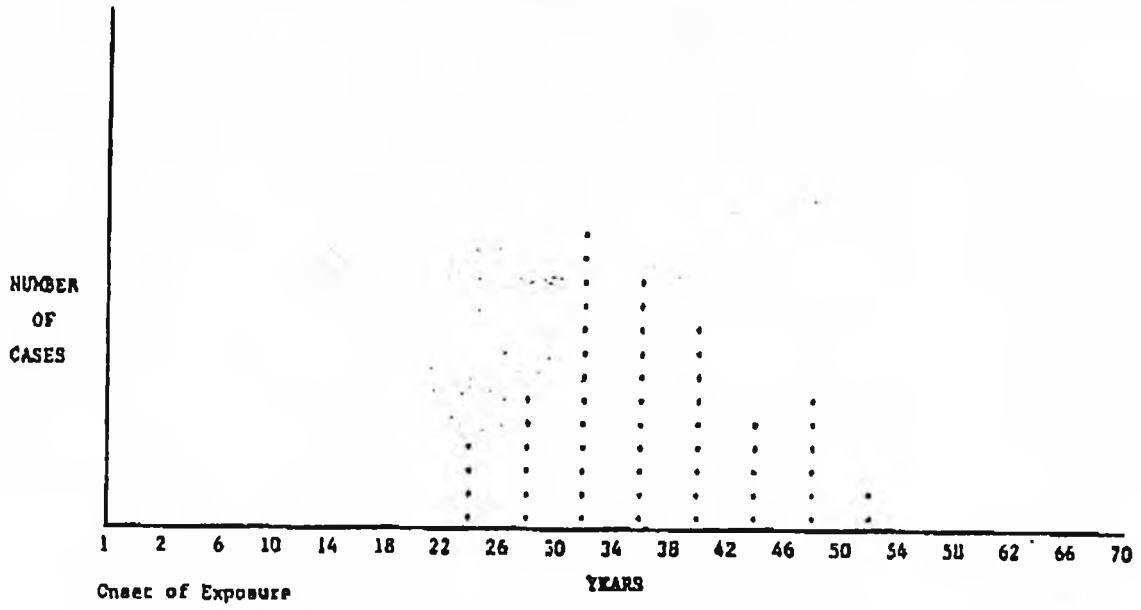


Figure II. Fifty-six cases of neoplasm of the lung or pleura (each case represented by a dot). The elapsed time from onset of exposure is shown on the base line.

The individual exposed to asbestos dust will develop cancer in approximately eight or ten out of every hundred workers rarely before twenty years from the date of initial exposure, and usually over thirty years after the initial exposure, which indeed may not be more than one or two months total exposure time for this entity to develop. The average age of development is approximately 31.8 years for mesothelioma, while for lung cancer, which rarely occurs before thirteen years after initial exposure, the average age of development from date of onset of initial exposure to asbestos dust is approximately 30.7 years. As mesothelioma and lung cancer are relatively late-developing asbestos-induced diseases, it is quite likely that an even greater percentages or workers will develop these cancers as they become older.

29 & 30

The primary importance of recognizing the time lag between initial exposure and the development of the disease is many current laws concerning Workmans' Compensation, Social Security benefits, and Workers' Pension Plans, contain a statute of limitations which states that the person is not liable for a company-induced disease, if the disease is discovered or diagnosed more than two, five, or perhaps seven years from the date the worker left the company's employment. State, federal and company rules or laws need to be modified in order to accept the medical facts related above. Each of these three major disability diseases; pulmonary fibrosis, mesothelioma, and lung cancer, all may develop twenty to thirty-five years or longer after the exposure to the asbestos dust has terminated.

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Authority: "To secure adequate laws for the care and protection of children and youth." National PTA Bylaws, Article II:c

Asbestos: Still a danger in schools

by Elaine S. Knapp

For Phyllis Adams and Ann Gibbs the last year has been a frustrating one—trying to get their local school board to remove asbestos from the school their children attend.

"It's frustrating, our children are being poisoned and there's not a..ything ve can do," Mrs. Gibbs declared. What the Lexington, Kentucky, housewife has done is work through the PTA, form a group of concerned parents, go door-to-door telling parents of the danger, gather hundreds of signatures on petitions, read volumes on asbestos, call and write federal agencies and confront the school administrator and board.

After a year of parental pressure being applied and at least a decade after school authorities knew of the asbestos hazard, Mrs. Gibbs said, "We don't think anything will be done until the government makes them (the school board)." School authorities maintain the asbestos will be cleaned up if money is available for renovation next year.

Ironically, the major government effort to control asbestos lies in Mrs. Gibbs and others like her. Telling parents and teachers that their school has asbestos and relying on them to ressure local action is the heart of the U.S. Environmental .'rotection Agency's (EPA) strategy to rectify the nationwide problem of asbestos in schools.

No effective federal program exists to protect schoolchildren from asbestos, state efforts vary widely and local schools often ignore the danger due to the cost of cleanup.

Asbestos dangers

Any exposure to asbestos involves some health risk, according to the Congress, the EPA and the scientific community. Children are especially vulnerable, according to the EPA guidance document on asbestos sent to schools. Their remaining life expectancy provides the 20 to 40 years it takes for disabling and fatal asbestos-related diseases to develop. Large numbers of children may be exposed in a contaminated school and exposure is continuous during the school year. Children are active and breathe more frequently than adults, possibly inhaling more asbestos fibers. Smoking can increase the cancer risk due to asbestos exposure.

Most hazardous is friable asbestos that can be crumbled. It sends deadly fibers into the air which may lodge in the lungs indefinitely, according to EPA's guidance document. Asbestos workers often develop a chronic and debilitating lung disease called asbestosis. Lower and shorter exposure can result in death many years later.

Asbestos diseases include: 1) asbestosis, a disease in which asbestos clogs the lungs, 2) pleural calcification, a deposit of alcium salts in the lung lining, 3) malignant tumors of the lung, 4) mesothelioma, a rapid and fatal cancer of the lung and 5) intestinal and uterine cancers.

Hot potato

Asbestos in the schools has been a "hot potato" tossed among various levels of government and federal agencies. One reason is that removal of asbestos can be quite expensive, especially if large areas of buildings are affected. Funding is basically up to local schools as is asbestos detection and control. No federal funds are available and state aid varies.

The U.S. EPA requires schools to inspect for asbestos and notify parents and [school] employees of asbestos hazards. The EPA doesn't require removal or abatement. "The theory is that PTAs and employees would pressure local districts to take remedial action," said Terrell Hunt, assistant to EPA Deputy Administrator Alvin Alm.

However, a recent internal EPA report found that many schools did not meet EPA's June 1983 deadline for asbestos detection, record keeping and notification.

No federal funds

Federal funds of $172 million authorized by the Asbestos School Hazard Detection and Control Act of 1980 were never appropriated. Grants were promised for schools to identify asbestos hazards and loans for mitigation of asbestos hazards. But funds were never requested by the Department of Education, reported John Bennett, aide to U.S. Representative George Miller, D-Calif., who sponsored the act. In 1983, a $50 million recommendation by the House was omitted in a House-Senate conference.

The U.S. Department of Education had a task force which set standards for state grants in 1980, according to W. Stanley Kruger, deputy director for state and local programs. However, when the program wasn't funded, the department "deferred to EPA," Kruger said.

Under pressure from Congress, the department reactivated its task force in October 1983 and is gathering information on asbestos to send to chief state school officials, Kruger said. The department also reactivated its requirement that states file plans for asbestos in the schools' programs and report on their progress every six months. All but two states have filed.

EPA's program

The federal effort has largely been a requirement by the EPA that schools inspect for asbestos hazards, sample and analyze material to determine if asbestos is present, keep records of the inspection, post notices, and notify parents and employees if asbestos is found. Although schools were to comply with the rule by June 1983, the EPA doesn't know how many did. It does not require schools to report to it and must send federal inspectors to schools to check their records. EPA staff said when the EPA regulation was written that the administration op-

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posed imposing a data reporting requirement. The EPA recently doubled its field force of inspectors by adding 16 people through a contract with the American Association of Retired Persons, Hunt said. These include retired architects and engineers. Primarily, EPA staff look at school records and physically inspect some schools. However, there are not enough inspectors to cover but a small portion of the nation's schools.

In providing technical advice, EPA can help schools determine the best strategy for evaluating the risk and responding to asbestos, Hunt said. He said that anything short of removal is considered a short-term solution.

Connie Derocco, environmental protection specialist with EPA, said that out of 1,527 schools inspected in 468 districts, some 60 percent did not comply with EPA rules. Most failed to notify and warn PTAs and employees of asbestos materials [manufacturers]. Schools know they will be pressured once the word is out, and they are hesitant to deal with the asbestos problem, Derocco explained. After receiving a notice of noncompliance, schools have 30 days to act before the EPA files a civil complaint.

Labor union concern

An estimated 3.24 million schoolchildren and 648,000 school employees are potentially exposed to asbestos, according to Kitty Conlan, research analyst with the Service Employees International Union (SEIU).

The SEIU is lobbying Congress to fund the 1980 act for grants and loans to schools. Schools don't have the money to clean up on their own, Conlan said. "It's a nationwide problem which affects the health of millions of people."

SEIU is suing the EPA to require schools to clean up flaking asbestos. "Schools say if EPA thinks asbestos is so bad, then EPA would require them to get rid of it," Conlan commented.

EPA does give schools good technical advice on how to get rid of asbestos, Conlan noted. But some schools accept the lowest bid rather than follow EPA guidelines. If the cleanup is not done right, the asbestos danger can be worsened.

Conlan said SEIU doesn't think suing asbestos' manufacturers is worthwhile, citing lack of action on suits filed by asbestos workers. "We're hesitant to have our members litigate themselves to death," she said.

Conlan added that school districts can also be held responsible for asbestos. "They can face a big liability," she commented.

Lawsuits filed

A number of lawsuits on behalf of school boards and building owners in Kentucky, Mississippi, New Hampshire, Florida, South Carolina, Alabama and Tennessee have been filed by a South Carolina law firm.

Daniel Speights (a school board attorney) noted that legal theories available to school boards against manufacturers of asbestos include: contract (the products were not fit for the use intended), negligence (the manufacturers were negligent in informing users of the risks associated with the products), strict liability (manufacturers should be strictly liable for failing to warn of asbestos hazards), and restitution (manufacturers have a duty to abate the hazard).

A civil action filed on behalf of the Barnwell, South Carolina, school district notes that school districts and public officials could be held liable for failing to abate a health hazard.

A September 1981 report by the U.S. attorney general to Congress recommended that school authorities seek to recover asbestos abatement expenses from asbestos manufacturers. The report said federal litigation would be ineffective unless Congress imposed liability on asbestos manufacturers.

Asbestos manufacturers are being sued by at least 20,000 people on the grounds that the companies knew of asbestos hazards and covered them up, according to a September article in the *National Journal*.

A 1983 report from the Rand Institute says that asbestos litigation and compensation has cost an estimated $1 billion over the past decade. Only 37 cents of every dollar went for actual compensation to plaintiffs. Estimates of the number of deaths due to asbestos over the next 30 years range from 74,000 to 265,000.

What you should do about asbestos in your school

Given current asbestos rules and regulations, PTAs should check on the following:

1. Was each school in your district inspected for friable asbestos? If not, request this action immediately.
2. Was an analysis of asbestos samples, using polarized light microscopy, conducted?
3. Are records of the asbestos inspection on file in the school district?
4. Does the PTA have a copy of the report in its records?

In schools where asbestos was found, has the school complied with the following:

1. Did the school district notify the children's parents, either directly or through the PTA?
2. Were school employees notified of the location of the materials?
3. Did the school post a standard form in administrative and custodial areas?
4. Are measures being taken, if not already completed, to remove asbestos in the school?
5. Did the school district provide maintenance and custodial employees with instructions for reducing exposure to asbestos?

If asbestos was found in your school, but corrective measures are not being taken, the following steps should be pursued:

1. The PTA should work with the school to affect removal or abatement. Invite parents, teachers, employees of the building, the school principal, and the superintendent to a PTA meeting. Request information about the degree of the asbestos problem and what plans are being developed for cleanup.

2. If plans are not under way or seem unsatisfactory, contact the school board to inform it of your concern. If informal discussions do not produce results, get the issue on the agenda of the next school board meeting. Be prepared to provide the facts, including the inspection reports and the cost of abatement, to school board members.

3. Meanwhile, inform your state legislature and the U.S. Congress about the problems and the degree of difficulty there is in terms of cleanup.

4. If the school board is unable or unwilling to ameliorate the problem, one resort would be a lawsuit. Be sure that you have tried every alternative before taking this step.

Asbestos in Schools Still a Problem

The federal government and the states have taken some actions over the past year to protect school children and others from exposure to asbestos.

Due to its fire retardant and insulating qualities, asbestos is used in hundreds of products. "Friable" asbestos, the kind that easily crumbles into microscopic fibers that can be inhaled, is very hazardous according to the Environmental Protection Agency (EPA). Studies have linked exposure to asbestos to lung diseases and cancer.

Federal Activities

In 1982, the EPA issued rules requiring public and private elementary and secondary schools to identify friable asbestos-containing building materials, maintain records, and notify employees and parent-teacher organizations of the results. The deadline for inspections was June 28, 1983.

According to a recent EPA survey, 93 percent of America's school buildings have been inspected, and 35 percent of them have friable materials that contain asbestos. The survey also revealed that 67 percent of the schools have taken action to control the substance in their buildings. However, only 34 percent of the schools have complied with major requirements of the 1982 rule.

The lack of uniform federal standards, particularly for definition of hazard and worker protection, is viewed by many as a flaw in the EPA's asbestos-in-schools program.

At least one state has moved to set its own standard. The New Jersey Asbestos Policy Committee in October recommended to Gov. Thomas Kean an "action guideline" at 0.003 fibers per cubic centimeter of air, and a decision-making protocol for building owners. Rules are expected to be proposed early this year. The federal Center for Disease Control has proposed an "action level" of 0.01 fibers per cubic centimeter, or three times higher than the proposed New Jersey standard.

In 1984, Congress passed the Asbestos School Hazard Abatement Act to provide loan and grant money to school districts seeking to abate friable asbestos-containing materials in schools. The act appropriated $50 million for fiscal 1984, and authorized $50 million for fiscal 1985 and $100 million per year for five years thereafter. Conservative estimates of the price tag for school abatement actions are in the range of $1.6 billion to $2 billion. "Typical" abatement projects cost from $100,000 to $500,000 per school.

This legislation created a number of deadlines for state authorities. By Nov. 20, 1984, state governors were to submit a plan to EPA on procedures for maintaining records on the presence, detection and abatement of asbestos. States must also meet deadlines to submit priority lists of schools that are candidates for abatement, and financial assistance applications.

What States Have Done

A number of states are undertaking their own legislative and regulatory initiatives. The most common state approach has been to appoint a state asbestos coordinator. State programs have focused on school buildings and other state-owned facilities.

Most states leave asbestos removal or cleanup to local school districts. A handful of states mandate cleanup or provide funds for removal. Even when state funding is provided, the local districts often must set their own standards for asbestos management.

In 1984, seven state legislatures adopted legislation on asbestos in schools or public buildings, according to the Safe Buildings Alliance, comprised of manufacturers of asbestos (see table). Five of those seven states passed funding bills for asbestos removal or control: California, Iowa, Minnesota, Nebraska and New Jersey. Delaware created an ad hoc committee to consider a comprehensive state plan on asbestos in state-owned buildings. Louisiana authorized the state attorney general to assist local school districts in bringing suit against asbestos manufacturers, suppliers and installers. Iowa also passed an asbestos contractor licensing law.

During the 1983-84 legislative sessions, 28 states considered legislation on the issue of asbestos-containing materials in buildings, according to the Safe Buildings Alliance.

(Editor's Note: This article was condensed from a CSG Backgrounder on "Asbestos in Buildings," compiled by John F. Welch, president of the Safe Buildings Alliance in Washington, D.C., and Kevin J. Fay, of Alcalde, Henderson and O'Bannon in Rosslyn, Virginia, in cooperation with Jon Grand, a former CSG staff member. For a copy of the entire report, contact the Order Department, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, KY 40578. Ask for Backgrounder No. 118402. Single copies are free to state officials.)

STATE ACTIONS ON ASBESTOS IN BUILDINGS

State	Legislation adopted	State funding	State assistance	Local funding option	Contractor certification and training	Encapsulation allowed	EPA NC citation
Alabama			★(a)				★
Alaska			★				
Arkansas							★
California	★	★				★	★
Connecticut		★	★			★	★
Delaware	★(b)						★
Georgia		★	★				★
Idaho				★			
Illinois	★		★	★			★
Indiana							★
Iowa	★			★	★	★	
Kansas							★
Kentucky	★(b)		★				★
Louisiana	★(c)						
Maine			★				
Maryland	★		★		★		
Massachusetts		★	★				★
Michigan							★
Minnesota	★	★		★		★	★
Missouri							★
Nebraska	★			★			
New Hampshire							★
New Jersey	★	★ (d,e)	★		★		★
New Mexico			★				
New York	★	★	★		★(f)	★	★
North Carolina		★ (e)					★
Ohio	★(b)						★
Oregon							★
Pennsylvania	★	★					★
Rhode Island							★
South Carolina	★(g)		★		★(h)		★
South Dakota							★
Tennessee	★(b)		★				
Vermont							★
Virginia							★
West Virginia			★			★	★
Wisconsin							★
Wyoming							★
Dist. of Columbia	★(b)						★

Definitions:

Legislation adopted—states that have specifically enacted a program, funding measure or commissioned a *study on asbestos in buildings.*

State funding—states that have established a funding program or cost sharing with local school districts.

State assistance—states that provide literature, training, inspections, certification or technical assistance to local school districts.

Local funding option—states that have authorized local school districts to raise funds for asbestos programs through local taxes.

Contractor certification and training—states that mandate certification, training or licensing of asbestos contractors.

Encapsulation allowed—states that allow encapsulation of asbestos materials as a viable control option.

EPA NC citation—states in which public or private school districts have been cited by the U.S. EPA for not complying with federal asbestos inspection regulations.

Notes:

(a) Asbestos being removed from schools under a court order obtained by the state attorney general in a suit against the state school boards.

(b) Special committee or task force created to study the problem.

(c) State attorney general is to assist local schools in bringing civil suit against asbestos manufacturers, suppliers and installers.

(d) Money available either through foundation aid programs or local funding is mandatory.

(e) Funding is available for asbestos control in government buildings.

(f) Training only.

(g) Mandatory state inspection program.

(h) Inspector certification required.



Asbestos: Still a Danger in Schools

By Elaine S. Knapp, editor

For Phyliss Adams and Ann Gibbs the last year has been a frustrating one—trying to get their local school board to remove asbestos from the school their children attend.

"It's frustrating, our children are being poisoned and there's not anything we can do," Mrs. Gibbs declared. What the Lexington, Kentucky, housewife has done is work through the PTA, form a group of concerned parents, go door-to-door telling parents of the danger, gather hundreds of signatures on petitions, read volumes on asbestos, call and write federal agencies and confront the school administrator and board.

After a year of parental pressure being applied and at least a decade after school authorities knew of the asbestos hazard, Mrs. Gibbs said, "We don't think anything will be done until the government makes them (the school board)." School authorities maintain the asbestos will be cleaned up if money is available for renovation next year.

Ironically, the major government effort to control asbestos lies in Mrs. Gibbs and others like her. Telling parents and teachers that their school has asbestos and relying on them to pressure local action is the heart of the U.S. Environmental Protection Agency's (EPA) strategy to rectify the nationwide problem of asbestos in the schools.

No effective federal program exists to protect school children from asbestos, state efforts vary widely and local schools often ignore the danger due to the cost of cleanup.

Asbestos Dangers

Any exposure to asbestos involves some health risk, according to the Congress, the EPA and the scientific community. Children are especially vulnerable, according to the EPA guidance document on asbestos sent to schools. Their remaining life expectancy provides the 20 to 40 years it takes for disabling and fatal asbestos-related diseases to develop. Large numbers of children may be exposed in a contaminated school and exposure is continuous during the school year. Children are active and breathe more frequently than adults possibly inhaling more asbestos fibers. Smoking can increase the cancer risk due to asbestos exposure.

Most hazardous is friable asbestos that can be crumbled. It sends deadly fibers into the air which may lodge in the lungs indefinitely, according to EPA's guidance document. Asbestos workers often develop a chronic and debilitating lung disease called asbestosis. Lower and shorter exposures are linked to lung and other cancers. Even brief exposure can result in death many years later.

Asbestos diseases include: 1) asbestosis, a disease in which asbestos clogs the lungs, 2) pleural calcification, a deposit of calcium salts in the lung lining, 3) malignant tumors of the lung, 4) mesothelioma, a rapid and fatal cancer of the lung, and 5) intestinal and uterine cancers.

Where It Is, What to Do

Use of asbestos materials was common in schools and other buildings from the mid-1940s until EPA banned sprayed asbestos in 1973. Friable (or soft) asbestos-containing material was used for fireproofing,

insulation or decoration. It was usually sprayed on overhead surfaces, steel beams, ceilings, walls and pipes.

As friable asbestos material ages, it breaks down and releases fibers into the air. School activities can damage or disturb asbestos, such as a ball hitting a gym ceiling. Asbestos material can be disturbed by maintenance activities, vandalism, water damage or vibration from people or machinery and release fibers into the air.

Many experts believe removal of asbestos is the only final and satisfactory solution to asbestos exposure. However, removal may cost more initially and be more complicated. Temporary measures include encapsulation by spraying asbestos with a sealant or enclosing the asbestos. EPA and other experts warn that such temporary measures make removal more difficult and dangerous later on, and must be constantly monitored.

The EPA guidelines call for asbestos work only after construction of sealed containment barriers and worker protection as mandated by OSHA. All but asbestos workers should be kept out of the sealed area and worker change rooms are required.

Hot Potato

Asbestos in the schools has been a "hot potato" tossed among various levels of government and federal agencies. One reason is that removal of asbestos can be quite expensive, especially if large areas of buildings are affected. Funding is basically up to local schools as is asbestos detection and control. No federal funds are available and state aid varies.

The U.S. EPA requires schools to inspect for asbestos and notify parents and employees of asbestos hazards. The EPA doesn't require removal or abatement. "The theory is that PTAs and employees would pressure local districts to take remedial action," said Terrell Hunt, assistant to EPA Deputy Administrator Alvin Alm.

However, a recent internal EPA report found that many schools did not meet EPA's June 1983 deadline for asbestos detection, record keeping and notification.

No Federal Fund

Federal funds of $172 million authorized by the Asbestos School Hazard Detection and Control Act of 1980 were never appropriated. Grants were promised for schools to identify asbestos hazards and loans for mitigation of asbestos hazards. But funds were never requested by the Department of Education, reported John Bennett, aide to U.S. Rep. George Miller, D-California, who sponsored the act. In 1983, a $50 million recommendation by the House was omitted in a House-Senate conference.

The U.S. Department of Education had a task force which set standards for state grants in 1980, according to W. Stanley Kruger, deputy director for state and local education programs. However, when the program wasn't funded, the department "deferred to EPA," Kruger said.

Under pressure from Congress, the department reactivated its task force in October 1983 and is gathering information on asbestos to send to chief state school officials, Kruger said. The department also reactivated its requirement that states file plans for asbestos in the schools' programs and report on their progress every six months. All but two states have filed.

EPA's Program

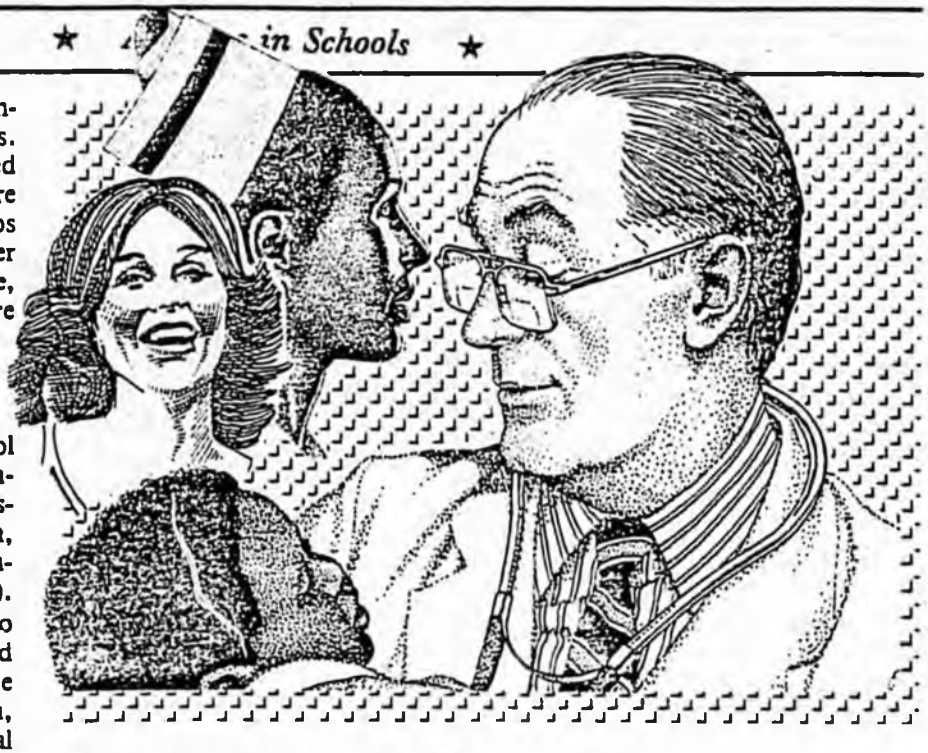
The federal effort has largely been a requirement by the EPA that schools inspect for asbestos hazards, sample and analyze material to determine if asbestos is present, keep records of the inspection, post notices, and notify parents and employees if asbestos is found. Although schools were to comply with the rule by June 1983, the EPA doesn't know how many did. It does not require schools to report to it and must send federal inspectors to schools to check their records. EPA staff said when the EPA regulation was written that the administration opposed imposing a data reporting requirement. The EPA recently doubled its field force of inspectors by adding 16 people through a contract with the American Association of Retired Persons, Hunt said. These include retired architects and engineers. Primarily, EPA staff look at school records and physically inspect some schools. However, there's not enough inspectors to cover but a small portion of the nation's schools.

In providing technical advice, EPA can help schools determine the best strategy for evaluating the risk and responding to asbestos, Hunt said. He said that anything short of removal is considered a short-term solution.

Connie Derocco, environmental protection specialist with EPA, said that out of 1,527 schools inspected in 468 districts, some 60 percent did not comply with EPA rules. Most failed

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to notify and warn PTAs and employees of asbestos materials. Schools know they will be pressured once the word is out, and they are hesitant to deal with the asbestos problem, Derocco explained. After receiving a notice of noncompliance, schools have 30 days to act before the EPA files a civil complaint.

Labor Union Concern

An estimated 3.24 million school children and 648,000 school employees are potentially exposed to asbestos, according to Kitty Conlan, research analyst with the Service Employees International Union (SEIU).

The SEIU is lobbying Congress to fund the 1980 act for grants and loans to schools. Schools don't have the money to cleanup on their own, Conlan said. "It's definitely a federal responsibility," Conlan said. "It's a nationwide problem which affects the health of millions of people."

SEIU is suing the EPA to require schools to cleanup flaking asbestos. "Schools say if EPA thinks asbestos is so bad, then EPA would require them to get rid of it," Conlan commented.

EPA does give schools good technical advice on how to get rid of asbestos, Conlan noted. But some schools accept the lowest bid rather than follow EPA guidelines. If the cleanup is not done right, the asbestos danger can be worsened.

Conlan said SEIU doesn't think suing asbestos' manufacturers is worthwhile, citing lack of action on suits filed by asbestos workers. "We're hesitant to have our members litigate themselves to death," she said.

Conlan added that school districts can also be held responsible for asbestos. "They can face a big liability," she commented.

Lawsuits Filed

A number of lawsuits on behalf of school boards and building owners in Kentucky, Mississippi, New Hampshire, Florida, South Carolina, Alabama and Tennessee, have been filed by a South Carolina law firm.

Daniel Speights noted that legal theories available to school boards against manufacturers of asbestos include: contract (the products were not fit for the uses intended), negligence (the manufacturers were negligent in informing users of the risks associated with the products), strict liability (manufacturers should be strictly liable for failing to warn of asbestos hazards), and restitution (manufacturers have a duty to abate the hazard).

A civil action filed on behalf of the Barnwell, South Carolina, school district notes that school districts and public officials could be held liable for failing to abate a health hazard.

A September 1981 report by the U.S. attorney general to Congress recommended that school authorities seek to recover asbestos abatement expenses from asbestos manufacturers. The report said federal litigation would be inefficient unless Congress imposed liability on asbestos manufacturers.

Asbestos manufacturers are being sued by at least 20,000 people on the grounds that the companies knew of asbestos hazards and covered them up, according to a September article in the *National Journal.*

A 1983 report from the Rand Institute says that asbestos litigation and compensation has cost an estimated $1 billion over the past decade. Only 37 cents of every dollar went for actual compensation to plaintiffs. Estimates of the number of deaths due to asbestos over the next 30 years range from 74,000 to 265,000.

Future Problems

Generally, 15-40 years can elapse between asbestos exposure and manifestation of certain diseases. For instance, shipyard workers exposed during World War II may only now be filing claims, according to the Rand study. Despite this knowledge, no attempt is being made to monitor school children exposed to asbestos.

An internal EPA memo written in November 1978 called for long-term surveillance of children who are exposed. The memo noted that when they reach adulthood these children could then be informed and notified of their childhood exposure. They could be medically examined more frequently for respiratory diseases and cancer.

EPA Regions, States

Because no one tracks data on asbestos in the schools on a national basis, *State Government News* interviewed asbestos coordinators in five of the 10 EPA regions and several state asbestos coordinators.

Generally, the federal regional EPAs have switched their emphasis from providing technical assistance on identifying and dealing with asbestos in the schools to checking school records on asbestos inspections. Most found a high percentage of schools either had not inspected or had not notified parents and employees of asbestos in the schools as required by the EPA.

State programs differ widely in scope and authority. While a few states fund asbestos removal and cleanup, most simply help schools identify asbestos or provide other technical assistance.

Region I

"Compliance is terrible," said Paul Heffernan, asbestos coordinator for EPA Region I covering Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Five full-time EPA inspectors have visited 160 districts covering 400 schools and issued 58 notices of noncompliance. Of the EPA violations, 37 percent had not even inspected and 53 percent had not notified parents or employees of asbestos found. Many school administrators didn't want to be "bothered," others had not read the regulation and others simply refused to post a warning in the building.

Oddly enough, schools in states which had asbestos programs in the late 1970s were most difficult to convince they needed to inspect for asbestos in ways not done in earlier years. For instance, the latest regulations require inspection of pipes and boiler rooms.

With 3,300 school districts in the region, there is no way EPA can inspect them all, Heffernan said. However, press releases announce schools found in violation, so the hope is that other schools will inspect rather than see themselves in the headlines.

Asbestos abatement efforts vary widely even in the same school district and among neighboring school districts, Heffernan said. He said West Haven, Connecticut, had an effective program while North Haven, next door, had none. While Hartford, Connecticut, spent $6 million on big problems in five schools, it had not tackled "mini-disasters" in 37 others. The same situation existed in Boston.

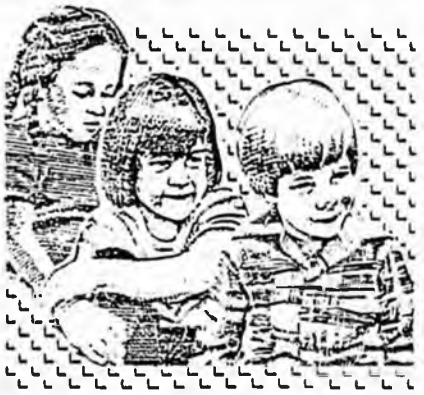
In the region, New Hampshire sent a checklist of EPA requirements plus abatement actions to help schools comply with the EPA.

Connecticut has granted $6.5 million since 1976 to localities for asbestos control in schools, reported Richard Krissinger, coordinator of school facilities, state Department of Education. State grants range from 40 to 80 percent of cost, depending on the aid formula the town qualifies for. If asbestos is found, the "chances are good it will be removed," Krissinger said. "We treat it as a health violation."

The state "accepts encapsulation" as an abatement measure, but doesn't encourage it. Krissinger said, "We believe removal is the only answer."

Al Siniscalchi, acting chief of the toxic hazard section of the Connecticut Department of Health Services and Education, noted that the state also provides technical assistance to schools. Schools were sent EPA guidelines and seminars were co-hosted by the state and EPA Region I.

A job freeze has reduced a former staff of nine to four and most inspec-



tions are now done by local health departments. Connecticut does follow-up inspections after asbestos removal to make sure the school is safe. Safe disposal of large amounts of asbestos is supervised by the state Department of Environmental Protection.

Maine is in good shape, according to Roy Nisbett, director of the Division of School Facilities. Most of the asbestos found was confined to pipe wrapping and boiler rooms. The state notified schools of the EPA rule and 90 percent complied with inspection requirements, Nisbett said. The Division of Industrial Safety trained school personnel to conduct asbestos inspections.

A proposed bill in Maine would authorize a bond issue to reimburse local schools for the cost of asbestos removal and repair.

In spite of the fiscal contraints caused by Proposition 2 1/2, public pressure has spurred asbestos abatement in Massachusetts, said Mike Malchik, assistant engineer, Division of Occupational Hygiene. "Parents and teachers are adamant about getting it (asbestos) down," Malchik said. The legislature allocated $2 million in 1983-84 to repay part of school removal costs if removal is recommended by the state.

Massachusetts inspects public buildings and schools, samples, analyzes samples and recommends abatement measures. There are at least five engineers and a project engineer available. The schools are being re-surveyed based on new guidelines, as inspections in 1978 only covered sprayed-on asbestos in public areas.

Region II

EPA Region II asbestos coordinator, Arnold Freiberger, has seven inspectors to check some 3,000 schools in New York and New Jersey. Out of 108 districts inspected, only 13 were in compliance with EPA rules, 32 had minor violations and 63 had either failed to inspect or identify asbestos or to post notices and notify parents and teachers.

New York has provided funds for asbestos control, reported Henry Binzer, associate in school business management, state Department of Education. In addition to state grants of $1.75 million annually for the past four years, school districts may tap state building aid for asbestos control.

An annual state survey of schools revealed 509,000 square feet of potentially hazardous asbestos.

The New York State School Asbestos Safety Act of 1979 required schools to identify asbestos and, if it is hazardous, take control measures. Encapsulation is most popular with schools. "The problem is that still has to be watched," Binzer noted. Removal is permanent, but expensive.

The state does not give advice on specific jobs, but provides an educational program for contractors and information to schools.

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New Jersey doesn't provide specific aid for asbestos removal, but schools can get assistance through the foundation aid program, said Dr. Irving M. Peterson, manager, Facility Planning Services, state Department of Education.

In 1979, a governor's Task Force on Asbestos set minimum specifications for removal of friable asbestos. The specifications, which contractors must follow, require notification of state and federal agencies prior to the start of a project, require documentation of the contractor's qualifications, and require the contractor to follow stringent procedures for removal. The standards do not permit encapsulation (by coating the asbestos-containing layer) in New Jersey.

The state must approve all construction projects, plans, make field inspections to assure the work area is set up properly so contamination doesn't spread and check at the end of the project. Contractors, agents and workers must all attend a one-day state-EPA seminar and carry certification cards on the job.

Out of 2,400 public schools in New Jersey, asbestos removal projects have been approved in 350. Costs have totaled $46 million, for an average of $131,000 per school. It's up to local districts to remove the asbestos and as many as 100 more may not have acted yet.

Region IV

EPA doesn't have the resources to inspect school compliance with asbestos regulations, declared Dwight Brown, asbestos coordinator for Region IV covering Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

Most commonly, schools have either failed to inspect or to notify parents, Brown noted. He added that common law requires building owners to identify and notify occupants of hazards, and to provide medical surveillence if there is evidence of exposure.

Region IV also provides technical assistance and its intensive seminars on asbestos are attended by many from outside the region.

Most of the asbestos found in Georgia schools was in boiler rooms or pipe wrapping and has been corrected, said Lovett Fletcher, asbestos coordinator. State environmental, health and education departments worked with the U.S. EPA to provide information and hold seminars for superintendents. In addition, 70 environmental health specialists were trained to assist local systems. Schools with acute problems could get matching state aid through the state capital outlay, Fletcher said.

Kentucky helps schools comply with EPA inspection requirements, but has no money to aid them, said Jim Judge, unit director of property insurance, Department of Education. Asbestos cleanup was estimated to cost $26 million last year, but a survey now underway could change that estimate. Judge noted that the EPA doesn't require removal and many schools "are hesitant to post a warning." Asbestos problems in the state's 180 districts range from major ones with ceilings to boiler rooms.

Affected schools mostly include those built from World War II to the early 1970s. Judge said certain architects used lots of asbestos while others didn't.

South Carolina selected the critical points of EPA's regulations in requiring public and private schools to inspect, sample and analyze for asbestos, said Lee Bacot, asbestos coordinator, Department of Health and Environment. Results of the school surveys and health hazard assessments were required to be publicized in meetings and by notifying parents.

Out of 1,200 public schools, 1,080 or 90 percent complied with EPA's rule and 270 found friable asbestos. Only about 30 percent of the 450 private schools complied.

Asbestos inspectors must be certified by the state and must send survey results to the state. A one-day course is offered by the state to consultants and state and local staff. Schools are provided information, but the state does not provide specific advice or any funds.

Tennessee had a governor's task force on asbestos in 1978, according to Robert Foster, chief, technical services, Division of Air Pollution Control, Bureau of the Environment.

Out of 1,773 schools, 150 reported potentially hazardous asbestos.

The state provides free analysis of suspected asbestos materials, provides information to schools, and conducts training sessions. Because there is a shortage of EPA inspectors, Tennessee Gov. Lamar Alexander wrote the EPA offering to help enforce the inspections. However, EPA has not responded. The state plans to proceed to develop the data anyway, Foster said.

"We're convinced asbestos in the schools is one of the more important health problems," Foster declared. "It's an absolute human carcinogen. It causes serious irreversible health effects. Even brief exposure can cause painful disease. Children are



EPA's new rule requiring parental notice "triggered a lot of work," Peterson said. As many projects were approved last year as in the previous four years.

even at more risk."

The goal should be to eliminate the hazard, Foster continued, while the EPA only requires inspections and warnings which can lead to panic and make schools vulnerable to unscrupulous contractors. People need to be educated on how to abate the hazard, he said. He added that although "most want to do the best, it's hard to convince them that a little dust out of the ceiling will kill them."

"I've gone in schools where the material (asbestos) was hanging off chairs," Foster said. In that case the superintendent closed the schools upon the state's recommendation. More troublesome are marginal situations, Foster noted, where schools don't understand the potential hazard. "They look to the state or federal government," he said. "But hope for federal or state aid is a loser."

Region V

"There's quite a few violations of EPA's rule," said Anthony Restaino, asbestos coordinator for Region V covering Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

Many school officials thought asbestos "was a low priority, didn't take time to inspect, didn't touch asbestos-materials to see if it crumbled or didn't notify parents or employees," Restaino said. Out of 43 school districts inspected, 29 were in violation. The Region V inspection staff was recently doubled to eight.

Illinois treats asbestos as a health and public safety issue, said Ralph Morrisette, architect, school facilities and organization section, State Board of Education.

Under Illinois law, school boards can hire an architect to determine if school building conditions endanger lives. After a survey of the cost to remove the asbestos, the local district can levy a tax for the amount without a referendum. Because schools are able to raise the funds, most of those with asbestos are having it removed, Morrisette said.

Most Wisconsin schools have inspected for asbestos, reported Nori Roden, school asbestos program coordinator, Department of Health and Social Services.

Out of 3,027 schools, 3,006 inspected and 1,089 found friable asbestos. Corrective action was taken by 583: 395 rewrapped pipes, 94 removed asbestos, 33 enclosed it and 61 encapsulated it.

Wisconsin has had an asbestos program since 1980. The Department of Industrial Labor and Human Relations conducted asbestos inspections when it conducted fire and other safety inspections. Samples were analyzed by the state lab. The Department of Public Institutions targeted schools for the free inspections, helped with record keeping, and provided technical assistance and consultation services. The health department computerized and coordinated the data and consults on health effects of asbestos.

A position paper being developed by the health department will most likely recommend removal of all friable asbestos, Roden said. "We're cautious of encapsulation and enclosure," she said. Advantages of the temporary measures include less cost and time, but the disadvantage is the "asbestos is still in the building," Roden said.

Minnesota in 1983 authorized a $25 per pupil unit capital expenditure levy and aid for asbestos removal or encapsulation and PCB cleanup with Department of Education approval.

Region VIII

The major violation found in Region VIII is that schools "aren't willing to put up notices," said Steve Farrow, EPA asbestos coordinator for Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming. Instead, schools are trying to remove or encapsulate the asbestos first, he said.

Of the states, Farrow said that Utah's problems were with pipes and boiler rooms, North Dakota was making progress and Wyoming had few major problems.

Chuck Johanningmeier, technical advisor for the region, said, "Many people hoped it would go away. Medically, it is just getting worse." A Fargo teacher had contacted the EPA after discovering asbestos debris left in a school storeroom. Not long afterwards, the lawyer for the teacher's estate reported the man had died of mesothelioma (a rare cancer associated with asbestos exposure).

Unqualified contractors can do more damage than if the asbestos was left alone, Johanningmeier said. A proposed measure before the Colorado Legislature will require contractors to be certified to work on asbestos.

In another case, a contractor left asbestos which students and teachers dusted up. As a result the EPA is helping write specifications in a contract for cleanup which will be available to others as well.

There are some bright spots as well. Johanningmeier praised the work of Gill Johnson, the asbestos coordinator for a Jefferson County, Colorado, district. Johnson overcame school resistance and succeeded in cleaning up the asbestos in the district's schools.

No Cavalry in Sight

Although asbestos was recognized as a nationwide health problem by the Congress in 1980, there's no real federal effort to protect the health of exposed school children. Even though most states have asbestos coordinators, few states mandate cleanup or provide funds for removal. Essentially, asbestos removal or cleanup is left up to local school districts. Local school officials may not be willing or understand how to inspect for asbestos. Some may not understand the health dangers or legal liability they incur by allowing asbestos to remain. Apparently, many refuse to adequately notify parents or teachers if asbestos is found. Even then, students have no choice but to attend the school and teachers may be fearful of retribution if they take action. Many schools don't have or don't want to spend the money it takes to remove or cleanup asbestos.

Alvin L. Alm, deputy administrator of the EPA, recently acknowledged that the agency was reconsidering its approach to asbestos in the schools.

* * *

Leonard P. Stavisky

State Responsibility for the Control of Asbestos in the Schools

Asbestos, widely used in construction, is hazardous to human health. Schools represent the most pressing concern for public policymakers who are faced with the asbestos issue. With few exceptions, compulsory attendance laws exist throughout the United States. Typically, state statutes prescribe that minors from six to 16 years old attend school for approximately 180 days a year. Parents and guardians have no discretion in this matter and those who refuse may be charged with neglect. As a result of these laws, government's legal and ethical responsibilities may be greater in this area than in others where one's presence is voluntary or where minors are not involved.[1]

On the school asbestos issue, the educational and public health mandates of existing state constitutions come into conflict. In the language of one state constitution: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all of the children of the state may be educated." The same constitution further stipulates that "the protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefore shall be made by the state and by such of its subdivisions (including school districts) and in such manner, and by such means as the legislature shall from time to time determine." Obviously, though teaching and learning cannot be suspended, the public deserves ironclad guarantees that the instruction will be offered in a safe environment.[2]

Such guarantees come in implied warranties of quality — the presumption that a product is free from substantial, latent defects which are not obvious through inspection; these appeared in Roman edicts as early as 150 B.C. In modern commercial practice, the term warranty has always meant that the conditions are exactly as they have been stated, that standards of quality exist, and that those in positions of responsibility recognize their obligation to repair or replace defective parts. Implied warranty of quality exist even in cases in which there is no sale. Thus, nonprofit institutions have been named as defendants under breach of warranty.[3]

Statutory law has extended the boundaries. In real property law, states have enacted warranties of habitability which presume that a dwelling is suitable for human habitation and that the occupants will not be subjected to conditions which are "dangerous, hazardous or detrimental to their life, health or safety." Similar language appears in occupational safety codes, public health laws and environmental protection legislation.[4] In recent decades, government has become a landlord — involved in the ownership and management of public housing. Formerly private buildings have been acquired through "in rem" proceedings resulting from non-payment of taxes. Does the warranty of habitability therefore apply to the public sector?[5] Does it extend to other physical settings such as schools? Presumably, when a child is enrolled in a public school, for which

taxes are paid in lieu of tuition, there is an implied warranty that professional services will be rendered in a building that is free from conditions and substances which are hazardous to health.[6]

Asbestos, a hydrated mineral silicate which was widely used for fireproofing, soundproofing and decorating during the post-World War II construction boom, was introduced in Great Britain in 1932 and in the United States three years later. Between 1946 and 1972, sprayed-on asbestos was used in school auditoriums, gymnasiums, classrooms, hallways and libraries. Of the one million tons consumed in the United States in a single year, the material was applied to insulation, ceilings, floor tiles, cement, roofing and shingles. Homes, offices, factories, government buildings, private institutions and places of public accommodation were laden with this ubiquitous substance. More than 3,000 known asbestos products came into use.[7]

Concern over the impact on human health arose as a result of the inordinately high rates of disease discovered among employees handling asbestos in mining, manufacturing and construction. During the 1950's and 1960's, clinicians and researchers reviewed the medical records of asbestos workers and established positive correlations between persons who had been exposed to extraordinarily high asbestos air concentrations and specific diseases such as: 1) asbestiosis, a non-malignant scarring of the lungs; 2) bronchogenic carcinoma, a malignancy of the lungs; 3) mesothelioma, a malignancy of the lining of the abdomen or chest cavity, and 4) cancer of the gastrointestinal tract (esophagus, stomach, colon or rectum). By the early 1970's, medical researchers at the National Cancer Institute demonstrated in laboratory experimentation that malignancies "comparable to those resulting from asbestos exposure in man, can be induced rapidly in the rat and hamster by direct intrapleural application of asbestos. Such experiments attest to the carcinogenity of asbestos and offer an excellent means of investigating those carcinogenic mechanisms involved," these studies concluded.[8]

Government has responded in various ways. Since 1970, the Occupational Safety and Health Administration (OSHA) has regulated working conditions in the asbestos industry. In 1973, the United States Environmental Protection Agency prohibited the spraying of asbestos materials for fireproofing and insulation. Five years later, the ban was extended to all forms of sprayed asbestos, including decorative applications. Agencies of government promulgated regulations to control the industrial discharge of asbestos materials into the air and water. The sale of spackling compounds containing asbestos and the use of asbestos in insulation fireplaces was halted. Placing asbestos on the list of hazardous materials is under consideration. In all sections of the country, monitoring and informational programs have been initiated by federal, state and local authorities.[9]

Efforts have also been made to verify the effects of asbestos in non-occupational settings, but here the information has been imprecise. Abnormally-high disease rates have been linked to people who live near asbestos mines and factories. Among the families of asbestos workers, diseases have been traced to the minute particles brought into homes of the workers' clothing, Nevertheless, attempts to define standards that would be applicable outside of industrial settings have been opposed by an unexpected source. Scientists who have worked in this field appear unwilling or unable to provide definitive answers to the question of what represents a "safe" level of exposure to asbestos over a given period of time. Researchers are currently unprepared to support publicly or privately an accepted standard such as nanograms of asbestos per cubic meter of air nor are they willing to risk their reputations or the health of the public by categorically stating that the presence of asbestos below certain levels is tolerable. In the opinion of many reputable scientists, there is no way to compromise with a carcinogenic substance.[10]

Asbestos fibers, which are neither chemically nor biologically degradable, are virtually indestructable. Once the particles have been released into the environment, the slightest turbulence disturbs those that have already settled. People are constantly exposed to asbestos in the air they breathe, in the water they drink and in the food they eat. Processed asbestos fibers are more hazardous than the natural mineral. The thin strands which are by-products of the manufacturing process are easily inhaled or ingested. Asbestos fills the urban environment as a result of incessant braking of motor vehicles, building construction and demolition projects, and the incineration of certain plastic products. In suburban and rural areas, asbestos exposure is most likely to stem from mines, mills, manufacturing plants and waste disposal sites.[11]

Although asbestos permeates the environment in various settings, outdoors the moving air currents disperse the particles to reduce the levels of concentration. Indoors, the presence of asbestos poses a special hazard. Architects have designed many structures with inoperable windows. At one time, planners even specified windowless schools for blighted urban neighborhoods. Within such enclosed ventilation systems, asbestos particles are continually recycled throughout these buildings.[12]

Most educational officials have not kept adequate records to deal with asbestos in their schools. State and local authorities never examined the building specifica-

tions to check for the presence of asbestos. Even when plans were reviewed by state agencies in order to determine eligibility for building aid, officials simply looked at the adequacy of the space in relation to the educational program. After a few years, those plans that had been filed by the school districts were routinely discarded in some states in order to "save space." As a result of a new wave of concern about asbestos in the schools, state and local educational authorities may be compelled to reassemble information which was once available to them when the schools were originally constructed or remodeled."[13]

Progress in this field has been painfully slow. By the late 1970's, only 27 states and the District of Columbia were known to have conducted any asbestos inspections. Approximately 15 states had looked at more than a few schools. Of these, New Jersey, Massachusetts and New York had each inspected more than 1,000 school facilities, while Indiana, Rhode Island, Michigan and Vermont had each examined more than 100 buildings. California and New Mexico had simply reported "many" inspections. Rhode Island, the only state which had presumably inspected all of its buildings identified asbestos in 19 locations. Seventeen states, primarily in the South, the Middle West and the Far West, had not reported any school asbestos inspections. In other states, the extent of the testing remained uncertain. Individual school districts undertook limited inquiries, but approximately forty per cent of the states in the nation had no asbestos programs at all. Nationally, no agency of the United States Government could provide reliable information as to how many schools had asbestos problems."[14]

Two principal methods exist for determining whether asbestos is present in a school — visual inspection and laboratory testing. The most common method of detecting asbestos in a friable or crumbling condition involves direct observation. Unfortunately, visual inspections can be quite subjective and deceptive. What appears to be asbestos to the naked eye may prove under a microscope to be some other material. On the other hand, asbestos may be concealed in unconventional forms. Laboratory analysis of air samples offers more reliable identification. However, the levels of asbestos may fluctuate dramatically from place to place within the same facility and vary from day to day, depending on how much activity preceded the collection of the sample."[15]

Funding poses another problem. Optical laboratory tests may cost $30 to $50 per air sample. To be accurate, multiple tests may be necessary; different locations within a building may have to be sampled at different times. Electron microscopic analysis may cost ten times as much as optical testing and finding competent laboratories is sometimes difficult. A Connecticut laboratory incorrectly labelled cellulose as asbestos. The error was not detected until the ceiling had been removed, at considerable cost to the local school district."[16]

Policymakers, the educational community and the public are caught in a cruel dilemma. There should be no danger to the life, health or safety of any child or adult in any school. On the other hand, the educational process cannot grind to a halt. Creating a sense of public panic or uncertainty is not the answer. Neither is indifference to the problem. What is needed is an immediate, responsible nationwide plan for school asbestos indentification and control. The commitment to act must involve lawmakers, boards of education and school administrators throughout the United States.

First, those entrusted with responsibility for the schools must become familiar with the fact that asbestos materials appear in various forms under different names such as chrysotile, amosite, crocidolite, tremolite, anthrophyllite and actinolite. Often, more than one form of asbestos is present and the fibers are frequently combined with other products.

While it would be desirable to deal with all types of asbestos at once, fiscal constraints dictate a strategy that focuses on those forms and conditions which knowledgeable scientists agree are hazardous to human health. Accordingly, many authorities have suggested that school officials concentrate on asbestos which has been sprayed on structures or applied in the form of plaster or textured paints. In addition, the physical condition of the asbestos should be considered. As a general guideline, an imminent hazard is likely to exist where the asbestos material is flaking, dusting, or shows similar evidence of damage, deterioration or disturbance because of abuse, abrasion, water leakage or forced air circulation which results in dispersing asbestos fibers and particles in the school."[17]

School-by-school surveys can be mandated by state statute or by the rules and regulations promulgated by the chief state school officer or the state board of education. With scientific and technical information provided by the state, preferably the superintendent of public instruction or commissioner of education after consultation with the department of health or the environmental protection agency, the school districts can proceed with the inspections. In most instances, the custodian who works in the school building daily is in a position to know where asbestos may be present. Regional training programs may be desirable to enhance the skills of those who conduct the preliminary surveys. Materials suspected of containing asbestos can be sent to approved

public or private laboratories for analysis."[18]

Once the asbestos has been identified and corrective action is required, there are three methods of dealing with the problem: 1) encapsulation, involving the use of a sealant which covers the original asbestos material and prevents further flaking; 2) structural containment, in which a permanent partition is installed between the asbestos area and the public and 3) removal of the asbestos."[19]

Each control method poses certain problems. A chemical sealant may be the easiest to apply and the least expensive technique, but it may not hold up for a long period of time. The very act of applying a chemical covering may damage some of the asbestos. Furthermore, in these days of mercurial changes in scientific data, there is no guarantee that a particular sealant itself may not subsequently stand accused as a hazard to health.

Structural containment is predicated upon the assumption that the area will not have to be accessible at a later date. Many school buildings have been designed to utilize the space between a ceiling and the floor above for electrical, plumbing, heating and ventilation installations. If a permanent partition is installed rather than a suspended ceiling made up of removable tiles, workmen may not be able to check faulty wiring, water leakage or a breakdown in the air circulation system. Also, although the asbestos will no longer be visible to the pupils and staff, asbestos particles may continue to be recycled through ventilation ducts after a new structural separation has been built.

Total removal is obviously the most comprehensive method. Nevertheless, substantial skill is required. The act of extricating the asbestos may pose a hazard for the occupants of the building and the workmen. Consequently, removal may have to take place during vacation periods. In most cases, work areas have to be sealed off from other sections of the building and care exercised to guarantee that asbestos particles do not become lodged in the air circulation system. Removal is also the most expensive program.[20]

Although not as dramatic, asbestos poses the same type of public health menace as the Three Mile Island nuclear reactor accident in Pennsylvania, the radiation near the desert testing sites of Utah and Nevada or seepage of toxic wastes from the Hooker Chemical Company in the Love Canal area of western New York. Public policymakers cannot risk having a whole generation of young adults discover 20 or 30 years from now that they have contracted lung cancer and other malignancies as a result of prolonged exposure to asbestos in the schools.

The United States Environmental Protection Agency is considering a plan for long-term surveillance of children exposed to asbestos in seriously contaminated schools. Unfortunately, the effort is fraught with complications. In an unpublished, in-house report, EPA acknowledges that the effects of asbestos exposure will not be evident for many years to come. "Medical examination of children now, whether to document exposure or to detect clinical disease, would be fruitless," the staff report concludes. "The psychological and monetary costs would be considerable. If a means were available to identify exposed school children so that they could be located years later, positive steps could be taken. As adults these persons could be informed of their childhood exposure and advised of the proper measures they personally could take." In the next breath, however, the agency has acknowledged the superficial, conscience-soothing nature of this recommendation, by admitting that "although no cures are currently known for asbestos-induced diseases, therapeutic research continues; it may be possible by then to apply *palliative* (emphasis added) measures. Without a means of identifying these children now almost nothing can be done to help them in the future." As a temporary expediency, some EPA officials have suggested issuing Social Security numbers to these children so that at a later date someone could open the sealed files and advise these people of their fates."[21]

The federal government, the states and local school districts should obviously pursue immediate programs of prevention and abatement instead of waiting to notify potential cancer victims that they have been needlessly exposed to an incurable disease. In the absence of an adequately-funded federal policy which would require appropriate corrective action throughout the country, the most promising approach seems to fall within the realm of the states. State legislation could establish goals and procedures which would:

1. Develop precise, scientific definitions of asbestos materials.

2. Identify the circumstances under which certain forms of asbestos pose hazards to human health.

3. Require the state commissioner of education — in consultation with state health or environmental officials — to: a) inform school authorities of the asbestos hazards; b) advise school districts of the methods of identifying, sampling and testing materials suspected of containing asbestos and constituting a health hazard; c) direct the school districts to undertake surveys of school buildings throughout the state; d) maintain current records regarding the condition of asbestos in the schools based upon periodic surveys by local school officials or inspections by the state education agency; e) provide scientific and technical assistance to the

school districts; f) require the districts to prepare and submit abatement plans; g) promulgate standards under which the containment or removal of asbestos shall proceed; h) establish regional training programs for contractors and supervisors engaged in eliminating asbestos hazards and i) monitor the implementation of these programs.

4. Establish timetables for abatement programs within state school asbestos legislation and create advisory councils of representatives from state education agencies; local school districts; medical, public health, architectural and engineering professionals; employers and employees in the construction industry; parents and the general public.[22]

Implementing such a state plan will inevitably be influenced by considerations of cost. New York City school officials estimated that the price of containing or removing all of the asbestos found in nearly 300 schools could easily range between $35 and $50 million. While construction costs are not uniform throughout the nation, an effective program in any state is certain to be expensive. In several New Jersey schools, expenditures for sealing ranged from $1 to $2 per square foot, while removal and replacement of asbestos ceilings varied between $2 and $5 per square foot. Without additional funding from federal or state government, real danger that school districts facing fiscal constraints, taxpayer revolt and declining enrollment may delay the implementation of asbestos identification and abatement.[23]

Asbestos control is not an ordinary building need. Surely in a health emergency, an overriding state or national obligation might be invoked. However, certain guarantees are required. A building treated for asbestos should not be one which is likely to be closed within the foreseeable future because of age or declining enrollment. The state must expect, and receive, adequate assurances that there are no other facilities available to accommodate the students and that the building utilization rate is above a minimum percentage. The anticipated life of the structure should also be considered before asbestos funding is provided. School officials must be prepared to justify the continued occupancy of any building for which major asbestos abatement is ordered.

What is the federal role in the detection, containment or removal of asbestos? In 1980, a year after the enactment of the New York State Asbestos Safety Control Act, parallel legislation was approved by Congress and signed into law by President Carter. However, there is no certainty that the United States Asbestos School Hazard Detection and Control Act will provide immediate and adequate relief for school systems that are concerned with asbestos problems. Although the legislation set up a fund for testing and evaluating potential hazards and ostensibly created a loan program to assist in the containment or removal of asbestos, the program is presently unfunded. The future of this program is further complicated by the results of the 1980 presidential election and the apparent unwillingness of the Reagan administration to implement new federal regulations for school asbestos control.[24]

There are public policy lessons to be derived from the school asbestos experience. Initially, lay decision makers feel unqualified to judge public health issues. Eventually, they may recognize that there is uncertainty even within the scientific community, that potential victims have not been warned of imminent life-threatening hazards and that a chasm exists between research and public policy. Practitioners in medicine and public health, producers and distributors of asbestos as well as the construction industry neglected to subject the mineral to ample, long-range testing before using it. Tragic and unforeseen mistakes were made by architects and engineers who specified the incorporation of asbestos in building plans and by the educational authorities who approved and then destroyed the working drawings which would have illuminated its use and the extent of the present predicament. Finally, state and local governments nationwide incorporated the use of asbestos in building codes and issued certificates of occupancy attesting to the safety of the structures.

Nevertheless, the search for villains is pointless. Decisions do not wait for convenient time or circumstances, nor pause for optimum technical nor fiscal resources. Policy makers who are presently confronted with urgent crises may not have created the original conditions which they are called upon to correct. Furthermore, some problems defy government's best available solutions.

The decision making process has been compared to a multiple choice examination. In approaching the school asbestos issue, public officials could adopt a wait and see attitude or appoint a study commission. In this situation, such a choice would be deadly, for it would endanger the lives of a whole generation of students and educators who would be needlessly exposed to a known carcinogenic substance.

A second alternative would be to raise the level of public consciousness, to alert the teachers and parents of school-age children that asbestos, in various forms, pervades the educational system. In so doing, the alarmists would create a climate of fear, making it impossible for instructional programs to continue until all questions have been answered. However, a third more realistic option is to undertake an immediate

investigation of the scope and nature of the problem and use every available federal, state and local resource to finance corrective action.

Sensing the complexity of the total picture, reviewing the available scientific data, assessing the impact of each option, accepting responsibility and, ultimately, deciding upon the most propitious policy are essential ingredients for dealing intelligently with the school asbestos issue. However, any course of action may establish new conditions for which the ramifications are unknown or unanticipated. Beyond the schools, there are libraries and museums, community centers and civic auditoriums, as well as other public buildings and quasi-public facilities which contain asbestos. The legal and ethical principles inherent in the doctrine of implied warranty will not stop at the schoolhouse door. Future legislation and litigation will expand the boundaries.[23]

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6. Existing provisions of state education laws contain broad safety requirements in relation to school building construction. Thus, the plans must "provide for heating, ventilation, lighting, sanitation and health, fire and accident protection adequate to maintain healthful, safe and comfortable conditions therein." *McKinney's Laws, Education Law*, §408, 408-a, 409. Responsibility is generally vested in the state education commissioner and in municipal building officials.

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The author is immediate past Chairman of the Education Committee of the National Conference of State Legislatures and a Commissioner on the Education Commission of the States. In New York State, where he chairs the Assembly Education Committee, he sponsored the "School Asbestos Safety Act." Dr. Stavisky is (Adjunct) Professor of Public Affairs in the Department of Political Science at Columbia University.



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The clock is ticking in your schools, and inaction could prove to be devastating

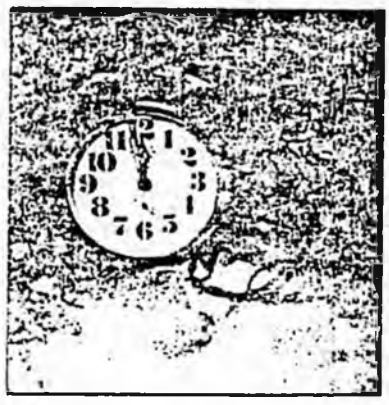
By Kathleen McCormick

ALL TALK AND no action: That's the way the asbestos-in-schools game has been played in the past several years by the federal government and thousands of U.S. school systems. It's time—past time—to respond to the potentially fatal hazards of asbestos in our schools. The ante has been raised in recent months, and from the look of things, school boards that haven't complied yet with federal regulations concerning inspection, notification, and record keeping could be in for a rough time. And even if you *have* made the inspections, posted the required notices, and notified parents and staff of potential health risks in your schools, you still might be the target of a lawsuit should a student or staff member become ill or die because of an asbestos-related disease.

That's not exactly reassuring news, but you can take some steps to meet federal regulations and protect your students and staff. Prudent school leaders would do well to consider carefully some of the recent developments in medical research, federal enforcement, and legal actions. Read on:

The medical risks

As far back as the 1930s, manufacturers of asbestos knew the substance was a killer. But the American public first became aware of the hazard when the Environmental Protection Agency (E.P.A.) banned some uses of sprayed-on asbestos in 1973, after research concluded that thousands of shipyard workers who had handled the substance during World War II were dying (or had died) of asbestos-related diseases. Five years later, an award-winning article in this magazine broke the disconcerting news to school leaders that U.S. schoolchildren faced imminent danger from asbestos: In schools built between 1946 and 1973, tens of thousands of tons of asbestos products were used for fireproofing, soundproofing, and insulating ceilings, walls, pipes, and boilers. As friable (loose or flaking) asbestos materials age, they release tiny particles into the air; if enough particles are inhaled, they can cause cancer and a variety of respiratory ailments. And if these materials get wet (say, from a roof that leaks) or are disturbed (perhaps by maintenance workers who fix electrical wiring in the ceiling), countless particles are dispersed, presenting an even greater health hazard.



The asbestos ante has been raised in recent months, and boards that don't respond could be in for trouble

What are the risks? Cancer, for starters: The most common form of asbestos-related cancer is lung cancer. Next is mesothelioma, a rare and fatal tumor of the membrane linings in the chest or abdominal cavities; its only known cause is asbestos. Exposure to the deadly mineral filaments released by asbestos also has been proved to cause cancers of the colon, rectum, stomach, esophagus, kidney, larynx, and pharynx. An associated disease is asbestosis, a scarring of the lungs that progressively robs the victim of breath and sometimes of life. The effects of asbestos are pervasive even among people who don't work directly with the stuff: Research has shown that among the immediate families of asbestos workers, 1 percent of the family members died from an asbestos-related cancer, and one-third were afflicted with asbestosis.

The number of airborne asbestos particles in your schools, of course, is considerably smaller than what asbestos workers once were exposed to on a daily basis. But that doesn't reduce the overall risk—nor does it absolve you from the responsibility of dealing with the problem. Dr. Edwin C. Holstein, clinical assistant professor at the Environmental Science Laboratories of Mount Sinai School of Medicine in New York, explains: "All scientific evidence suggests there is no safe dose of asbestos. Any exposure, no matter how small, will increase the risk of cancer." Dr. Holstein and his colleagues at Mt. Sinai, the preeminent U.S. institution for medical research on asbestos, have concluded the substance is a public health problem that must be remedied as soon as possible.

"For any one person, the risk is low," says Dr. Holstein. "But for a school system, sheer numbers tell you that you have a problem. It's like the half-full/half-empty glass of water," he notes. "The optimists say the health risks of asbestos are tiny; the pessimists—including public health authorities—know some people are going to die from exposure to asbestos."

Kathleen McCormick is assistant editor of the JOURNAL.

OPINIONS EXPRESSED BY THE JOURNAL OR ANY OF ITS AUTHORS DO NOT NECESSARILY REFLECT POSITIONS OF THE NATIONAL SCHOOL BOARDS ASSOCIATION

And they'd like to see schools help prevent those deaths—no matter how few—by removing the risk.

It could be many years before we're able to draw conclusions on the effects of asbestos exposure in schools. The risks vary, of course, depending on individual people, the condition and location of asbestos materials in school buildings, and the amount and duration of exposure. The appalling truth, according to Dr. Holstein: "It's false reassurance if no one is sick [now], because they might be sick by 1990 and dead by 1992." But despite the tendency for people to personalize this kind of highly emotional, life-and-death issue, he says, school board members and administrators should assure concerned parents that "there's no need to get hysterical; it's a problem that can be remedied."

The remedy

At the very least, you already should have complied with all federal regulations pertaining to asbestos in schools. Three sets of regulations have been issued. First, Department of Education (ED) regulations specify *how* states must distribute information on asbestos to schools, according to the Asbestos School Hazard Detection and Control Act of 1980. Second, Occupational Safety and Health Administration regulations detail procedures for the protection and decontamination of asbestos abatement workers and for measuring airborne asbestos. Schools engaged in containing and removing the friable fibers must comply with these procedures. Third—and more to the point—are the E.P.A. regulations: As of June 1983, you're responsible for having met the requirements of Section 6(a) of the Toxic Substances Control Act (T.S.C.A.), which were specified in "Friable Asbestos-Containing Materials in Schools; Identification and Notification Rule" (47 *Federal Register* 23360, May 27, 1982).

E.P.A. issued this rule because its Technical Assistance Program (TAP), launched in 1978, had limited success in getting schools to comply voluntarily with previous E.P.A. inspection and record-keeping guidelines. The T.S.C.A. rule applies to all elementary and secondary schools, except those built after December 31, 1978, and those that can document they already have checked buildings and either found no friable asbestos or satisfactorily dealt with the material. Schools were given one year to comply with the requirements.

(1) *Inspection.* You must inspect each building for friable materials.

(2) *Sampling.* If you find friable materials, you must take samples, following E.P.A. instructions.

(3) *Analysis.* A qualified laboratory must perform an analysis using polarized light microscopy, a sophisticated (and expensive) technique for measuring the amount of asbestos fibers in asbestos-containing materials.

(4) *Warnings and notifications.* You must post warning signs wherever you find friable asbestos-containing materials in schools—and send written notification to the staff and the P.T.O. of each school involved, specifying where the hazardous materials are located.

Note that the T.S.C.A. rule does *not* require you to remove, cover, or encapsulate the asbestos; it's up to individual school systems to decide how to dispense with the offending material. The rule also doesn't require you to report your findings to E.P.A., although you *do* need to keep complete and detailed records documenting your compliance with the T.S.C.A. rule.

Once you've found asbestos in your schools, you have a choice of four acceptable ways to resolve the problem: (1) removing the material altogether; (2) enclosing the areas containing asbestos to prevent fibers from escaping; (3) encapsulating completely the area that contains or is coated with asbestos; and (4) observing and maintaining the affected surfaces to avoid any damage that could cause the release of more fibers. Experts say removal is the only surefire way to rid your schools finally and completely of asbestos hazards. But the removal process itself is an extremely dangerous undertaking; a faulty or incomplete removal job could present even greater health hazards to your students and staff, as well as to asbestos abatement workers. So before you contract for any asbestos containment or removal work, refer to the technical advice presented in the E.P.A. document, "Guidance for Controlling Friable Asbestos-Containing Materials in Buildings," published in March 1983. And even though other measures might work in some schools, many school systems have found that public pressure is brought to bear on the school board to remove asbestos completely—regardless of expense.

The cost

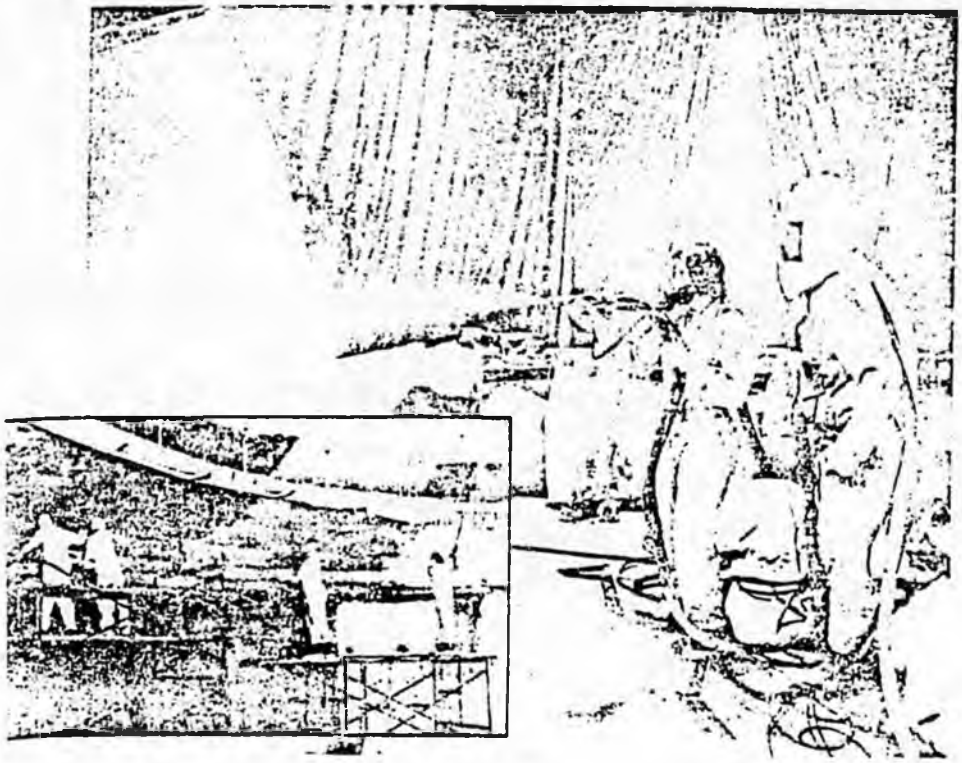
E.P.A. estimates that as many as 14,000 U.S. schools might contain dangerous friable material composed of more than 1 percent asbestos—which means more than 3 million students and 250,000 staff members are at risk right now. The agency estimates the total cost of asbestos abatement at $1.4 billion nationwide, or $100,000 per school building. Some school systems already have spent millions. According to Dwight Brown, formerly asbestos coordinator for E.P.A. Region IV in Atlanta, schools can expect to pay between $3 and $10 per square foot for asbestos removal—and the price can go as high as $28 per square foot. What drives the cost so high is the need for sophisticated analysis equipment and clothing to protect workers, Brown explains. Analysis of asbestos samples using an electron microscope goes for between $200 and $500 per sample—and you might need scores of samples to determine the hazard level in only one school.

Without a doubt, asbestos is a financial burden for school systems. At President Reagan's behest, Congress repeatedly has refused to provide funds to accompany the federal regulations it requires schools to obey. Part of the Asbestos School Hazard Detection and Control Act of 1980, for example, called for $700 million in grants and interest-free loans to help state and local education agencies identify and correct asbestos hazards in schools; no appropriations were made. Don't count on E.P.A. for changes in the funding situation, either: Officials there say they have no plans to request or provide money for school systems to deal with asbestos problems.

School systems in several states are fortunate to be reimbursed for expenses they incur in removing asbestos. In the past four years, for example, New York has given more than $12 million in grants and state building aid to help local asbestos removal programs. And in the same period, Florida has appropriated $10.5 million for asbestos removal. These are notable exceptions, however. Most school leaders have to dig into general operating budgets to come up with the funds. Such cost considerations, along with federal regulations that are at once technical and vague, have caused many school leaders to avoid the issue of asbestos altogether. But ducking the issue can only bring harm to your schools.

The consequences

Forewarned is forearmed: E.P.A. is stepping up its monitoring of schools' compliance. Although the agency has no conclusive statistics, E.P.A. officials say the rate of noncompliance by schools is high. Proferred proof: An E.P.A. staff



Space-age procedures are needed to eliminate asbestos from schools. Here, abatement workers wet down and remove the substance from a school gymnasium.

memorandum in August 1983 indicated that 80 percent of a sample of 167 schools were in violation of the E.P.A. inspection rule. And, according to E.P.A.'s compliance monitoring office, inspections conducted in 275 school systems since June 1983 show that 190—nearly 70 percent—had not complied with E.P.A. regulations on obtaining asbestos samples, notifying parents, keeping records, and so forth. The 275 school systems inspected include approximately 80 of the 100 largest school systems in the U.S.

Now something is being done about that kind of slackness: In fact, E.P.A. inspectors could come knocking on your door any day, asking to see your records. You could be cited for violations of T.S.C.A. on these grounds: failure to inspect schools; failure to sample friable materials; failure to analyze asbestos samples; failure to notify parents and staff; and failure to keep records.

Depending on the number and type of violations, your schools could be fined as much as *$25,000 per day per violation*—an amount that quickly could snowball into an outrageous sum. Here's how the fine system works: If E.P.A. finds you haven't complied with T.S.C.A., your central office will be given 30 days to certify compliance in writing. If certification isn't received within 30 days, E.P.A. files a civil complaint against your schools. Agency officials then will ask to see a compliance schedule as a demonstration of your good intentions. If these negotiations fail—if you don't cooperate—E.P.A. will attempt to collect the fines it has levied against your schools.

If you think the E.P.A. is making idle threats, think again: Under the direction of old/new Director William Ruckleshaus, E.P.A. has become more vigilant [illegible] is going after asbestos in schools as one [illegible]s Top Ten priority items. E.P.A.'s design in these aggressive actions is to force schools into compliance through pressure from the community, according to Connie DeRocco, a specialist in E.P.A.'s asbestos enforcement program. It stands to reason that school board members and administrators would tend to choose compliance over the chance that a concerned parent might blow the whistle on the schools' negligence.

Other signs that E.P.A. means business: The agency is doubling its monitoring staff for fiscal year 1985. And then there's the Philadelphia case: E.P.A. has threatened to set a precedent by filing a civil complaint for noncompliance against the Philadelphia schools, to the tune of $378,000 in fines ($6,000 for each of 63 nursery and day care centers housed in buildings leased by the school system that weren't inspected for asbestos). School officials are trying to head off the complaint by inspecting the buildings; E.P.A. officials say they are willing to negotiate as long as the Philadelphia schools can show they mean to comply fully with E.P.A. regulations.

But public pressure also is mounting on E.P.A. itself to issue more stringent and specific regulations on asbestos in schools. In response to a petition filed last November by the Service Employees International Union—prompted by the asbestos-related death of a school custodian—E.P.A.'s Ruckleshaus announced in late February that the agency will set formal standards for schools to remove or seal crumbling asbestos materials.

The legal ramifications

Before you make any decisions about asbestos in your schools, consult your school attorney. Advice from Dwight Brown, who has conducted seminars on asbestos in schools for the past five years: Devise a three-part legal action plan with your attorney concerning cost recovery, tort claim defense, and the process of administering contracts for removing and disposing of asbestos.

One legal question on everyone's mind: Can you recover costs of removing asbestos from the manufacturers of the material? "The Attorney General's Asbestos Liability Report to the Congress," published in September 1981, says schools should have a good chance of recovery in court. The bankruptcy last year of a major asbestos producer, Johns Manville Co., cast a pallor over what some school attorneys had held were excellent chances to recover costs. But in February, Lexington County School District No. 5 in South Carolina brought suit against U.S. Gypsum Co. to recover approximately $300,000—the cost of removing asbestos from Irmo High School. (The potentially precedent-setting case was about to come to trial as the JOURNAL went to press.) The school system is being represented by Daniel A. Speights of Hampton, S.C. Speights anticipates having filed as many as 30 asbestos-related lawsuits against U.S. Gypsum Co., National Gypsum Co., and W.R. Grace & Co. by July on behalf of school systems in Florida, Alabama, Mississippi, New Hampshire, and other states. He says these cases stand a "good chance" of winning. The Lexington suit, then, could open the floodgates for thousands of lawsuits against asbestos manufacturers.

Other legal issues you should be aware

Asbestos-control funds sought from legislatures

The Environmental Protection Agency is threatening to require schools to eliminate asbestos or face closure.

In autumn 1982, the U.S. House of Representatives voted to appropriate $50 million to provide school districts with interest-free loans to help defray the cost of removing or controlling asbestos in school buildings. But the measure, authorized under the Asbestos School Hazard Detection and Control Act that was passed in 1980 but never funded, failed to win the support of the Senate. When a conference committee also decided against asbestos-control funds, the chances that Washington would provide money for removal became remote.

The defeat of the funding measure is likely to mean that state legislatures will feel increased pressure from school officials to come up with asbestos-control funds. Some states — New York and Alabama, for example — already have provided such funds. Alabama uses a $75-million fund drawn from oil and gas revenues. In Mississippi, state education officials planned to go to the Legislature to ask for funds to offset the estimated $20 million it will cost to remove asbestos from schools, schools.

The continued absence of federal funding comes at a time when public pressure to deal with asbestos in the schools is increasing in many areas, in part because the Environmental Protection Agency may now issue a press release announcing which schools have not met the requirements of its regulation. Under the EPA regulation, all public and private schools were required to inspect for friable (crumbling) asbestos by June 28, 1983. If they found asbestos but took no action, the schools were required to notify parents and staff members. Although there is no federal requirement that asbestos be removed from the schools, the belief was that knowledge of its presence would generate enough public pressure to force action.



What this strategy of the EPA did not take into account, however, is that many school districts lack the money to pay for the often costly abatement procedures, and would instead simply fail to notify anyone of the presence of crumbling asbestos. As of last fall, an EPA survey outlined in an internal memorandum found that about 66 percent of all schools had not complied with some component of the regulation. The most common violation, the survey found, was failure to notify.

Although more school districts are belatedly complying with the regulation, according to EPA officials, the problem of funding remains serious for some. A report prepared for the Senate Appropriations Committee by the U.S. Department of Education estimated the cost of removing asbestos from schools nationwide at $1.4 billion. Under the loan program authorized in the 1980 legislation, the federal share of this would be $700 million. Acknowledging that there are no firm data to support this estimate, the report places the number of schools with an asbestos problem at 14,000. The estimated cost of removal is $100,000 per school, according to the draft report. That figure is dramatically higher in some areas: Jackson, Miss., faces a $6-million bill, and in Philadelphia school officials estimated the cost at $17 million. Others, of course, will require much less money because their asbestos situation is less dire.

A growing concern that they will be held liable for any asbestos-related illness — cancer, for example — contracted by students or staff is also prompting some school officials to step up the removal process and accelerate their quest for outside funding. Lawyers who handle asbestos litigation argue that, although no school suit of this type has been filed, school officials who do not remove a substance known to be hazardous will indeed be legally liable.

Some school districts — about 35 as of last fall — have filed suits of their own against asbestos manufacturers. Should one of these cases be decided in favor of a school district, more suits may follow, and favorable rulings would allow districts to recoup the cost of removal. Until then — barring the possibility of federal funding — districts have few places to turn and state legislators may find themselves the recipients of pleas from school officials.

— Susan Walton

States help employees buy out failing firms

Since the mid-1970s, more than 6,000 businesses across the nation have become, wholly or in part, owned by their employees. In most cases, employees have simply purchased stock through Employee Stock Ownership Plans (ESOPs), and there has been little state involvement.

When the number of plant shutdowns and relocations rose during the recent recession, however, legislators in several states sought ways to encourage "buyouts" of ailing firms by employees to save their jobs.

At least 12 states — California, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, and West Virginia -- have laws concerning worker ownership. Although some of these laws simply direct that state agencies study the issue, others, such as in California, Illinois, Michigan, and New York, have broader provisions that provide venture capital, technical assistance, and other help to workers attempting a buyout.

Maryland and Wisconsin also have strong legislation pending, while an attempt to add to New Jersey's law was vetoed last year by Governor Thomas H. Kean.

Essentially, there are two types of employee buyouts. The first is the most widely publicized — but least frequent — when, in a last-ditch attempt, employees try to save their jobs by buying a failing or unprofitable plant in danger of being closed. Weirton Steel in West Virginia is a recent example. This kind of buyout, however, constitutes "only about 1 percent of the total," according to Corey Rosen, director of the Center for Employee Ownership in Washington, D.C.

Far more common are ESOPs. In a typical plan, workers are simply offered company stock at market value rates.

Workers of firms that offer ESOPs typically own from 15 to 30 percent of the stock, although often the stock offered is nonvoting. ESOPs are encouraged by various federal tax incentives, and little state legislation has been enacted.

Instead, some state lawmakers have designed their efforts specifically to help employees purchase failing firms, particularly in already hard-hit urban areas. For example, in Illinois, Democratic state Representative Wyvetter H. Younge, hoping to "subsidize employment rather than unemployment," sponsored a bill that passed and was sign-

TARGET VOL. 13/APRIL-MAY '84/NO. 5

Authority. "To secure adequate laws for the care and protection of children and youth." National PTA Bylaws, Article II.c

Asbestos: Still a danger in schools

by Elaine S. Knapp

For Phyllis Adams and Ann Gibbs the last year has been a frustrating one—trying to get their local school board to remove asbestos from the school their children attend.

"It's frustrating, our children are being poisoned and there's not anything we can do," Mrs. Gibbs declared. What the Lexington, Kentucky, housewife has done is work through the PTA, form a group of concerned parents, go door-to-door telling parents of the danger, gather hundreds of signatures on petitions, read volumes on asbestos, call and write federal agencies and confront the school administrator and board.

After a year of parental pressure being applied and at least a decade after school authorities knew of the asbestos hazard, Mrs. Gibbs said, "We don't think anything will be done until the government makes them (the school board)." School authorities maintain the asbestos will be cleaned up if money is available for renovation next year.

Ironically, the major government effort to control asbestos lies in Mrs. Gibbs and others like her. Telling parents and teachers that their school has asbestos and relying on them to pressure local action is the heart of the U.S. Environmental Protection Agency's (EPA) strategy to rectify the nationwide problem of asbestos in schools.

No effective federal program exists to protect schoolchildren from asbestos, state efforts vary widely and local schools often ignore the danger due to the cost of cleanup.

Asbestos dangers

Any exposure to asbestos involves some health risk, according to the Congress, the EPA and the scientific community. Children are especially vulnerable, according to the EPA guidance document on asbestos sent to schools. Their remaining life expectancy provides the 20 to 40 years it takes for disabling and fatal asbestos-related diseases to develop. Large numbers of children may be exposed in a contaminated school and exposure is continuous during the school year. Children are active and breathe more frequently than adults, possibly inhaling more asbestos fibers. Smoking can increase the cancer risk due to asbestos exposure.

Most hazardous is friable asbestos that can be crumbled. It sends deadly fibers into the air which may lodge in the lungs indefinitely, according to EPA's guidance document. Asbestos workers often develop a chronic and debilitating lung disease called asbestosis. Lower and shorter exposure can result in death many years later.

Asbestos diseases include: 1) asbestosis, a disease in which asbestos clogs the lungs, 2) pleural calcification, a deposit of calcium salts in the lung lining, 3) malignant tumors of the lung, 4) mesothelioma, a rapid and fatal cancer of the lung and 5) intestinal and uterine cancers.

Hot potato

Asbestos in the schools has been a "hot potato" tossed among various levels of government and federal agencies. One reason is that removal of asbestos can be quite expensive, especially if large areas of buildings are affected. Funding is basically up to local schools as is asbestos detection and control. No federal funds are available and state aid varies.

The U.S. EPA requires schools to inspect for asbestos and notify parents and [school] employees of asbestos hazards. The EPA doesn't require removal or abatement. "The theory is that PTAs and employees would pressure local districts to take remedial action," said Terrell Hunt, assistant to EPA Deputy Administrator Alvin Alm.

However, a recent internal EPA report found that many schools did not meet EPA's June 1983 deadline for asbestos detection, record keeping and notification.

No federal funds

Federal funds of $172 million authorized by the Asbestos School Hazard Detection and Control Act of 1980 were never appropriated. Grants were promised for schools to identify asbestos hazards and loans for mitigation of asbestos hazards. But funds were never requested by the Department of Education, reported John Bennett, aide to U.S. Representative George Miller, D-Calif., who sponsored the act. In 1983, a $50 million recommendation by the House was omitted in a House-Senate conference.

The U.S. Department of Education had a task force which set standards for state grants in 1980, according to W. Stanley Kruger, deputy director for state and local programs. However, when the program wasn't funded, the department "deferred to EPA," Kruger said.

Under pressure from Congress, the department reactivated its task force in October 1983 and is gathering information on asbestos to send to chief state school officials, Kruger said. The department also reactivated its requirement that states file plans for asbestos in the schools' programs and report on their progress every six months. All but two states have filed.

EPA's program

The federal effort has largely been a requirement by the EPA that schools inspect for asbestos hazards, sample and analyze material to determine if asbestos is present, keep records of the inspection, post notices, and notify parents and employees if asbestos is found. Although schools were to comply with the rule by June 1983, the EPA doesn't know how many did. It does not require schools to report to it and must send federal inspectors to schools to check their records. EPA staff said when the EPA regulation was written that the administration op-

This is a reprint of a portion of an article appearing in State Government News, *March 1984. It is authored by and printed with permission of Elaine S. Knapp, its editor.*

posed imposing a data reporting requirement. The EPA recently doubled its field force of inspectors by adding 16 people through a contract with the American Association of Retired Persons, Hunt said. These include retired architects and engineers. Primarily, EPA staff look at school records and physically inspect some schools. However, there are not enough inspectors to cover but a small portion of the nation's schools.

In providing technical advice, EPA can help schools determine the best strategy for evaluating the risk and responding to asbestos, Hunt said. He said that anything short of removal is considered a short-term solution.

Connie Derocco, environmental protection specialist with EPA, said that out of 1,527 schools inspected in 468 districts, some 60 percent did not comply with EPA rules. Most failed to notify and warn PTAs and employees of asbestos materials [manufacturers]. Schools know they will be pressured once the word is out, and they are hesitant to deal with the asbestos problem, Derocco explained. After receiving a notice of noncompliance, schools have 30 days to act before the EPA files a civil complaint.

Labor union concern

An estimated 3.24 million schoolchildren and 648,000 school employees are potentially exposed to asbestos, according to Kitty Conlan, research analyst with the Service Employees International Union (SEIU).

The SEIU is lobbying Congress to fund the 1980 act for grants and loans to schools. Schools don't have the money to clean up on their own, Conlan said. "It's a nationwide problem which affects the health of millions of people."

SEIU is suing the EPA to require schools to clean up flaking asbestos. "Schools say if EPA thinks asbestos is so bad, then EPA would require them to get rid of it," Conlan commented.

EPA does give schools good technical advice on how to get rid of asbestos, Conlan noted. But some schools accept the lowest bid rather than follow EPA guidelines. If the cleanup is not done right, the asbestos danger can be worsened.

Conlan said SEIU doesn't think suing asbestos' manufacturers is worthwhile, citing lack of action on suits filed by asbestos workers. "We're hesitant to have our members litigate themselves to death," she said.

Conlan added that school districts can also be held responsible for asbestos. "They can face a big liability," she commented.

Lawsuits filed

A number of lawsuits on behalf of school boards and building owners in Kentucky, Mississippi, New Hampshire, Florida, South Carolina, Alabama and Tennessee have been filed by a South Carolina law firm.

Daniel Speights (a school board attorney) noted that legal theories available to school boards against manufacturers of asbestos include: contract (the products were not fit for the use intended), negligence (the manufacturers were negligent in informing users of the risks associated with the products), strict liability (manufacturers should be strictly liable for failing to warn of asbestos hazards), and restitution (manufacturers have a duty to abate the hazard).

A civil action filed on behalf of the Barnwell, South Carolina, school district notes that school districts and public officials could be held liable for failing to abate a health hazard.

A September 1981 report by the U.S. attorney general to Congress recommended that school authorities seek to recover asbestos abatement expenses from asbestos manufacturers. The report said federal litigation would be ineffective unless Congress imposed liability on asbestos manufacturers.

Asbestos manufacturers are being sued by at least 20,000 people on the grounds that the companies knew of asbestos hazards and covered them up, according to a September article in the *National Journal*.

A 1983 report from the Rand Institute says that asbestos litigation and compensation has cost an estimated $1 billion over the past decade. Only 37 cents of every dollar went for actual compensation to plaintiffs. Estimates of the number of deaths due to asbestos over the next 30 years range from 74,000 to 265,000.

What you should do about asbestos in your school

Given current asbestos rules and regulations, PTAs should check on the following:

1. Was each school in your district inspected for friable asbestos? If not, request this action immediately.
2. Was an analysis of asbestos samples, using polarized light microscopy, conducted?
3. Are records of the asbestos inspection on file in the school district?
4. Does the PTA have a copy of the report in its records?

In schools where asbestos was found, has the school complied with the following:

1. Did the school district notify the children's parents, either directly or through the PTA?
2. Were school employees notified of the location of the materials?
3. Did the school post a standard form in administrative and custodial areas?
4. Are measures being taken, if not already completed, to remove asbestos in the school?
5. Did the school district provide maintenance and custodial employees with instructions for reducing exposure to asbestos?

If asbestos was found in your school, but corrective measures are not being taken, the following steps should be pursued:

1. The PTA should work with the school to affect removal or abatement. Invite parents, teachers, employees of the building, the school principal, and the superintendent to a PTA meeting. Request information about the degree of the asbestos problem and what plans are being developed for cleanup.

2. If plans are not under way or seem unsatisfactory, contact the school board to inform it of your concern. If informal discussions do not produce results, get the issue on the agenda of the next school board meeting. Be prepared to provide the facts, including the inspection reports and the cost of abatement, to school board members.

3. Meanwhile, inform your state legislature and the U.S. Congress about the problems and the degree of difficulty there is in terms of cleanup.

4. If the school board is unable or unwilling to ameliorate the problem, one resort would be a lawsuit. Be sure that you have tried every alternative before taking this step.

35 U.S. School Boards Sue to Force Manufacturers to Remove Asbestos

By JAMES BARRON

With the Environmental Protection Agency stepping up its campaign against asbestos in schools, more than 35 school boards around the nation have filed lawsuits to get asbestos manufacturers to pay for removing the potentially hazardous material from their buildings.

The agency says 62 percent of the school districts it has inspected violate some of the Federal regulations that require local school officials to inspect and report on asbestos. Alvin Alm, Deputy Administrator of the E.P.A., said the figure dropped as low as 50 percent earlier in the year but climbed recently as the inspections continued.

To improve the compliance rate, the environmental agency has proposed fines of more than $300,000 against 16 school districts where Federal inspectors found problems.

Four of the school districts fined were in New Jersey: Brick Township, South Orange, Springfield Township and Dunellen. The largest fine was $102,000 against the Waterbury public schools in Connecticut. There, the agency said it had found that 16 of 26 schools contained asbestos that could become airborne.

Some Call E.P.A. Rules Vague

Some local school officials say the agency's rules are vague and subjective and its inspectors interpret them arbitrarily. But others have turned to the courts because of the high cost of removing asbestos, more than $100,000 a school by some estimates.

One case in South Carolina was settled last month when U.S. Gypsum agreed to pay $675,000 to the school district in Lexington County. One in Pennsylvania may be used as the basis for a suit that would consolidate all the claims against manufacturers by school boards around the country.

Asbestos was widely used as fireproofing insulation between World War II and the late 1970's. It has since been found to pose a threat of a variety of serious diseases, including mesothelioma, a cancer of the lining of the lungs that is often fatal.

The E.P.A. says it cannot estimate how many children face possible future health problems from attending classes in schools containing asbestos or how much exposure causes a health hazard. The National Education Association, which maintains that children are more susceptible to asbestos-related diseases than adults, says there are asbestos problems in 14,000 schools. The teachers' union has threatened to make asbestos removal a bargaining issue this year.

Under the Federal rules, more than 121,000 public and private schools with more than 50 million pupils are required to notify parents and school employees if asbestos is found by inspectors. In most cases, there are two types of asbestos in schools: asbestos in ceiling insulation and asbestos wrapping on plumbing and heating equipment.

The environmental agency's inspectors are supposed to check for asbestos that crumbles or can be pulverized at a touch, but they may also cite school districts for failing to keep detailed records on their own inspections.

"The unsettling thing is I'm afraid that is sidetracking the E.P.A.'s attention from the real issue, which is what's hazardous," said William Anderson, a lawyer who represents the National Association of School Boards. "It's also creating an adversarial situation. The E.P.A. is making enemies of many school districts as a result of what the schools see as nit-picking and unfair enforcement."

The Syracuse public schools complied with New York state regulations before the Federal environmental inspectors arrived. Ernest Rookie, the system's facilities supervisor, said the Federal inspectors questioned whether there was asbestos in an auditorium ceiling at Fowler High School.

"We had already taken samples in nine different spots," he said. "They were proved to be not asbestos. The E.P.A. came through and demanded a lab analysis. It cost $450, and we were sure that stuff wasn't asbestos."

Fine Is Called 'Unreasonable'

In Waterbury, Thomas G. Parisot, an assistant corporation counsel, called the proposed fine "unreasonable" and questioned how the agency had determined it. Long before the Federal inspectors showed up, he said, Waterbury made plans to have the asbestos removed.

"The E.P.A. inspected only four schools before it lowered the boom," he said. "They were not really familiar with the makeup of our school system when they issued their complaint. We say any asbestos-containing material is limited in comparison to other districts. We don't have any spray-on beam insulation, wall insulation, or the kinds of materials that are a great deal more friable."

He said samples taken before the E.P.A. inspection "indicated there was no exposure problem for airborne concentrations."

Many school boards are divided on how to proceed with the suits, stalled since Federal District Judge James M. Kelly ruled in Philadelphia that all the cases should be combined and tried there.

After lawyers representing many of the other districts with pending cases protested, he scheduled a hearing on whether to go ahead with the merged legal actions. The case before him originally concerned only the schools in Lancaster, Pa., which had sued the Lake Asbestos Company, a Canadian company, among others.

"To require thousands of lawsuits to be tried in one forum means that each individual school district will be lost in the mass," said Daniel Speights, a Hampton, S.C., lawyer handling more than a dozen cases. "Historically, parties in a class action do not get the amount in damages that they would get if they tried their cases separately. Many of them could file locally and try the case in a year or less."

David Berger, one of the lawyers who represented the Lancaster districts when the case began, said individual trials would prove "costly, repetitive and duplicative."

"If everyone operates independently," he said, "that might make it impossible for anyone to recover. There is no way this industry could withstand $4 billion or $5 billion in judgments relating to school claims, which is what would happen if we used the tremendously ineffective case-by-case basis."

Ruckelshaus En

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, May 19 — One year after his return as Administrator of the Environmental Protection Agency, William D. Ruckelshaus is widely credited with restoring morale, stability, purpose and credibility to an agency he found in a state of chaos.

But his critics, including members of Congress and environmentalists, charge that he has failed in leadership on such important environmental issues as emissions into the air of sulfur and nitrogen oxides that fall in particles called acid rain, killing aquatic life and threatening forests; that he is seeking to weaken environmental regulation by weighing risks to health against other social values; that he is serving as a benign front for what the critics call the anti-environmental policies of the Reagan Administration.

In an interview in his office overlooking the Potomac, Mr. Ruckelshaus denied that the Administration was anti-environment.

"It is a fair criticism of this Administration that the environment is not one of its high priorities — it has not been a high priority of the President in his career," he said. But he added that "this Administration has much more sympathy for the environment than the Nixon Administration," though many major environmental laws were passed in that Administration's tenure. "In the

Bartlett calendar approved

By ANDREW PERALA
Daily News reporter

The Anchorage School Board unanimously approved an extended summer vacation for students at Bartlett High School next year to give contractors time to remove asbestos from campus buildings.

Representatives of the school's students, teachers, parents and staff had supported the new school calendar, which will also extend the school day by 90 minutes beginning Jan. 21, 1985.

Under the plan, students at Bartlett will be out of school from April 26 to Oct. 15, 1985. The long summer break will allow contractors to remove asbestos insulation from inside the school building.

In a separate action, the board approved a $14.8 million contract to Vertecs Corporation for removal of the asbestos.

Of that amount, $13.4 million will be for the base contract and $1.3 million will be reserved as a contingency fund.

The contingency fund, said district superintendant Gene Davis, will cover unforeseen problems encountered during the 150-day asbestos removal project.

"It has not even been determined how many lights will have to be removed" from the school's ceilings, Davis said.

Removal of the asbestos has been classified as an emergency and the state Department of Education ruled

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Bartlett

Continued from Page C-1

recently that the district can alter the school calendar.

Any new asbestos-removal expenses over $20,000 will require approval of the board. Amounts under $20,000 will be approved at the discretion of the superintendant, Davis said.

The 5½-month Bartlett summer vacation won't come without a price, however. In order for students to get the equivalent of 162 days of classroom instruction, the class day will be lengthened by an hour and a half. Students will start school at 7:30 a.m. as usual, but will not be released from classes until 3:30 p.m.

The extra-long summer break aroused the most concern from the speakers before the School Board.

"Our one concern is that students remain active" during the long break, said Karla Josephson, who spoke on behalf of the high school's staff. "Most students do like the idea of a five-and-a-half month summer," said student representative Brian Schmidt. The calendar plan represents a better solution than attending school on Saturdays or double-shifting with another school, he said.

In conjunction with approving the new calendar, the board also approved spending an additional $231,432 in the spring semester of this school year to accommodate the extra costs of changing the school calendar.

About $98,000 will go toward the expected added costs of school buses the district will have to pay a bus contractor. And $78,000 will be allotted to local moving companies to move the hundreds of student desks and other furniture into the school's gymnasium.

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EPA: schools ignore law about asbestos warnings

WASHINGTON (AP)—Local school officials, worried about their budgets or about "panic and hysteria," are widely ignoring a federal law requiring parents to be notified about dangerous asbestos in their school buildings, a government study says.

The study by the Environmental Protection Agency said that study said.

In many cases, the study said, school officials did not want to notify parents because of the money the school district would have to spend if forced to clean up the asbestos hazard.

School officials "are reluctant to notify parents because they believe this will result in a redirection of limited operating funds and-or create unnecessary panic and hysteria," the study said.

But whatever the reason, the EPA study added, it is undermining the program to get rid of hazards from asbestos that face millions of schoolchildren.

"The success or failure of the asbestos in schools rule, which relies heavily upon public involvement, is the degree to which information is communicated to the public," the study said. "Poor public awareness has resulted in only slight activity on the part of the parent groups in schools."

The finding are included in an internal program review requested by EPA Deputy Administrator Al Alm and completed in December. A copy was obtained by The Associated Press.

The study involves asbestos insulation that once was widely used in schools and other public buildings. Health officials now say that some types of asbestos can flake into microscopic particles that can be inhaled, causing lung cancer or other lung diseases. There is no known safe exposure level.

Under federal law, school officials are required to inspect their buildings for hazardous asbestos and to notify parents and school employees if it is found. It is then up to the local officials to decide what to do.

The law covers more than 37,000 public, private and parochial school systems with more than 50 million students.

The EPA study was intended to find out how well the program was working. Some of its findings, including the conclusion that two-thirds of the nation's schools are in violation of some part of the law, have been reported earlier.

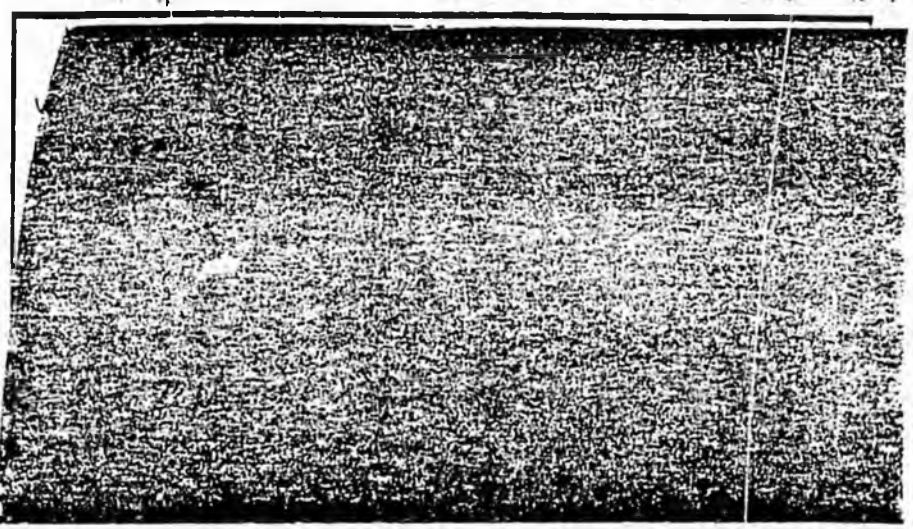
The EPA study did not blame school officials alone. It also found that the agency itself needed to devote more money and people to the program, including more than doubling the EPA inspection program.

"The agency has not issued a high-level statement detailing the risks of exposure to asbestos and the importance of considering various abatement options," the study said. "The regions and the public have not been made fully aware and have received mixed signals on the seriousness of asbestos health hazards."

The congressional author of the asbestos in schools law, Rep. George Miller, D-Calif., focused on those shortcomings in his analysis of the report.

"This document, drafted by EPA's own experts, again confirms the shocking inadequacy of this administration's approach to a threat that endangers the health of millions of school children," Miller said. "It is apparent that at least some officials within EPA are trying to warn their agency about the consequences of the current policies."

Whatever the failings of the agency, however, the study indicated that school officials have not endorsed the program wholeheartedly.



Funding limits asbestos removal

Associated Press

Washington — Local school officials, worried about their budgets or about "panic and hysteria," are widely ignoring a federal law requiring parents to be notified about dangerous asbestos in their school buildings, a government study says.

The study by the Environmental Protection Agency said that of 275 schools inspected by EPA, 190 were found to be violating the federal law on asbestos insulation. Of those 190, the EPA said, 134 had violated the requirement that parents be notified of the excess levels.

"Consequently, we can conclude that the parents of students exposed are in many cases unaware of the existence of such a hazard," the study said.

In many cases, the study said, school officials did not want to notify parents because of the money the school district would have to spend if forced to clean up the asbestos hazard.

School officials "are reluctant to notify parents because they believe this will result in a redirection of limited operating funds and-or create unnecessary panic and hysteria," the study said.

But whatever the reason, the EPA study added, it is undermining the program to get rid of hazards from asbestos that face millions of schoolchildren.

"The success or failure of the asbestos in schools rule, which relies heavily upon public involvement, is the degree to which information is communicated to the public," the study said. "... Poor public awareness has resulted in only slight activity on the part of the parent groups in schools."

The finding are included in an internal program review requested by EPA Deputy Administrator Al Alm and completed in December. A copy was obtained by The Associated Press.

The study involves asbestos insulation that once was widely used in schools and other public buildings. Health officials now say that some types of asbestos can flake into microscopic particles that can be inhaled, causing lung cancer or other lung diseases. There is no known safe exposure level.

Under federal law, school officials are required to inspect their buildings for hazardous asbestos and to notify parents and school employees if it is found. It is then up to the local officials to decide what to do.

The law covers more than 37,000 public, private and parochial school systems with more than 50 million students.

Whatever the failings of the agency, however, the study indicated that school officials have not endorsed the program wholeheartedly.

Federal funds to help remove asbestos

by Stephen J. Downes 2/9/87
Times Writer

The federal government has offered at least $2.1 million to help remove asbestos at Bartlett High School, a school district official said Wednesday.

And federal dollars will also pay for removing asbestos at Mount Spurr Elementary School, said assistant superintendent Tom Freeman.

Freeman said the federal Department of Education made the offer in a letter received by the district Tuesday, after three months of lobbying by the school district and members of the school board.

The district wanted the federal government to pay a portion of the bill for the schools because they are both on federal land.

About 35 acres of Bartlett is on federal land and technically belongs to the federal government, Freeman said. The other 118 acres have been deeded to the municipality, he said. The district operates the whole school.

Mount Spurr is on Elmendorf Air Force Base. The school district estimates it will cost $80,000 to remove asbestos at the school.

Negotiations between the district and the DOE that might result in even more money being obtained are still continuing. The district is seeking additional funds because cost estimates for Bartlett are increasing, Freeman said.

The $2.1 million represents 39 percent — the federal government's share — of what the district originally believed the Bartlett project would cost: $5.5 million.

"We've informed them that it may be more," Freeman said.

Howard Games, a DOE project engineer in Seattle, said a request for the money would go to DOE offices in Washington as soon as the school district provides a revised estimate of the cost. The estimate could come as early next week.

Construction firms will be asked to come up with estimated costs of removing asbestos at Bartlett. The firms will also seek a way to complete the work without disrupting the school year, which could mean higher costs.

The federal Environmental Protection Agency has linked exposure to asbestos with lung cancer and other diseases. The Anchorage School Board last year ordered asbestos removed from all district buildings.

The state legislature is now considering a district request for $10 million to remove asbestos from six schools, among them Bartlett and Mount Spurr. Bartlett is the top priority and has by far the most asbestos.

Anchorage lawmakers have already proposed $8.7 million for Anchorage asbestos removal.

DOE representatives will come to Anchorage in the next couple of weeks to advertise for bids on the Mount Spurr project, Freeman said.

The bid specifications will be drawn up by Gobbell, Hays and Pickering, the firm evaluating the asbestos problem for the school district.

Another DOE official, Jim Ishihara, said the federal government is also paying for asbestos removal on other Alaska schools: a $2.2 million project at Reeve Junior and Senior High School in Adak, and a $230,000 project at nine schools in Fairbanks.

5/8/84

Parents, scientists tell EPA to ban asbestos in schools

By BETTY ANNE WILLIAMS
The Associated Press

WASHINGTON — Scientists, union officials and parents urged the Environmental Protection Agency on Monday to require the removal of the carcinogen asbestos from schools and other public buildings.

"Ultimately, what you will do is decide who will live and who will die," said Irving Selikoff, director of the environmental sciences laboratory at Mount Sinai School of Medicine and an authority on the health effects of asbestos.

"We're gazing at children being exposed to asbestos. We're seeing teachers, personnel being exposed. We don't really need any additional research about what can happen. What we need now is controls."

Selikoff and other witnesses testified as the EPA held the first of four hearings on what to do about the asbestos which was used in public building construction and insulation until it was pinpointed as a cancer-causing agent in humans in the late 1970s. Other hearings will be held in Boston, San Francisco and Chicago in June.

The hearings series was planned after the Service Employees International Union petitioned the EPA to issue an asbestos abatement rule which would assure the removal of the substance from schools and other types of public buildings.

William Borwegan, director of occupational safety and health for the union, said the EPA should be prepared to come up with more money and staff to implement a tougher standard and monitor its enforcement.

"At a minimum, the agency should immediately train at least 100 individuals that can act as technical advisers to advise building owners and local school districts on how to evaluate and control asbestos in building hazards," he said.

National Education Association Vice President Keith Geiger estimated that as many as 650,000 teachers and other workers and three million children are exposed to asbestos every school day in 14,000 institutions.

"An emergency exists in our schools. Each day that the asbestos hazard goes unabated, the likelihood increases that there will be more victims," he said.

The EPA believes only 250,000 teachers and other school personnel are at risk but does not quarrel with the other estimates cited by the NEA.

Geiger also called the asbestos problem "a national disaster" and said the federal government must take the lead in arranging for the cleanup.

White House rejects suggestion to cut Social Security benefits

The Associated Press

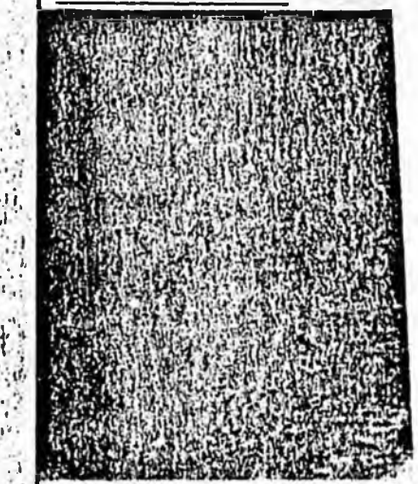
WASHINGTON — Democrats in Congress criticized Treasury Secretary Donald

Nevertheless, Senate Minority Leader Robert Byrd, D-W.Va., said the Regan

untary item," said House Speaker Thomas O'Neill

Del

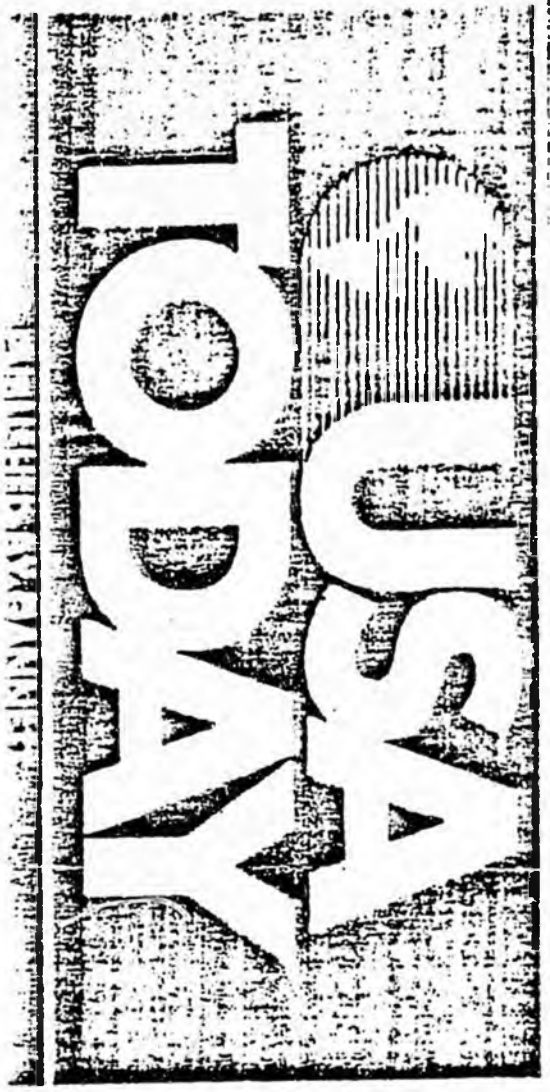
alaska women's run 1984



"I made it all the way

On June 12, there wi
very special runners amor
hundreds of participants ir
Alaska Women's Run 1984
months of training with vo
coaches, these ten women
giving their personal best t
money for The Association
Retarded Citizens of Anchc
They know how much ARC
help people with mental ret

Soon, volunteers
will be asking you to
pledge an amount



School asbestos program failing

By Carol Stevens
USA TODAY

Mary Banscombe hopes to find out today if her sixth-grade son is being exposed to cancer-causing asbestos at his Goffstown, N.H., school.

The suburban Manchester district will get results of an inspection ordered after it was fined 11 days ago for failing to tell parents about possible asbestos dangers.

Meanwhile Banscombe, like many USA parents, is worried: "At this point we don't know what we're dealing with."

Says executive director James Fite of the White Lung Association: "Conditions in the nation's schools are absolutely horrible . . . and getting worse."

The federal Environmental Protection Agency's $24,000 fine against Goffstown was its first at any school.

It's been a decade since EPA outlawed asbestos as a fireproofing agent because of studies linking it to cancer. Yet EPA estimates asbestos is still present in as many as half the USA's 121,000 schools.

As a result, 3 million to 5 million children in schools built in 1940-60 risk asbestos exposure, says Arnold Fege of the National Congress of Parents and Teachers.

EPA's voluntary cleanup program is partly to blame. Schools had until June 1983 to inspect buildings and tell parents of the asbestos dangers.

Nine months after the federal deadline, EPA says the regulations have failed. Spot checks of 275 school districts found more than 69 percent violating asbestos standards.

Administrators say they can't afford cleanup at $100,000 per school.

FRI./SAT./SUN. MARCH 23-25, 1984

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

20

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 15, 1986

SUBJECT: SCS SSHB 20 (L&C)
(Interest on deposits collected by public utilities)

TO: Senator Fred Zharoff
Chairman, Labor and Commerce Committee

FROM: Teresa B. Cramer TBC
Legislative Counsel

Enclosed is the Senate CS you requested to HB 20. The language added by the CS raises questions because it is not clearly reflected in the title. Article II, Section 13 of the Alaska State Constitution requires in part that

> The subject of each bill shall be expressed in the title.

The court has stated that a violation of this section must be substantial and plain before it will require an enactment to be set aside. North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978).

The title to SCS SSHB 20 reads "relating to interest on deposits collected by public utilities." (Emphasis added) The Senate CS adds the following sentence to the bill:

> A public utility may collect and retain a deposit for contracted recurring monthly service.

To the extent that the language grants a public utility a right to collect and retain deposits, it is arguably beyond the scope of the title, which could be read as limited to interest on those deposits. It is also possible that the court would consider that the title was broad enough to encompass provisions concerning the deposits as well as the interest.

The safest course for the committee to follow would be to amend the title to clearly include the subject of deposits collected by public utilities, not merely the interest on those deposits. A title amendment would require permission to waive the rules since the bill originated in the House.

If I may be of further assistance, please advise.

TC:mkr
m4/113

Enclosure

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SSHB 20: Summary

This measure requires a public utility to pay interest on utility deposits of $100 or more, at the legal rate of interest at the time the deposit was made. Exceptions to this requirement occur as follows:

1) If the deposit is in an interest bearing account, the utility shall pay the interest rate of that account.

2) In cases where delinquent payments interrupt service, the utility is not required to pay interest for 12 months following the reestablishment of service.

BILL SUMMARY

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 12, 1985

MEMORANDUM

TO: Representative Peter Goll

FROM: Nancy Pease Nancy Pease
Legislative Analyst

RE: Deposits to Public Utilities
Research Request 85-142

Bob Berry of your office requested the following information on deposits that public utilities may require of first-time customers or those with no established credit:

- the representative low, high and average deposit required;
- the total amount of deposits held by public utilities;
- the length of time the deposits are held;
- the administrative cost and the burden to public utilities if they were required to pay interest on the deposits, and;
- an indication of the lead time utilities would require to begin paying interest on deposits without undue burden to the utilities.

The attached table presents information on the customer deposit requirements of 28 electric, natural gas, water, sewer or refuse utilities across the state. The four smallest utilities surveyed do not require deposits from first-time customers or those with no established credit.[1] In addition, several utilities waive their deposit requirement for new customers who provide good credit references or for new residential customers who own or purchase a home.

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[1]The Cities of Kotlik, Seldovia, North Pole and Dillingham each provide utility services to no more than 225 customers.

SPONSOR'S INFORMATION

Average deposits

Utilities which require a standard deposit from their new customers charge, on average, a $74 deposit to open a residential account and $142 to open a commercial account.

However, many utilities adjust the amount of a customer's deposit according to the monthly bills or credit histories of previous customers with similar service needs. Depending upon the methods used to calculate customer risk, residential deposits range from $10 for water and sewer service in Fairbanks to $600 for telephone service from the Matanuska telephone utility. Deposit requirements for new commercial accounts range from $19 for water service in Wrangell to $2,500 for electricity in Dillingham.[2] For those utilities which reported varying deposit requirements, the average low and high residential deposits are $29 and $130 respectively. The average low and high commercial deposits are $89 and $950 respectively.

Total Amount of Deposits Held by Public Utilities

Bob Berry indicated that the Alaska Public Utilities Commission (APUC) was providing you with the total deposits held by all APUC-regulated utilities. Based on the information gathered in this survey, we are unable to estimate the amount of deposits held by unregulated utilities. The 10 unregulated utilities which indicated in this survey that they require customer deposits hold a total amount of at least $1,180,000. Four of the unregulated utilites surveyed do not require deposits.

These 14 unregulated utilities represent only 20 percent of the approximately 70 unregulated utility corporations which provide electricity, natural gas, water, refuse removal, sewer or telephone service to Alaska consumers.[3] It is difficult to assess how accurately this survey reflects the sizes and types of unregulated utilities as well as

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[2]David Bowker, General Manager of Nushagak Electric Co-operative in Dillingham, stated that Nushagak received permission from the Alaska Public Utilities Commission to charge commercial users a deposit of up to the estimated two-month billing. This policy was directed specifically toward fish processors after the utility suffered $50,000 in losses when fish processors went bankrupt.

[3]The survey included the following unregulated utilities: Fairbanks Municipal Utilities Systems, Ketchikan Public Utilities, Kodiak Municipal Utilities, and the Cities of Kenai, Petersburg, Sitka, Nome, Wrangell, Palmer, Unalaska, Kotlik, Seldovia, Dillingham and North Pole.

other unknown factors which may correlate to deposit policy. Because this sample is not necessarily representative, the information cannot be used to extrapolate the total amount of deposits for all utilities.

We were also unable to estimate the total amount of deposits by determining the average deposit charged per customer or per capita. Utilities' records show the number of customer accounts, but not necessarily the number of actual customers. One customer may pay a single deposit for several services or he may pay multiple deposits either to the same or different utility companies. An extrapolation of total deposits based on a per capita estimate would also be inaccurate because the percent of the population who are utility customers varies greatly in different localities.

Length of Time Deposits Are Held

Most of the surveyed utilities which require deposits refund them after either one or two years if the customer maintains good credit with the company. Nearly half (42 percent) of those utilities keep the deposits for two years. Four of the utilities surveyed hold the deposit until the customer closes the account. For those utilities which return customer deposits after a scheduled interval, the average period for holding deposits is 16 months.

Administrative Cost, Burden and Lead Time for Requiring Interest Payments on Deposits

The administrative cost to utilities of paying interest on customer deposits depends largely on whether the utility has a computerized accounting system. Spokespersons for several utilities which currently pay interest indicated that implementing the interest paying policy incurred a one-time computer programming cost. Their computers calculate interest monthly on each customer's deposit. The interest is either credited to the customer's bill once per year or is refunded with the deposit. Utility spokespersons who currently use computerized accounting sytems to pay interest estimated that implementing an interest paying policy would require very little lead time.

Some of the small utilities balance their customer accounts by hand. Calculating and paying interest for each customer deposit would increase considerably the accounting and clerical work for these utilities. The utilities clerk for the city of Kenai stated that the Kenai utility might find it advantageous to stop requiring deposits rather than handle the paperwork of paying interest on each deposit.

Several utilities spokepersons mentioned that administrative complications would arise in calculating and paying interest to customers delinquent on their payments. The amount held in deposit for a customer may change many times at irregular intervals if the customer is consistently late with his payments and is disconnected, has part of his deposit confiscated, or is required to pay additional deposits.

Utility spokespersons were not able to estimate the financial burden of paying interest without determining what portion of their customer deposits would be affected. The burden to each utility will depend on the amount of deposits on which it must pay interest and on the utility's current use of the deposits. There was no consistent pattern to utilities' management of the deposits. Some of the utilities hold their deposits in a general fund and use them for general operating expenses while other utilities keep the deposits in checking accounts or interest bearing saving accounts, either separately or in combination with other daily cash deposits.

Chugach Electric keeps its deposits in a noninterest bearing checking account because it must frequently make refunds. If the utility were forced to commit its deposits to an investment account, it would lose this flexibility. Utilities which enter deposits into their general funds would also lose operating flexibility.

Ketchikan Public Utilities currently keeps customer deposits in an interest bearing savings account and passes along interest to the depositers. The City of Sitka invests its customer deposits for a return of 8 or 9 percent, also passing most of the interest to depositers. These utilities will incur a minimal burden if interest payment is mandated.

* * *

We hope you find this information to be useful. Please contact us if you have further questions.

NP

Attachment

Consumer Deposits with Public Utilities

Utility	Number of Customers	Deposit Residential Low ($)	Deposits Residential High ($)	Deposits Resident. Std. ($)	Deposits Business Low ($)	Deposits Business High ($)	Deposit Busines Std. ($)	Utility Deposits TOTAL ($)	Months Held	Interest Paid %
Fairbanks Muni. Util								799,491	12	6
electricity	6,274	20	40				1 mo.use			
water	4,539	10	30				40			
sewer	5,198	10	30				40			
telephone	22,883	20		100			220			
district heat	131	10	15				30			
Juneau & Douglas Tel										
telephone	17,061			100		400	225	55,193	12	0
Anchorage Mun. Tel.										
telephone	170,390	50	150			900		1,100,000		0
ENSTAR Natural Gas										
gas (1)	60,505	25	225			2,000		800,000	24	5
Matanuska Tel. Util.										
telephone	26,050		600	50		2,000		616,000	12	6
Homer Elec. Assoc.										
electric	14,427		150	100						0
Ketchikan Pub. Util.	14,748									
elec. & tel.			100	50			100	117,000	13	5
Kenai, City of	2,153									
water & sewer				40			50	19,000	24	0
Petersburg, City of	3,700									
elec,water&sewer				40			75	12,821	12	0
Bethel Utilities										
electricity	2,055			100			100	66,000	var	0
AK Elec. Lt & Power										
electricity	9,856	20	30		75	300		NA	24	0
Barrow Util. & Elec.								32,000	24	0
electricity	1,101			75			75			
gas	787			75			75			
Chugach Elec. Assoc.										
electricity	59,874			30	50	300		NA	24	0
Sitka Telephone										
telephone	6,320			90			125	NA	6	5
Sitka, City of	4,000									
elec,water&sewer				75			105	167,700	til close	6
Nushagak Elec. Coop.										
electricity	879			100	200	2,500		32,000	24	0
telephone				100			1,500	45,000	24	0
Nome, City of	2,500							20,000	12	0
electricity				75			75			
water&sewer				50			50			
Bristol Bay Tel.										
telephone	679		100	100		500		10,700	24	0
Wrangell, City of	1,164									
electricity				50			50	13,000	til close	5
water			20		19	403		2,000	12	5
Glacier State Tel.										
telephone	28,540			100			150	290,478	12	0
Kodiak Mun. Util.	1,690									
water hook-up				250			250	NA	1	0
sewer hook-up				300			300	NA	1	0
refuse				10			10	NA	til close	0
Palmer, City of	675									
water,sewer&refuse				40			40	30,700	til close	0
Eklutna Utilities										
water	300			50				20,000	24	10
Unalaska, City of										
elec. & water	475	100	200		100	200		1,400	24	0
Kotlik, City of										
elec. & tel.	105	0	0	0	0	0	0	0	0	0
Seldovia, City of										
water & sewer	209	0	0	0	0	0	0	0	0	0
North Pole, City of										
water & sewer	225	0	0	0	0	0	0	0	0	0
Dillingham, City of										
water & sewer	175	0	0	0	0	0	0	0	0	0
Total	469,496							$4,250,483		
Partial Average (2)		$29	$130	$86	$89	$950	$168	$223,710	16.4	

(1)Deposits required for business accounts range into the thousands of dollars.

(2)Average excludes utilities not requiring or not reporting deposits.

Prepared by House Research Agency, February 1985

Utility	Number of Customers	Deposits Residential Low	Deposits Residential High	Deposits Resident. Standard	Deposits Business High	Deposits Business Standard	Utility Deposits TOTAL	Period Held	Interest Paid %
Fairbanks Muni. Util							799491	12	6
electricity		20	40			1 mo.=5%			
water		10	30			40			
telephone		20	50						
district heat		10	15			30			
Juneau-Douglas									
telephone	17061			100	400	225	55193	12	0
Anchorage Mun. Tel.									
telephone	170390	50	150		900		1100000		0
ENSTAR									
gas	60505	25	225		over 1000		800000	24	5
Mat-Susitna Tel.									
telephone	26050		600	50	2000		616000	12	6
Homer Elec. Asso.									
electric	14427		150	100			960,090 *		0
Ketchikan Pub. Util.									
elec. & tel.			100	50		100	117000	13	5
Kenai, City of									
water & sewer				40		50	19000	24	0
Petersburg, City of									
elec,water&sewer				40		75	12821	12	0
Bethel Utilities									
electricity	2055			100		100	66000	var	0
AK Elec. Lt & Power									
electricity	9856	20	30		300		107,165 *	24	0
Barrow Pub. Util.							32000	24	0
electricity	1101			75		75			
gas	787			75		75			
Chugach Elec. Asso.									
electricity	59874			30	300		1,739,017 *	24	0
Sitka Telephone									
telephone	6320			90		125	61,873 *	6	5
Sitka,City of									
elec, water&sewer				75		105	167700 *til clos		6
Nushagak Elec.									
electricity	879			100	2500		32000	24	0
telephone				100		1500	45000	24	0
Nome, City of							20000	12	0
electricity				75		75			
water&sewer				50		50			
Bristol Bay Tel.									
telephone	679		100	100	500		10700	24	0
Wrangell, City of									
electricity				50			13000 til close		5
water			20				2000	12	5
Glacier State Tel.									
telephone	28540			100		150	290478	12	0
Kodiak Mun. Util.									
water hookup				250		250	NA	1	0
sewer hook-up				300		300	NA	1	0
refuse	272			10		10 NA	til close		0
City of Palmer									
water,sewer&refuse				40		40	30700 til close		0
Eklutna Utilities									
water	303			50			20000	24	10

Prepared by House Research Agency 08 Feb 1985

ADJUSTED VERSION

ELECTRIC UTILITIES
(Source - 1983 Annual Report)

NAME	CLASS	CUSTOMER DEPOSITS
Alaska Electric Light and Power Company	A	$ 107,165
Alaska Power and Telephone Company	B	36,899
Alaska Village Electric Cooperative, Inc.	A	670
Aniak Light & Power Company	D	0
Arctic Utilities, Inc.	B	0
Barrow Utilities and Electric Cooperative, Inc.	B	Data Not Available
Bethel Utilities Corporation, Inc.	B	80,545
Bettles Light & Power, Inc.	D	0
Chugach Electric Association, Inc.	A	1,739,017
Copper Valley Electric Association, Inc.	A	165,216
Fort Yukon Utilities (now Gwitchyaa Zhee Utility Co.)	C	0
Golden Valley Electric Association, Inc.	A	897,705
Haines Light and Power Company	C	3,425
Homer Electric Association, Inc.	A	960,090
Iliamna-Newhalen Electric Cooperative, Inc.	D	11,622
Kodiak Electric Association, Inc.	A	111,755
Kotzebue Electric Association, Inc.	B	44,455

ELECTRIC UTILITIES (CONT.)
(Source - 1983 Annual Report)

NAME	CLASS	CUSTOMER DEPOSITS
M & D Enterprises	C	Data Not Available
Manley Utility Company, Inc.		Data Not Available
Matanuska Electric Association, Inc.	A	$ 802,909
McGrath Light & Power Company	C	3,450
Municipality of Anchorage d/b/a Municipal Light & Power Dept.	A	44,913
Northern Power & Engineering Corporation (now G&K, Inc.)	C	1,276
Northway Power & Light, Inc.	D	0
Nushagak Electric Cooperative, Inc.	B	6,955
Pelican Utility Company Pelican Division	D	0
Pelican Utility Company Sand Point Division	C	0
Tanana Power Company, Inc.	C	6,244
Teller Power Company	D	Data Not Available
Tlingit-Haida Regional Electrical Authority	B	17,320
Yakutat Power, Inc.	C	0
SUBTOTAL		$5,041,631

GAS UTILITIES
(Source - 1983 Annual Report)

NAME	CLASS	CUSTOMER DEPOSITS
Alaska Pipeline Company	A	$ 0
Barrow Utilities and Electric Cooperative, Inc.	C	Data Not Available
ENSTAR Natural Gas Company	A	765,255
Kenai Utility Service Corporation	C	Data Not Available
SUBTOTAL		$765,255

SEWER UTILITIES
(Source - 1983 Annual Report)

NAME	CLASS	CUSTOMER DEPOSITS
Barrow Utilities and Electric Cooperative, Inc.	D	$ 30,660
College Utilities Corporation	B	27,247
Municipality of Anchorage d/b/a Anchorage Sewer Utility	A	512,813
Salmantof Utilities, Inc.	D	Data Not Available
Settlers Bay Properties, Inc.	D	0
SUBTOTAL		$570,720

TELEPHONE UTILITIES
(Source - 1983 Annual Report)

NAME	CLASS	CUSTOMER DEPOSITS
Alascom, Inc.	A	$ 233,242
Arctic Slope Telephone Association Cooperative, Inc.	B	6,867
Bristol Bay Telephone Cooperative, Inc.	B	6,307
Bush-Tell, Inc.	C	315,473
Copper Valley Telephone Cooperative, Inc.	B	45,805
General Telephone Company of Alaska	A	160,836
Glacier State Telephone Company	A	250,677 290,478
Interior Telephone Company	B	18,482
Juneau and Douglas Telephone Company	A	50,198 55,193
Matanuska Telephone Association, Inc.	A	620,512
Mukluk Telephone Company, Inc.	C	3,275
Municipality of Anchorage d/b/a Anchorage Telephone Utility	A	1,014,349
National Utilities, Inc.	C	32,083
Nushagak Telephone Cooperative, Inc.	B	35,487
OTZ Telephone Cooperative, Inc.	B	3,600
Sitka Telephone Company	A	61,873
Telephone Utilities of Alaska, Inc.	B	2,369
United Utilities, Inc.	A	80,846
Whittier Telephone Company	C	Data Not Available
Yukon Telephone Company	C	3,437
SUBTOTAL		$2,945,718

Total for Central Alaska 345,671
- mail up of Juneau Douglas +

WATER UTILITIES
(Source - 1983 Annual Report)

NAME	CLASS	CUSTOMER DEPOSITS
Alyeska Utilities, Inc.	D	$ 0
Barrow Utilities and Electric Cooperative, Inc.	A	30,660
Central Alaska Utilities[1]	A	200,869
College Utilities Corporation	B	52,416
Chugiak Utilities, Inc.	D	Data Not Available
Dawn Development Corporation	D	Data Not Available
Eklutna Utilities, Inc.	D	18,930
Glacier Utilities, Inc.	D	Data Not Available
Kwik Log Water System	D	Data Not Available
Matanuska Utility Company	D	Data Not Available
McCann, Alfred O.	D	Data Not Available
McGahan Utilities, Inc.	D	Data Not Available
McKinley Utilities, Inc.	D	0
Mendenhaven Improvement & Maintenance Corporation	D	0
Municipality of Anchorage d/b/a Anchorage Water Utility	A	189,311
Norfolk Utilities, Inc.	D	2,860
Paul Omlin, Inc.	D	0

[1]Now owned by the Municipality of Anchorage d/b/a Anchorage Water Utility.

WATER UTILITIES (CONT.)
(Source - 1983 Annual Report)

NAME	CLASS	CUSTOMER DEPOSITS
Pelican Utility Company	D	$ 0
R.J. & Clara Rhodes	D	0
Romig Park Improvement Company	D	0
S & S Development	D	0
Settlers Bay Properties, Inc.	D	0
Spenard Heights Water System	D	0
Sunny Slopes Water System	D	Data Not Available
Valley Water Company, Inc.	D	8,440
SUBTOTAL		$503,486
GRAND TOTAL OF ALL UTILITIES		$9,826,810

CHAIRMAN'S INFORMATION: SCS SSHB 20(L&C)

1) BILL TITLE: "An act relating to interest on deposits collected by utilities."

a) Introduced: Goll, Sund, Marrou, Gruenberg, Taylor, and Davis.

b) Co-sponsors:

2) INTENT: This measure requires public utilities to pay interest on deposits of $100 or more, at the legal rate of interest at the time the deposit was made. Exceptions to this requirement occur as follows:

1) If the deposit is in an interest bearing account, the utility shall pay the interest rate of that account.

2) In cases where delinquent payments interrupt service, the utility is not required to pay interest for 12 months following the reestablishement of service.

SCS added an amednment which occurs on line 10 an 11 of page 1. The amendment makes it clear in statute that a public utility may collect and retain deposits for contracted monthly service.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C SCS.

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to interest on deposits collected by public utilities."

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

* Section 1. AS 42.05 is amended by adding a new section to read:

Sec. 42.05.365. INTEREST ON DEPOSITS. (a) A public utility may collect and retain a deposit for contracted recurring monthly service. A public utility that collects and retains a deposit of $100 or more for recurring monthly service shall pay interest on that deposit at or before the time it is returned. Interest paid under this section shall be at the legal rate of interest at the time the deposit is made. However, if the deposit is placed in an interest bearing account, the utility shall pay the interest rate of the interest bearing account.

(b) If delinquent payments result in interruption of service, a public utility is not required to pay interest under (a) of this section for 12 months after reestablishment of service.

Introduced: 3/4/85
Referred: Labor & Commerce
and Finance

IN THE HOUSE

BY GOLL, SUND, MARROU,
GRUENBERG AND TAYLOR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to interest on deposits collected by public utilities."

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

* Section 1. AS 42.05 is amended by adding a new section to read:

Sec. 42.05.365. INTEREST ON DEPOSITS. (a) A public utility that collects and retains a deposit of $100 or more for recurring monthly service shall pay interest on that deposit at or before the time it is returned. Interest paid under this section shall be at the legal rate of interest at the time the deposit is made. However, if the deposit is placed in an interest bearing account, the utility shall pay the interest rate of the interest bearing account.

(b) If delinquent payments result in interruption of service, a public utility is not required to pay interest under (a) of this section for 12 months after reestablishment of service.

how many utilities over charge for deposit. DC

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : ____

REQUEST

Bill/Resolution No. : SSHB20
Title : Interest on deposits by Utilities

Sponsor : Goll,Sund,Marrou,Gruenberg
Requestor : Jeanne Smith & Taylor
Date of Request : House Rules PH465-3764
2/4/86

FISCAL DETAIL

Agency Affected : Ak Public Utilities Commissior
BRU : same

Components : Administration

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

No Fiscal Impact

Prepared by : T. S. Moninski, Dep. Director
Division : Ak Public Utilities Commission
Phone : 276-6222
Date : 2/4/86

Approved by Commissioner : Loren H. Bounsbury
Date : 2/4/86
Agency : Commerce

Distribution (by Agency preparing fiscal note) :
Legislative Finance

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4204 SLAB HB 55 - HB 63 (FILE 1)

1084

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/27/89
Date

02-519 (REV 8/78)


HB
55

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

HJ 4-13-85 9:00AM

HOUSE BILL 55

TESTIMONY BEFORE THE SENATE LABOR AND COMMERCE COMMITTEE
by Representative Virginia Collins
February 19, 1986

Purpose. One of the priority issues identified by the Governor's Task Force on Drunk Driving was State funding for directing and funding public awareness programs on alcoho. . l drug use and responsible motor vehicle operation. House Bill 55 is an attempt to respond to this concern. HB 55 is designed to improve public awareness and information at the sites where alcoholic beverages are purchased or consumed.

Statement of the Problem: In the last few years there has been an increased public interest in the problem of drinking and driving. In response to this rising concern, the State of Alaska in recent years has enacted legislation aimed at removing the drunk driver from our streets and thus reducing alcohol-related accidents and fatalities. These statutes provide for the following:

1. Raised legal drinking age of twenty-one.

2. An implied consent statute

3. Preliminary breath testing on the roadway

4. Administrative license revocation upon arrest

5. Breath test refusal penalties same as DWI conviction

6. Citizen reporting, i.e., REDDI

7. Definition of Breath Alcohol level at .10 illegal per se

8. Mandatory sentencing

9. Mandatory fines

10. Victim compensation

11. Driver licensing information

12. Rehabilitation education

13. Compliance with conditions of court order

14. Mandatory liability insurance

15. Four new judges in the Anchorage area

16. Decrease in time between arrest and sentencing

Despite all of these efforts, drinking and driving continues to be a significant problem for the citizens of our state.

Recent newspaper headlines attest to the increasing public interest in the drunk-driving problem. Much of this increase results from campaigns conducted by such citizen groups as MADD (Mothers Against Drunk Driving). Organizations like MADD have been very effective in enlisting public and official support for more severe penalties for drunk drivers. In the past, efforts to strenghthen drunk-driving laws have generally focused on increasing penalties.

One justification frequently cited for this approach is the apparent success of drunk-driving laws carrying strict penalties and ensuring that such penalties are actually carried out. Unfortunately, in the past it generally has been the experience that public concern has been temporary, and when the interest of the moment has passed, the intensity of the effort to overcome the drinking-driving problem tends to fade. If current efforts are to have a long-term effect, it is important that public awareness accompany all current and future legislation to stem the tide of drunk driving.

The passage of stricter drunk-driving laws alone will not reduce alcohol-related accidents or the incidents of drunk driving. For stricter laws to be effective, the public must know the laws and penalties and have an increased fear of apprehension and conviction.

To have an impact on the rate of accidents caused by drunk drivers, laws must not only be enacted but also well publicized and enforced. In some cases, it appears that current DWI laws and their penalties are not as highly publicized throughout Alaska as they could be.

A review of the research on the scope of the problem as it exists in other states as well as in Alaska is well documented. It is clear from reviewing the information that drinking and driving is a very complex problem which requires a combination or a variety of approaches. Although it appears from reviewing the literature that enactment of stronger drunk-driving laws has been successful in stemming the tide, it has not been entirely successful in eliminating the problem.

To be effective, enforcement programs must be accompanied by public information activities which ensure that there is a perception of increased probability of detection. A review of the research further indicates there is a strong connection between public awareness and the effectiveness of drunk-driving laws. Public awareness and accurate knowledge of the law, along with thorough enforcement procedures and stiff penalties are the major components, which will have a lasting impact on the large numbers of persons drinking and driving in Alaska, particularly in the case of social drinkers. Although this approach may not be as effective with problem drinkers, research indicates that the passage of stricter drunk-driving laws alone does not reduce alcohol-related accidents or the incidence of drunk driving. To increase the effectiveness of our efforts, the public must know the laws and the penalties and have an increased fear of apprehension and conviction.

The sale of alcohol is one of society's most highly regulated industries. There is good reason for this; it is a potentially dangerous substance posing extreme hazards to the health and welfare of consumers and motor vehicle operators on our public roads.

In the past decade, the vast majority of Americans have been concerned over public safety. This concern has risen steadily since 1971. In a recent Harris survey, 87% of the adult Americans polled blamed consumers themselves for injury resulting from misuse of products. Of the consumers surveyed, 73% believed that product safety objectives should be accomplished through publicity on product risks and dangers or by health warnings such as those required for cigarettes and over-the-counter drugs.

If a product has a hidden hazard, an unknowing consumer may be denied the valuable information necessary in deciding whether or not to risk using the product in the first place or how abuse of the product could impact his future welfare. Often, hazards in the use of alcohol are not visible to a consumer, and thus the consumer may not have a full appreciation for the severity of the decision to expose himself to that hazard. The probability of a hazard actually occurring, therefore, is of prime consideration in the consumer's behavior. Following this line of reasoning, an educated product consumer of alocholic beverages is likely to be a more responsible consumer.

RECOMMENDATIONS:

The approaches for dealing with the drunk-driving problem are many, which include punitive, educational, rehabilitation, and behavioral. The value of placing warning signs in establishments where alcohol is sold and/or consumed should be effective because the message is subliminal. Research has shown that subliminal advertising has a greater long-term effect in influencing behavior than any other form of advertising. The prominent display of DWI warning signs in establishments that sell alcohol would, over a period of time, effect consumer behavior in a positive manner. Subliminal messages are conveyed to the unconscious rather than to the conscious level. Once having established the message on the unconscious level, repeated exposure to the message reinforces its effect and eventually will lead to changes in behavior which will influence consumers of alcoholic beverages to act responsibly, not necessarily for the good of others, but for themselves.

HB 55 REPRESENTS GOOD LEGISLATION; IT MAXIMIZES THE EFFECT OF CURRENT LAW AT MINIMAL EXPENSE TO THE PUBLIC TREASURY. HB 55 CARRIES A ZERO FISCAL NOTE.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY. ON BEHALF OF MYSELF AND ALL THOSE WHO WILL BENEFIT FROM THIS BILL, I REQUEST YOUR SUPPORT IN PASSING HB 55 OUT OF COMMITTEE.

I AM AVAILABLE FOR ANY QUESTIONS YOU MAY HAVE.

TIMELINE SUMMARY OF SIGNIFICANT LEGISLATION REGARDING CONTROL OF DRUNK DRIVERS

MUNICIPALITY OF ANCHORAGE	ALASKA STATE STATUTE

January, 1977

Established Mandatory Minimum Sentence:

1st offense	24 hours
2nd offense	3 days
3rd & subsequent	10 days

Illegal to operate motor vehicle with BAC .10% or higher (Per Se law)
(AO 267-76)

January, 1978

Adopted procedure whereby involuntary blood test was made in medical setting upon refusal of breathalyzer test.
(Administrative Procedure)

Established mandatory judicial referral for alcohol screening/rehabilitation
(ch. 152 SLA 1978)

Established mandatory jail sentence of 10 days for DWLS.

Disallowed limited license on second offense for serious traffic misdemeanors
(ch. 178 SLA 1978)

November, 1978
(11/28/78)

Increased Mandatory Minimum sentence:

1st offense	3 consecutive days
2nd & subsequent	10 consecutive days

(AO 78-230S)

November, 1979

Adopted breath as well as blood standard for measurement of BAC
(AO 79-194)

1980

(September)

Adopted mandatory minimum jail sentence:
1st offense 3 consecutive days
2nd offense 10 consecutive days

Illegal to operate motor vehicle with BAC .10% or higher

Adopted breath alcohol measurement standard

Established admissibility of refusal under implied consent law as evidence in prosecution
(ch. 129 SLA 1980)

(August)

Adopted state statute
(AO 80-122)

1981

Assumes validity of chemical test if taken within four hours of arrest
(AO 81-75)

[Reduction in hours of legal sale of alcohol]

1982
(September)

Established refusal under implied consent laws as misdemeanor offense with same sentence as DWI offense

Allowed for application of DWI law to airplanes and watercraft

Allowed forceable blood test for BAC in fatalities, injuries or cases where defendant is incapable of refusing

Required use of limited license for at least 60 days (rather than only 30 days)

Revised mandatory minimum sentence
1st offense 72 consecutive hours
2nd offense 10 consecutive days
20 days if subsequent offense within one year
(ch. 117 SLA 1982)

Adopted state statute but leaves in validity of chemical test if taken within four hours of arrest
(AO 82-126)

November, 1982

Allows forfeiture of motor vehicle to Municipality on 2nd or subsequent offense within 5 years of first offense

Permit impoundment (temporary seizure) of vehicle to Municipality for 30 days for 1st and 2nd offense, 60 days for 3rd offense and 90 days on 4th or subsequent offense.
(AO 82-205)

June, 1983
Effective 10/17/83

Revised mandatory minimum sentence
1st offense 72 hours (unchanged)
2nd offense w/in 10 years 20 days
3rd offense w/in 10 years 30 days

Established mandatory minimum fines
1st offense $250
2nd offense $500
3rd offense $1000

Established administrative revocation of driver's license by law enforcement officer if BAC is .10% or higher or driver refuses breath test. Driver receives 7-day temporary license; driver has seven days to appeal.

Revises terms of license revocation under administrative or court authority - provides minimums:
- 1st offense 90 days (last 60 days may be limited)
- 2nd offense 1 year
- 3rd offense 10 years

Court revocation may be either concurrent or consecutive with administrative action.

Revises procedure to recover valid license: driver must post SR22, pay fee and pass written and road test.

Revises penalty for driving with license revoked. If revocation was for 1st DWI conviction, mandatory minimum 30 days in jail. If revoked for 2nd or subsequent DWI, mandatory jail sentence of 90 days to serve.

Allows for impoundment or forfeiture of vehicle on 3rd & subsequent offense.

Suspended imposition of sentence is no longer permitted for DWI, Breath Test Refusal, or Driving with License Revoked.

[Minimum legal age to purchase/consume increased from 19 to 21 -- over three year period, effective January, 1984.]

[State tax on alcohol increased (last increase was 1962).]

WORK DRAFT WORK DRAFT WORK DRAFT

Ford
2/27/86

Original sponsors: Collins, Uehling
and Gruenberg

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 55 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

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

* Section 1. AS 04.11.370 is amended to read:

Sec. 04.11.370. SUSPENSION AND REVOCATION OF LICENSES AND PERMITS. Except as provided in (b) of this section, a [A] license or permit shall be suspended or revoked if the board finds that one or more of the following grounds exists:

(1) misrepresentation of a material fact on an application for a license or permit;

(2) continuation of activities authorized under a license or permit would be contrary to the best interest of the public;

(3) failure on the part of the licensee to correct defects which constitute violations of this title, regulations adopted under this title, or other laws within a prescribed time after receipt of notice issued by the board or its agent;

(4) conviction of a licensee of a violation of a provision of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(5) conviction of the agent or employee of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have

recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that an agent or employee violates a law, regulation, or ordinance;

(6) failure of the licensee to comply with the laws and regulations pertaining to public health in the state;

(7) use of the licensed premises as a resort for illegal possessors or users of narcotics, prostitutes, or pimps; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, or pimps;

(8) occurrence of illegal gambling within the limits of the licensed premises;

(9) permitting any public offense involving moral turpitude to occur on the licensed premises;

(10) violation by a licensee of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(11) violation by an agent or employee of a licensee of a provision of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that the agent or employee violates the law, regulation, or ordinance.

* Sec. 2. AS 04.11.370 is amended by adding a new subsection to read:

(b) The board may not suspend or revoke a license or permit for the conviction of a licensee or permittee of a violation of AS 04.21.-035 or 04.21.036.

* Sec. 3. AS 04.16 is amended by adding a new section to read:

Sec. 04.16.205. PENALTY FOR FAILURE TO CONTACT TAXI OR DISPLAY ALCOHOL WARNING SIGNS. The board may impose a civil penalty, not to exceed $100, upon a licensee that the board finds, after notice and hearing, has violated AS 04.21.035 or 04.21.036.

* Sec. 4. AS 04.21 is amended by adding new sections to read:

Sec. 04.21.035. DUTY TO CONTACT TAXI. A licensee or a licensee's agent or employee shall make reasonable efforts to procure a taxi, where regular taxi service is available, for any person in the premises who requests a taxi. The licensee is not responsible for paying the cost of the taxi.

Sec. 04.21.036. DISPLAY OF ALCOHOL WARNING SIGNS. (a) A licensee, except a common carrier licensee, shall conspicuously display at the main public exit and in all restrooms, a sign that reads "Drunk Drivers Go To Jail - Why Risk It - Call A Taxi." The sign shall include a prohibitory symbol. The sign must be at least 18 inches wide and six inches high, with lettering at least one and one-fourth inches high.

(b) The state shall furnish, without cost, signs required under this section to any licensee requesting them.

CHAIRMAN'S INFORMATION: SCS CSHB 55(L&C)

1) BILL TITLE: "An act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

a) Introduced: Rep Collins, Uehling, Gruenberg

b) Co-sponsors:

2) INTENT: Measure requires liquor licensees' to make reasonable efforts to call a taxi when a patron requests a taxi. Additionally it would require the posting of alcohol warning signs at each public entrance and exit. Violation of these provisions will result in the revocation or suspension of a licensees' permit.

Senate L&C CS modifies the penalty section for those licensees' who are in violation of this law, (civil fine not to exceed $100, imposed by the ABC Board after hearing and notice) and requires that signs be placed at the main exit and in all restrooms.

FISCAL NOTE: 0 (but with the proviso that the Dept of H&SS will fund the cost of the signs from its operating budget.)

N.B. <u>NO EFFECTIVE DATE CLAUSE</u>

3) ADDITIONAL REFERRALS: HESS, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt L&C CS

= CHANGES IN L&C CS;
Pg. 2 LINES 26-28
Pg. 3 LINE 8

Ford
2/18/86

Original sponsors: Collins, Uehling and Gruenberg

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 55 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

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

* Section 1. AS 04.11.370 is amended to read:

Sec. 04.11.370. SUSPENSION AND REVOCATION OF LICENSES AND PERMITS. Except as provided in (b) of this section, a [A] license or permit shall be suspended or revoked if the board finds that one or more of the following grounds exists:

(1) misrepresentation of a material fact on an application for a license or permit;

(2) continuation of activities authorized under a license or permit would be contrary to the best interest of the public;

(3) failure on the part of the licensee to correct defects which constitute violations of this title, regulations adopted under this title, or other laws within a prescribed time after receipt of notice issued by the board or its agent;

(4) conviction of a licensee of a violation of a provision of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(5) conviction of the agent or employee of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have

recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that an agent or employee violates a law, regulation, or ordinance;

(6) failure of the licensee to comply with the laws and regulations pertaining to public health in the state;

(7) use of the licensed premises as a resort for illegal possessors or users of narcotics, prostitutes, or pimps; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, or pimps;

(8) occurrence of illegal gambling within the limits of the licensed premises;

(9) permitting any public offense involving moral turpitude to occur on the licensed premises;

(10) violation by a licensee of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(11) violation by an agent or employee of a licensee of a provision of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that the agent or employee violates the law, regulation, or ordinance.

* Sec. 2. AS 04.11.370 is amended by adding a new subsection to read:

(b) The board may not suspend or revoke a license or permit for the [first] conviction of a licensee or permittee of a violation of AS 04.21.035 or 04.21.036.

* Sec. 3. AS 04.21 is amended by adding new sections to read:

Sec. 04.21.035. DUTY TO CONTACT TAXI. A licensee or a licensee's agent or employee shall make reasonable efforts to procure a taxi, where regular taxi service is available, for any person in the premises who requests a taxi. The licensee is not responsible for paying the cost of the taxi.

Sec. 04.21.036. DISPLAY OF ALCOHOL WARNING SIGNS. (a) A licensee, except a common carrier licensee, shall conspicuously display at the main public entrance and in one lighted area where alcohol is sold at retail, a sign that reads "Drunk Drivers Go To Jail - Why Risk It - Call A Taxi." The sign shall include a prohibitory symbol. The sign must be at least 18 inches wide and six inches high, with lettering at least one and one-fourth inches high.

(b) The state shall furnish, without cost, signs required under this section to any licensee requesting them.

Offered: 5/1/85
Referred: Rules

Original sponsors: Collins, Uehling
and Gruenberg

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 55 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

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

* Section 1. AS 04.21 is amended by adding new sections to read:

Sec. 04.21.035. DUTY TO CONTACT TAXI. A licensee or a licensee's agent or employee shall make reasonable efforts to procure a taxi, where regular taxi service is available, for any person in the premises who requests a taxi. The licensee is not responsible for paying the cost of the taxi.

Sec. 04.21.036. DISPLAY OF ALCOHOL WARNING SIGNS. (a) A licensee, except a common carrier licensee, shall conspicuously display at each public entrance and exit of premises where alcohol is sold at retail, a sign that reads "Drunk Drivers Go To Jail - Why Risk It - Call A Taxi." The sign shall include a prohibitory symbol. The sign must be at least 18 inches wide and six inches high, with lettering at least one and one-fourth inches high.

(b) The state shall furnish, without cost, signs required under this section to any licensee requesting them.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF ALCOHOLISM AND DRUG ABUSE

POUCH H 05F
JUNEAU, ALASKA 99811
PHONE: 586-6201

January 24, 1986

The Honorable Fred Zharoff
Chair, Labor & Commererce Committee
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Zharoff:

This is to inform you that this office has agreed to fund HB 55 for a total sum of $3,000.00. This funding was committed during House Judiciary testimony last year. We feel the signs as described in HB 55 would be in line with our drunk driving prevention inititive.

Sincerely,

Matthew C. Felix
Coordinator

CO/2

H&SS Explanation of Funding

06-F74LH

Sec. 04.21.035. DUTY TO CONTACT TAXI. A licensee or a licensee's agent or employee shall make reasonable efforts to procure a taxi, where regular taxi service is available, for any person in the premises who requests a taxi. The licensee is not responsible for paying the cost of the taxi.

Sec. 04.21.036. DISPLAY OF ALCOHOL WARNING SIGNS. (a) A licensee, except a common carrier licensee, shall conspicuously display at the main public entrance and in one lighted area where alcohol is sold at retail, a sign that reads "Drunk Drivers Go To Jail - Why Risk It - Call A Taxi." The sign shall include a prohibitory symbol. The sign must be at least 18 inches wide and six inches high, with lettering at least one and one-fourth inches high.

(b) The state shall furnish, without cost, signs required under this section to any licensee requesting them.

Offered: 5/1/85
Referred: Rules

Original sponsors: Collins, Uehling
and Gruenberg

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 55 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

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

* Section 1. AS 04.21 is amended by adding new sections to read:

Sec. 04.21.035. DUTY TO CONTACT TAXI. A licensee or a licensee's agent or employee shall make reasonable efforts to procure a taxi, where regular taxi service is available, for any person in the premises who requests a taxi. The licensee is not responsible for paying the cost of the taxi.

Sec. 04.21.036. DISPLAY OF ALCOHOL WARNING SIGNS. (a) A licensee, except a common carrier licensee, shall conspicuously display at each public entrance and exit of premises where alcohol is sold at retail, a sign that reads "Drunk Drivers Go To Jail - Why Risk It - Call A Taxi." The sign shall include a prohibitory symbol. The sign must be at least 18 inches wide and six inches high, with lettering at least one and one-fourth inches high.

(b) The state shall furnish, without cost, signs required under this section to any licensee requesting them.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF ALCOHOLISM AND DRUG ABUSE

POUCH H 05F
JUNEAU, ALASKA 99811
PHONE: 586-6201

January 24, 1986

The Honorable Fred Zharoff
Chair, Labor & Commererce Committee
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Zharoff:

This is to inform you that this office has agreed to fund HB 55 for a total sum of $3,000.00. This funding was committed during House Judiciary testimony last year. We feel the signs as described in HB 55 would be in line with our drunk driving prevention inititive.

Sincerely,

Matthew C. Felix
Coordinator

CO/2

H&SS Explanation of Funding

06-F74LH

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 55(fin)am Summary:

Measure requires that a licensee make a reasonable effort to contact a taxi for a patron who requests one, and that the licensee display an alcohol warning sign at each entrance and exit of a licensed premiss. Further, the bill requires the state to furnish alcohol warning signs, without cost, to any licensee requesting them. Penalty provisions for violation of these sections would result in revocation or suspension of license or permit.

SCS CSHB 55 (L&C) would not invoke a penalty on the first conviction, and modifies the requirement for alcohol warning signs to be placed at each entrance and exit of a licensed premiss. SCS would require signs at the main public entrance and in one lighted area.

Latest Senate CS would require the posting of signs in all restrooms and at the main public exit of a licensed premiss. Penalty provisions may be imposed by the board, after a hearing and notice, and may include a civil penalty not to exceed $100.

CC
Sup 48

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 55(JUD)
Title: An Act relating to licensees' duty to contact taxi & display signs
Sponsor: Collins
Requestor: House Judiciary
Date of Request: 4/13/85

FISCAL DETAIL

Agency Affected: Dept. of Health & Social Servic
Program Category Affected: Office of Alcoholism & Drug Abuse
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

According to testimony before the Judiciary Committee by the Department of Health + Social Services, Office of Alcoholism and Druge Abuse, that because this bill represents a positive approach to problems caused by alcohol abuse, the department is willing to fund the cost of the required signs up to the amount cited in the original fiscal note. The funds will come from the operating budget and require no additional appropriation.

Prepared By: Hayden Kaden, Counsel HK Phone: 465-4990
Division: House Judiciary Committee Date: 4/15/85

Approved by ~~Commissioner~~: Date:
Agency: Legislature

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

FISCAL NOTE

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

63

File 1

CHAIRMAN'S INFORMATION: CSHB 63(L&C)

1) BILL TITLE: "An act relating to the plumbing code; and providing for an effective date."

a) Introduced: Governor

b) Co-sponsors:

2) INTENT: This measure adotps a portion of the 1985 plumbing code, as well as adopting the Uniform Solar Energy and the uniform swimming pool, spa, hot tub code in their entirety.

Under ther House version, plastic pipe is limited to type V nonrated residential construction, and also grandfathers in those projects which had used plastic pipe prior to the effective date of the act.

The L&C CS expands the use of plastic to type V residential construction, and increases the population threshold for exemption from plumbing code conformity. Additionally, the SCS places certain liabilities on municipalities for adopting standards which violate state code, and holds the state harmless for liability for damages arising from the installation of materials not permitted by the code.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the Senate L&C CS

Cramer
5/9/86

Original sponsor: Rules/Governor

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 63 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the plumbing code; and providing for an effective date."

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

* Section 1. AS 18.60.705 is amended to read:

Sec. 18.60.705. PLUMBING CODE. The following publications are adopted [DEPARTMENT OF LABOR SHALL ADOPT,] as the official minimum plumbing code for the state: [,]

(1) the Uniform Plumbing Code, 1985 [1979] edition, adopted at the 54th [49TH] Annual Conference, September, 1983 [1978], International Association of Plumbing and Mechanical Officials, chs. 1 - 13 and appendices, Useful Tables, and Installation Standards, but excluding Part I, Administration, pages 1a - 6a, and subject to AS 18.60.710 - 18.60.740 and the changes specified in (b) of this section;

(2) the Uniform Solar Energy Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials, chs. 1 - 9 and appendices, but excluding Part I, Administration, pages 3 - 9; and

(3) the Uniform Swimming Pool, Spa and Hot Tub Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials, chs. 1 - 5, but excluding Part I, Administration, pages 1 - 9.

* Sec. 2. AS 18.60.705 is amended by adding a new subsection to read:

(b) The 1985 edition of the Uniform Plumbing Code adopted under (a)(1) of this section is adopted with the following changes:

(1) on page 37, chapter 4, Drainage Systems, section 401, Materials, subsection (a), sub-subsection (2), all material is excluded and the following language is adopted:

"(2) ABS or PVC installations may not be used in a hotel or motel and are limited to residential combustible construction of two stories or less."

(2) on page 45, chapter 5, Vents and Venting, section 503, Materials, subsection (a), sub-subsection (2), all material is excluded and the following language is adopted:

"(2) ABS or PVC installations may not be used in a hotel or motel and are limited to residential combustible construction of two stories or less."

(3) on page 75, chapter 10, Water Distribution, section 1004, Materials, subsection (a), the second and third sentences are excluded and the following language is adopted:

"Asbestos-cement, PE, or PVC water pipe that is manufactured to recognized standards may be used for cold water distribution systems outside a building. CPVC and PB water pipe and tubing may be used for hot and cold water distribution systems within a residential combustible building of two stories or less other than a hotel or motel."

* Sec. 3. AS 18.60.715 is amended by adding a new subsection to read:

(f) Notwithstanding any other provision of law, CPVC, PVC, and PB plastic pipes may be used for fire control sprinkler systems. The department may approve other types of plastic pipes for use in fire control sprinkler systems.

* Sec. 4. AS 18.60.735 is amended to read:

Sec. 18.60.735. BOROUGH OR CITY REGULATION. AS 18.60.705 - 18.60.740 do not affect the authority of a [ANY] municipality to

establish [PRESCRIBE] by ordinance, rule or order, standards for the municipality's [THEIR RESPECTIVE] areas of jurisdiction that are no less stringent than those established under AS 18.60.705. This chapter is not intended to duplicate or preempt code administration or enforcement by municipalities. An [ANY] organized municipality or unorganized village, whether or not the municipality or village is within an organized borough, having a population of less than 5,000 [2,500 POPULATION] is exempt from AS 18.60.705 - 18.60.740 [THE PROVISIONS OF THIS ACT].

* Sec. 5. AS 18.60.735 is amended by adding a new subsection to read:

(b) A municipality that establishes standards under (a) of this section is liable to a property owner for the cost of removing plumbing installed in compliance with a municipal standard if the plumbing is held to violate a state standard and for the cost of replacing the plumbing with plumbing that conforms to state standards, and shall hold the state harmless from liability for any damages arising from the use of the plumbing methods or materials that conformed to municipal standards but did not conform to state standards.

* Sec. 6. AS 18.60.740(1) is amended to read:

(1) "code" means the 1985 editions of the Uniform Plumbing Code, the Uniform Solar Energy Code, and the Uniform Swimming Pool, Spa and Hot Tub Code [1979 EDITION], adopted at the 54th [49th] Annual Conference, September, 1983 [1978], International Association of Plumbing and Mechanical Officials, as modified and adopted in AS 18.60.705;

* Sec. 7. Notwithstanding secs. 1, 2, and 6 of this Act, the installation of a plastic pipe, made from a substance permitted under the official state plumbing code as amended by this Act, in a plumbing or drainage system before the effective date of this Act may not be held to violate the

official state plumbing code as amended by this Act.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 63(L&C): Summary

This measure adopts a portion of the 1985 Uniform Plumbing Code, as well as adopting the Uniform Solar Energy Code and the Uniform Swimming Pool, Spa, and Hot Tub Code in their entirety.

The version which passed the House permits the use of plastic pipe in limited applications, and also "grandfathers" in those projects which had used plastic pipe prior to the effective date of this act.

Under the House version of the bill, plastic pipe is limited to type V, non rated, residential construction.

BILL SUMMARY

Offered:2/14/86
For Today's Calendar

Original sponsor: Rules/Governor

BY THE LABOR AND COMMERCE COMMITTEE

IN THE HOUSE

CS FOR HOUSE BILL NO. 63 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the plumbing code; and providing for an effective date."

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

* Section 1. AS 18.60.705 is amended to read:

Sec. 18.60.705. PLUMBING CODE. The following publications are adopted [DEPARTMENT OF LABOR SHALL ADOPT,] as the official minimum plumbing code for the state: [,]

(1) the Uniform Plumbing Code, 1985 [1979] edition, adopted at the 54th [49TH] Annual Conference, September, 1983 [1978], International Association of Plumbing and Mechanical Officials, chs. 1 - 13 and appendices, Useful Tables and Installation Standards, but excluding Part I, Administration, pages 1a - 6a, and subject to AS 18.60.710 - 18.60.740 and the changes specified in (b) of this section;

(2) the Uniform Solar Energy Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials, chs. 1 - 9 and appendices, but excluding Part I, Administration, pages 3 - 9; and

(3) the Uniform Swimming Pool, Spa and Hot Tub Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials, chs. 1 - 5, but excluding Part I, Administration, pages 1 - 9.

* Sec. 2. AS 18.60.705 is amended by adding a new subsection to read:

(b) The 1985 edition of the Uniform Plumbing Code adopted under (a)(1) of this section is adopted with the following changes:

(1) on page 37, chapter 4, Drainage Systems, section 401, Materials, subsection (a), sub-subsection (2), all material is excluded and the following language is adopted:

"(2) ABS or PVC installations are limited to type VN residential construction."

(2) on page 45, chapter 5, Vents and Venting, section 503, Materials, subsection (a), sub-subsection (2), all material is excluded and the following language is adopted:

"(2) ABS or PVC installations are limited to type VN residential construction."

(3) on page 75, chapter 10, Water Distribution, section 1004, Materials, subsection (a), the second sentence is not adopted. The third sentence of subsection (a) is excluded and the following language is adopted:

"CPVC and PB water pipe and tubing may be used for hot and cold water distribution systems within a type VN residential building."

* Sec. 3. AS 18.60.740(1) is amended to read:

(1) "code" means the 1985 editions of the Uniform Plumbing Code, the Uniform Solar Energy Code, and the Uniform Swimming Pool, Spa and Hot Tub Code [1979 EDITION], adopted at the 54th [49th] Annual Conference, September, 1983 [1978], International Association of Plumbing and Mechanical Officials, as modified and adopted in AS 18.60.705;

* Sec. 4. Notwithstanding secs. 1 - 3 of this Act, the installation of a plastic pipe, made from a substance permitted under the code as amended by this Act, in a plumbing or drainage system before the effective date of this Act may not be held to violate the code as amended by this Act.

* Sec. 5. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

municipality responsibility

Bill No. Committee Substitute for House Bill 63 (L&C)

Title "An Act relating to the Plumbing Code."

Date February 11, 1986

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

Committee Substitute for House Bill 63 provides for the modification and adoption of the 1985 Uniform Plumbing Code; and for adoption of the Uniform Solar Energy Code, and Uniform Swimming Pool, Spa and Hot Tub Code. The 1979 Uniform Plumbing Code currently in effect in Alaska is outdated.

The International Association of Plumbing and Mechanical Officials revises its minimum standards for the installation of plumbing every three years to incorporate technological advances, and the 1985 edition is the most recent effort in this regard. The standards for the installation of solar energy and the spa and hot tub standards have not previously been adopted in Alaska; the minimum standards for swimming pools were formerly included in the Uniform Plumbing Code.

In response to a number of water quality, worker safety and fire safety questions that have been posed on the use of plastic pipe in drainage and water distribution systems, the Committee Substitute modifies several provisions in the 1985 plumbing code to limit the use of plastic pipe in Alaska. As modified in this bill, Alaska's minimum plumbing standards on the use of plastic pipe would, therefore, be less restrictive than the 1979 code presently in effect and more restrictive than 1985 code per se. This appears to be a reasonable compromise on the issue.

The Department notes that Section 4 of the Committee Substitute provides that plastic pipe which was installed in the state prior to the effective date of the bill need not comply with either the 1979 code or the 1985 code as modified in this bill. The Department's understanding is that this "grandfather" clause stems from confusion that was created when various local governments adopted the 1982 or 1985 Uniform Plumbing Codes, which permitted such installations of plastic pipe. While the Department does not object to such a "grandfather" clause, it should be noted that it may be perceived as inequitable by those persons whom the Department has required to comply with the 1979 code. In several instances the Department's enforcement action in this regard has necessitated the removal of plastic pipe and installation of permissible materials.

This bill also removes an anomalous provision that instructs the Department of Labor to adopt the specific publications that constitute the plumbing code. The current statute leaves no discretion in the department as to whether to adopt or as to what to adopt. Thus the actions of the department in going

POSITION PAPER: Department of Labor

through the formal adoption procedures are unnecessary. Under the amendment in this bill, the statute will simply declare what constitutes the plumbing code. This is the approach already employed for the electrical code under AS 18.60.580.

Committee Substitute for House Bill 63 would not have a fiscal impact on the Department of Labor.

APPROVED:

Jim Robison, Commissioner
Department of Labor

AS18.60.710 DOCUMENT
CHAPTER = 18.60
SECTION = 18.60.710
TITLE = 18
HEADINGS TITLE 18.
Health and Safety.
CHAPTER 60.
Safety.
ARTICLE 8.
Plumbing Code.
CITATION Sec. 18.60.710.
CATCH LINE
DUTIES OF THE DEPARTMENT.
TEXT The department is responsible for the administration of the code. The department may promulgate regulations designed for maximum practical implementation of the code, and may grant exceptions from specific code provisions, where distance or other factors make implementation impractical. Specific consideration shall be given to outlying villages and sparsely populated areas to ensure that AS 18.60.705 18.60.740 will not impose an undue financial burden. The department may by regulation designate appropriate inspection to a public or private utility company. A company so designated may refuse utility connections if an installation does not meet the requirements of this code.
HISTORY (Sec. 1 ch 15 SLA 1972)

AS18.60.715 DOCUMENT
CHAPTER = 18.60
SECTION = 18.60.715
TITLE = 18
HEADINGS TITLE 18.
Health and Safety.
CHAPTER 60.
Safety.
ARTICLE 8.
Plumbing Code.
CITATION Sec. 18.60.715.
CATCH LINE
ADMINISTRATION.
TEXT (a) The code applies to all new construction, all new work in relocated buildings and to any alteration, repairs or reconstruction of buildings except as provided otherwise under AS 18.60.705 - 18.60.740.
(b) The department may inspect work installed, removed, altered or replaced on any plumbing, gas or drainage piping,

plumbing fixture, water heater or water treating equipment in a building or other location. No permit or inspection is required for the following work: the stopping of leaks in drains, soil, waste or vent pipes, the clearing of stoppages in or repairing of leaks in pipe valves or fixtures, repairs or alterations not of a substantive nature which can be reasonably exempted from inspection.

(c) Nothing in AS 18.60.705 - 18.60.740 prohibits a person from performing plumbing work on his own property.

(d) The department may adopt regulations establishing fees for inspections conducted under AS 18.60.705 - 18.60.740. Fees may be established under this chapter only for inspections requested by the owner of a structure.

(e) The department shall maintain a record of all plumbing inspections performed by it and of all inspection fees and permit fees collected by it.

HISTORY (Sec. 1 ch 15 SLA 1972; am sec. 2 ch 88 SLA 1980)

AS18.60.720 DOCUMENT
CHAPTER = 18.60
SECTION = 18.60.720
TITLE = 18
HEADINGS TITLE 18.
Health and Safety.
CHAPTER 60.
Safety.
ARTICLE 8.
Plumbing Code.
CITATION Sec. 18.60.720.
CATCH LINE
COST OF PERMITS.
TEXT (a) If the department by regulation requires permits for plumbing work, fees may not exceed the following:

(1) for issuing each permit $2.00

(2) a permit for each

(A) plumbing fixture or trap or set of fixtures on one trap, including water, drainage piping and backflow protection 1.50

(B) building sewer or trailer park sewer 5.00

(C) drain in rainwater system 2.00

(D) cesspool 5.00

(E) private sewage disposal system 10.00

(F) water heater and/or vent 1.50

(G) gas piping system of one to five outlets 1.50

(H) gas piping system of six or more outlets, per outlet 30

(I) industrial waste pretreatment interceptor, including its trap and vent, but excluding kitchen type grease interceptors functioning as fixture traps 1.00

(J) installation, alteration or repair of water piping or water treating equipment 1.50

(K) repair or alteration of drainage or vent piping 1.50

(L) lawn sprinkler system or any one meter which includes backflow protection devices 2.00

(3) for vacuum breakers or backflow protective devices on tanks, vats, or for installation on unprotected plumbing fixtures including necessary water piping

(A) one to five 2.00

(B) over five, each 30

(b) The department shall keep a record of all fees collected and all inspections performed.

HISTORY (Sec. 1 ch 15 SLA 1972)

AS18.60.725 DOCUMENT
CHAPTER = 18.60
SECTION = 18.60.725
TITLE = 18
HEADINGS TITLE 18.
Health and Safety.
CHAPTER 60.
Safety.
ARTICLE 8.
Plumbing Code.
CITATION Sec. 18.60.725.
CATCH LINE
ENFORCEMENT OF COMPLIANCE.
TEXT (a) A department inspector shall give written notice to the owner of a constructed premise or the contractor of a premise under construction of each violation of the code. The notice of violation shall accurately describe the violation and give specific reference to the section and paragraph of the code. In addition, the notice shall prescribe the necessary changes so that the work will comply with the code.

(b) In case of complaints by a contractor, builder or installer charging arbitrary actions or incompetence on the part of an inspector, the commissioner, after reviewing written presentation of the dispute, may require reinspection by a new inspector who has no connection with either disputant.

HISTORY (Sec. 1 ch 15 SLA 1972)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS18.60.730 DOCUMENT
CHAPTER = 18.60
SECTION = 18.60.730
TITLE = 18
HEADINGS TITLE 18.
Health and Safety.
CHAPTER 60.
Safety.
ARTICLE 8.
Plumbing Code.
CITATION Sec. 18.60.730.
CATCH LINE
PENALTY FOR VIOLATIONS.
TEXT A person who violates a provision of the code, and who, after receiving the notification required by AS 18.60.725, refuses to correct the violation, after proof of the violation, is subject to a fine of not more than $1,000.
HISTORY (Sec. 1 ch 15 SLA 1972)

AS18.60.735 DOCUMENT
CHAPTER = 18.60
SECTION = 18.60.735
TITLE = 18
HEADINGS TITLE 18.
Health and Safety.
CHAPTER 60.
Safety.
ARTICLE 8.
Plumbing Code.
CITATION Sec. 18.60.735.
CATCH LINE
BOROUGH OR CITY REGULATION.
TEXT AS 18.60.705 - 18.60.740 do not affect the authority of any municipality to prescribe by ordinance, rule or order, standards for their respective areas of jurisdiction no less stringent than those established under AS 18.60.705. This chapter is not intended to duplicate or preempt code administration or enforcement by municipalities. Any organized municipality or unorganized village having less than 2,500 population is exempt from the provisions of this Act.
HISTORY (Sec. 1 ch 15 SLA 1972)

AS18.60.740 DOCUMENT
CHAPTER = 18.60
SECTION = 18.60.740
TITLE = 18
HEADINGS TITLE 18.
Health and Safety.
CHAPTER 60.
Safety.
ARTICLE 8.
Plumbing Code.
CITATION Sec. 18.60.740.
CATCH LINE
DEFINITIONS.
TEXT In AS 18.60.705 - 18.60.740

(1) "code" means the Uniform Plumbing Code, 1979 edition, adopted at the 49th Annual Conference, September 1978, International Association of Plumbing and Mechanical Officials;

(2) "commissioner" means the commissioner of labor;

(3) "department" means the Department of Labor;

(4) "inspector" means a qualified inspector employed by, designated by, or under contract to the Department of Labor.

HISTORY (Sec. 1 ch 15 SLA 1972; am sec. 3 ch 88 SLA 1980)

International Conference of Building Officials

Alaska Southeast Chapter

CSHB 63

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE

MEMBERS OF THE SENATE LABOR AND COMMERCE COMMITTEE,

The three Alaska Chapters of the International Conference of Building Officials urge you to adopt the 1985 Uniform Plumbing Code unamended. This position was strongly supported by the building and fire safety personnel who testified at the House Labor and commerce Committee teleconference hearings held on March 21, 1985.

Our organization is comprised of professional code administrators from all regions of the State. We represent Federal, State and Municipal governmental agencies. Duties of our members include administration of fire and life safety requirements as well as the Plumbing, Building, Electrical and Mechanical Codes in Alaska.

The 1979 Plumbing Code is outdated and does not reflect current changes in construction technologies. We believe that national consensus, or model, codes should be adopted with a minimum of changes to promote uniformity in commerce. There are no conditions unique to alaska which would justify adoption of the amendments contained in CSHB 63.

The language proposed in the substitute bill is not clear, understandable or effective. The term "VN" as used in the amendments is not defined in the Plumbing Code. In Section Four, the "grandfather" clause will not solve the problem of inconsistent regulations within the State. Each major city in Alaska has already, or is currently adopting the 1985 Plumbing Code without these restrictions on the use of plastic pipe.

We look forward to being of assistance to the Legislature in all future construction code-related matters.

Respectfully,

Stephen O Shows

Stephen O. Shows, Secretary
Alaska Southeast ICBO Chapter

International Conference of Building Officials

Alaska Southeast Chapter

April 1, 1986

Senator Fred Zharoff, Chairman
Senate Labor and Commerce Committee
P.O. Box V
Juneau, Alaska 99811

Honorable Senator Zharoff,

There is much concern about adoption of the current Uniform Plumbing Code. Support for adoption is statewide amongst virtually all Building and Code Officials, Architects, Engineers, and others in the development industry.

Alaska is faced with two major problems. First is uniformity between jurisdictions. Code standards in one jurisdiction is not usually the same as in the next. Many times State Inspectors are enforcing older, "out-of-sync" codes than those of the jurisdiction within which the project is located.

Secondly, code provisions are made with advancing technologies in mind. The code development and adoption process at the national level is done by experts in the field. By maintaining or adopting older code editions the State of Alaska is precluding professionals in the construction field from taking full advantage of the most advanced, cost effective materials and techniques known. This has serious affects on all Alaskans in terms of finances and life safety.

For these reasons the Alaska Southeast Chapter of the International Conference of Building Officials strongly supports adoption of the unamended 1985 Plumbing Code.

Respectfully,

Eric R. Davenport
President

ALASKA FIRE CHIEF'S ASSOCIATION

POST OFFICE BOX 304 • CORDOVA, ALASKA 99574 • TEL. (907) 424-7475

RECEIVED
APR 1 1986
BY BUILDING DIVISION

March 28, 1986

Mr. Steve Shows
155 S. Seward
Juneau, Alaska 99801

Dear Mr. Shows:

There seems to be some question as to the stand the Fire Service takes on the use of plastic pipe for plumbing in certain occupancies. The question arises around the adoption of the new Uniform Plumbing Code without the amendments previously inserted restricting some usage.

The State Fire Marshal's Office no longer feels that those amendments are required since data has not indicated that plastic pipe has in fact contributed at all to loss of life or increased fire spread where it has been used.

I believe that it's use is not a critical fire and life safety matter and consequently the Plumbing Code should be adopted as it. Local jurisdictions will still have the option of being more restrictive when they adopt it if they are still doubtful about the matter.

Sincerely,

Dewey Whetsell
President

ALASKA 1984 FIRE LOSS ANALYSIS

THIS IS AN ANALYSIS OF THE FIRE LOSS IN ALASKA FOR 1984 LISTED BY TYPE OF PROPERTY. SPECIAL PROPERTY INCLUDES WILDLAND FIRES WHICH CONTRIBUTE TO THE LARGE NUMBER OF REPORTED INCIDENTS. PLEASE NOTE THE NUMBER OF INCIDENTS, INJURIES, DEATHS, AND THE AMOUNT OF PROPERTY LOSS IN RESIDENTIAL PROPERTIES.

FIXED PROPERTY USE	# OF INCIDENTS	% OF TOTAL	INJURIES	DEATHS	$ LOSS	% OF TOTAL
Unclassified	1				$ 300	
Public Assembly	87	2.3	6		2,077,838	6.0
Educational	48	1.3	2		5,201,500	15.1
Institutional	21	.5	1		4,765	
Residential	1,296	35.2	60	32	16,479,411	47.8
Store/Office	111	3.0	5	1	2,572,695	7.5
Industrial	61	1.6			156,465	.5
Manufacturing	24	.6			2,000,826	5.8
Storage	122	3.3	7	1	3,253,440	9.4
Special	1,908	51.8	18	1	2,719,823	7.9
TOTAL	3,679		99	35	$34,467,063	

RECEIVED
MAR 26 1986
BUILDING DIVISION
BY



ALASKA STATE HOMEBUILDERS ASSOCIATION

P.O. Box 3259
Juneau, Alaska 99803
(907) 789-0626

PRESIDENT
Preston "Buck" Burnett
9352 Center Court
Juneau, Alaska 99801
(907) 789-9143

FIRST VICE PRESIDENT
JAMES N. MALAPANES
(907) 376-5130

SECOND VICE PRESIDENT
MERLE K. BEETER
(907) 364-1136

TREASURER
MITCHEL L. ROBINSON
(907) 262-5047

SECRETARY
G. GREG BOLES
(907) 247-8357

NATIONAL REPRESENTATIVE
JESS HALL
(907) 283-4659

NATIONAL DIRECTOR
N. CLAIBORNE PORTER, JR.
(907) 562-2263

BUILD PAC CHAIRMAN
FREDRICK WIKE
(907) 376-3976

IMMEDIATE PAST PRESIDENT
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(907) 456-7421

AT LARGE
LARRY GREEN
(907) 225-4513

AT LARGE
HOWARD MORGAN
(907) 243-5681

EXECUTIVE OFFICER
F.W. "BILL" BAXANDALL
(907) 789-0626

24 March 1986

Mr. Steve Shows
City & Borough of Juneau Building Department
155 South Franklin Street
Juneau, Alaska 99801

Dear Steve;

Per our discussion of this past week regarding legislative action on the adoption of the 1985 Uniform Plumbing Code.

This is to inform you that the Alaska State Homebuilders Association Board of Directors, at their March 18 board meeting, passed a motion in support of passage of legislation to adopt the use of the 1985 UPC without admendments.

If we can be of further assistance in this matter, please advise.

Sincerely,

Preston Burnett

Preston Burnett, President
Alaska State Homebuilders Association

cc: Clark Gruening



ALASKA CHAPTER
THE AMERICAN INSTITUTE OF ARCHITECTS

March 28, 1986

State of Alaska
Senate Labor and Commerce Committee

Dear Senators,

We urge you to support an unamended adoption of the 1985 Uniform Plumbing Code.

Architects in Alaska have long been concerned with uniformity of the codes in the simplest form possible. Our profession has also supported building safety as a fundamental element of all types of construction. The American Institute of Architects has led the way, nationwide, in both of these areas.

CS HB 63 conflicts with current contemporary directions in the code industry. Specific amendments regarding the use of plastic pipe are not appropriate for adoption on a state level. They do not represent unique Alaskan conditions. They confuse the design professional and create inconsistencies between the codes. In addition, restricting the use of plastic pipe will add unnecessary costs to a project which will be passed on to the consumer in an unproductive way.

Please give careful attention to this bill. We would be pleased to discuss it in greater depth at your convenience.

Respectfully,

Gary Gillette, President
AK Chapter AIA

Catherine Fritz, Chair
AK Chapter AIA Codes and Standards Committee

PLEASE REPLY TO: Catherine Fritz, 586-5231

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY
P.O. BOX O, JUNEAU, ALASKA 99811-1800

Telephone:(907)
Address:
(907) 465-2653

April 2, 1986

Mr. Steve Shows
ICBO - Southeast Chapter
c/o City and Borough of Juneau Engineering Dept.
155 South Seward Street
Juneau, Alaska 99801

Dear Mr. Shows:

This is a reply to your inquiry of April 1, 1986 regarding our opinion of the effect on potable water quality of different types of pipe materials.

At an earlier date we had provided a statement to Representative Peter Goll concerning the possible conditions under which water being carried by plastic pipe could pick up organic contaminants. That same information is herein provided to you as follows:

Permeation of organic compounds through plastic pipe walls:

Both laboratory studies and actual field incidents have shown that passage of organic contaminants contained in soil or groundwater into plastic pipe and the water that it carries is possible, and indeed has occurred in municipal water systems. Studies have shown that this mode of contamination is possible for all common varieties of plastic water pipe.

Leaching of organic compounds from uncontaminated plastic pipe or pipe glue materials:

Existence of organic contaminants in potable water carried by non-contaminated plastic pipe has been shown to occur in laboratory studies. The origin of these compounds has been traced to the actual pipe itself and to the solvents used to cement sections of pipe together. It appears to be a phenomenon common to all types of plastic pipe.

The highest concentrations of contaminants are usually found within the first two weeks following installation of the pipe, with concentrations decreasing to below detectable levels after this period. However, use of higher than average amounts of plastic pipe cement has been shown to increase the levels and persistence of these contaminants in the water carried.

Additional information on other types of pipe:

Metal pipe has also been implicated as the source of inorganic contaminants in drinking water, primarily as the result of corrosion of pipe or joint material.

Several nationwide studies have shown that corrosion of metal pipe can supply sometimes significant levels of contaminants to the drinking water it carries, most notably copper, lead, zinc and iron. Water systems with high quality, and therefore chemically aggressive waters, have been known to cause significant corrosion of metal components of the system. The Seattle water system is one such example.

In Alaska we have had several incidents of aggressive source water dissolving lead from the tin-lead solder in copper pipe joints to the point where state standards were exceeded for lead in drinking water. The attached article describes this condition in the villages of St. Michael, Birch Creek, Gambell and Shismaref. In addition, this problem was extensively investigated by the North Slope Borough for eight water systems within the borough, with state standards for lead being exceeded in the villages of Point Lay, Nuiqsut and Barrow.

It is significant to note that the most feasible method recommended for mitigating the lead contamination problem in the North Slope water systems was to completely replace all of the pipe joints (copy of study attached).

Asbestos-cement pipe is also susceptible to corrosion by chemically aggressive waters, liberating asbestos fibers into the water in the process. However, information from the U.S. Environmental Protection Agency concerning the health effects of ingested asbestos is inconclusive at this time.

As you can see, there are drawbacks to the use of almost any kind of pipe, given particular operating conditions. However, at this time we feel we have insufficient evidence to limit the use of any type of pipe due to concern of health effects related to the pipe.

Sincerely,

Richard M. Farnell

Richard M. Farnell, Coordinator
Drinking Water Program

Enclosures



NFIB® National Federation of Independent Business

The Guardian of Small Business

April 2, 1986

Sen. Fred Zharoff, Chairman
Senate Labor and Commerce Committee
State Capitol
Pouch V
Juneau, Alaska 99811

REF: HB 63 - Adoption of 1985 Edition of Plumbing Code

Dear Sen. Zharoff:

The National Federation of Independent Business is a national organization whose primary function is to represent small business interests in state legislatures and Congress. In Alaska, NFIB has in excess of 4,100 members representing a broad cross section of all types of businesses. Our members are very concerned about the existing situation in Alaska where the edition of the Plumbing Code adopted by the State is several years behind the times and is resulting in great confusion and much higher construction costs for any type of commercial structure.

The confusion results because the state adopted version of the Plumbing Code is the 1979 Edition while all municipalities who have a plumbing code have adopted either the 1982 or the 1985 editions. Since there are many differences between the 1979 edition and both later editions, anyone putting up a structure must make sure that their structure complies with edition adopted by their local municipality except when the 1979 code differs. Since the State adopted code controls because it is adopted by statute, the builder must modify their building to conform to the 1979 version.

One provision of the 1979 code which was modified in both the 1982 and 1985 editions and which impacts commercial buildings the most, is the one which mandates cast iron sewer pipe rather than the specified plastic pipe permitted by the later editions. This provision alone results in the cost of the sewer system being two to three times more costly than the plastic pipe approved in the later editions.

The situation is further compounded by the fact that even though communities of less than 2,500 in population are exempted from having to comply with the state adopted version of the plumbing code, the fire marshall and Dept. of Labor inspectors in some cases are requiring them to comply with it. In a recent state wide poll, our members voted in favor of having a uniform code statewide by a margin of 64% in favor with 24% opposed and 12% undecided.

NFIB/ALASKA
Legislative Office
P.O. Box 210194
Auke Bay, AK 99821
907/586-4100

We urge the Senate Labor and Commerce Committee to take quick action on HB 63 and amend it so that the 1985 Plumbing Code is adopted without the exceptions inserted by the House. We need a consistent code statewide, not more confusion and hassles. Your attention to this issue will be appreciated very much.

Very truly yours,

Gary L. Jenkins, Director
Governmental Relations/Alaska

CAMERON
PLUMBING & HEATING
P. O. Box 2720
JUNEAU, ALASKA 99803

Phone 789-2896

JOB ESTIMATE

PHONE

DATE 4-2-86

JOB NAME/LOCATION

TO Dan Callahan
dba Westwind Construction

Coventry Town Homes
40-Unit (4-10 plexes)

OB DESCRIPTION:

Per plans and specifications, Plumbing and to include 2 and 1/2 bath rooms each unit.

Using the 1979 UPC plumbing code, ABS plastic drainage to be used $95,700.00

Using the 1985 UPC plumbing code, Cast iron pipe would be used, add $45,000.00

EXCLUSIONS: HEAT, caulking around tub, sewer line, water lines, well, bathroom accessories, permit fees, electrical, excavation, insulation of water lines. Water & sewer to terminate 5' outside buildings.

PLEASE EXAMINE THIS ESTIMATE CAREFULLY. IF WE HAVE FAILED TO LIST ANY ITEMS THAT YOU WANTED INCLUDED, PLEASE CALL US IMMEDIATELY AS THIS ESTIMATE INCLUDES ONLY MATERIALS AND LABOR AS SHOWN ABOVE.

ESTIMATE is good for 30 days only, until signed.

3 ESTIMATE IS FOR COMPLETING THE JOB AS DESCRIBED)VE. IT IS BASED ON OUR EVALUATION AND DOES NOT IN-)E MATERIAL PRICE INCREASES OR ADDITIONAL LABOR AND ERIALS WHICH MAY BE REQUIRED SHOULD UNFORESEEN)BLEMS OR ADVERSE WEATHER CONDITIONS ARISE AFTER E WORK HAS STARTED.

ESTIMATED JOB COST see above

ESTIMATED F

F. F. Cameron

LICENSED • BONDED • INSURED

ALASKA PLUMBING

3600 Spartan Street • Juneau, Alaska 99801
(907) 789-3600

Commercial • Residential • Marine
Hydronic Heating • Solar

To Whom it may concern.

Last year we plumbed Evergreen Condo's. The cost was 65,000.00 This project would Have cost Approximately 110,000.00 under the 1985 Amended code U.P.C. Under the un-amended 1985 code This project would still only cost 65,000.00

Small Alaska owned Businesses Like ours, Rely on affordable Housing, which is 90% of our Business. Plastic plumbing is one of the key ways for Builders to provide affordable Housing. We support the 1985 unamended code.

yours truely

Bill Ashley

owner AK plumbing

Valley Bakery
Box 9
Tok, Ak. 99780

March 19, 1986

Dear Mr. Zharoff,

The NFIB has brought to my attention HB 63, Adoption of 1985 Plumbing Code. I strongly encourage you to adopt it.

In 1983 I started a bakery in Tok. As there were unsuitable buildings to occupy, I was able to secure a loan to build my own. I tried to do everything as accurately and professionally as possible. However, I did not contact the Fire Marshall's office.

While in Fairbanks I sought advice concerning venting my oven at the Petrolane office. The owner suggested I contact the Fire Marshall's office, which I did. When I left his office, I was complete deflated. I not only paid $137.00 for a plan review, I also had to submit requests for waivers--they were promptly denied.

Presently, the Fire Marshall's office still wants me to tear open my walls and replace plasic pipe with non-burnable materials. I do not think this is reasonable, justifiable or warranted. For 9 months of the year I am open only 3 days a week which satisfies the local demand for our products. Knowing this, you can imagine the budgetary restraints we have.

I certainly hope you will think of all small businessmen while you are making your decision concerning this bill. Costs are high to replace plumbing and salaries often are not commesurate with the replacement demands. We need your support.

Sincerely,

Roger Skarie

Roger Skarie

cc: National Federation of Independent Business

JON A. REISWIG, M.D.
A PROFESSIONAL CORPORATION
ORTHOPAEDIC SURGERY
3260 HOSPITAL DRIVE
JUNEAU, ALASKA 99801

TELEPHONE 586-1211

March 28, 1986

Senator Fred Zharoff
State Capitol
Pouch V
Juneau, AK 99811

Dear Senator Zharoff:

I have been practicing in Juneau for the past 13 years and finally am about to complete the building of a new office. I was given a certain amount of time by the hospital board to vacate the space I am renting and, therefore, had to build during the winter months. Because of that I elected to build with modules, using Evergreen Mobile Co. in Issaquah, WA, since they have had experience building medical clinics. The modules are now in place and the roof is being constructed.

It is now my understanding that the state inspector reviewed my building and noted that there are plastic pipes for some of the plumbing instead of cast iron. It is also my understanding that this plastic pipe meets all local codes not only here in Juneau, but in the state of Washington, but that there is a requirement here in the state of Alaska for commercial buildings to use cast iron pipe. I have discussed this with my builder and other people and all those I have talked with confirm the concensus that plastic pipe is just as good, if not better, than cast iron and the only reason that it is required at this time is at the insistance of the Pipe Layer's Union. I, of course, was unaware of the requirement and at this time do not know exactly what to do. One of the objectives in using the modules was, #1, to be able to build during the winter and, #2, to complete the project under a minimum amount of time because I had been given a certain date to leave the hospital. If it is now insisted that I must change this pipe, this could easily go beyond the specified period of time that is available to me and in addition, the amount of monies that have been set aside by the bank, including AIDA.

I have been informed that the senate is considering a bill which would delete the requirement for cast iron pipe and allow plastic pipe to be used. May I at this time strongly urge you to consider favorably the use of plastic pipe.

Sincerely,

Jon A. Reiswig, M.D.

JAR:slr

CITY OF KOTZEBUE

P.O. BOX 46. KOTZEBUE. ALASKA 99752

1980-81
ALL AMERICA
CITY

442-3401 CITY HALL
442-3157 DAY CARE CENTER
442-3816 GEORGE FRANCIS MEMORIAL LIBRARY
442-3500 MUNICIPAL WATER PLANT
442-3465 PLANNING DEPARTMENT
442-3351 POLICE DEPARTMENT

442-3465 PUBLIC WORKS DEPARTMENT
442-3066 RECREATION CENTER
442-3921 REGIONAL FIRE TRAINING CENTER
442-3779 TEEN CENTER
442-3404 VOLUNTEER FIRE DEPARTMENT

March 14, 1986

Senator Frank Ferguson
Alaska State Legislature
Pouch V (MS-3100)
Juneau, Alaska 99811

Dear Frank:

Enclosed please find some background information that you and I had briefly discussed during your last visit here in Kotzebue.

As you can see, the current Legislature (as passed by the House) would have definite repercussion's in rural Alaska.

We would appreciate your consideration in any assistance that you may provide.

Sincerely,

Leo P. Schaeffer,Jr.
City Manager

cc:
Senator Zharoff
Chairman
Labor of Commerce

March 13, 1986

MEMORANDUM

TO: City Manager

FROM: Sandy Huss, Building Inspector

RE: Background on Minmum State Plumbing Code Legislation

This is in response to your request for background information on the current legislation to update the Uniform Plumbing Code.

At the present time the State has adopted the 1979 Uniform Plumbing Code. A feature of this Code which later editions do not feature is the prohibition of plastic pipe in most buildings (limiting them to residential structures of not more than two stories). Efforts were made by the legislature to adopt the 1982 edition of this Code but opposition by the Fairbanks plumbers union and others to inclusion or expansion of plastic provisions resulted in the failure to pass this legislation. This year the Alaska Department of Labor through the Governor requested adoption of the 1985 edition of the UPC without any amendment. HB 63 performed this task. SB 238 followed a different track in that it included amendments which would put us on the 1985 UPC but maintain the 1979 UPC ban on extensive use of plastic pipe.

The House Labor & Commerce Committe finally substituted another bill which was a mirror image of the SB 238 and this passed the Committee, passed the House floor and went to the Senate where it now sits in the Senate Labor & Commerce Committee. According to Sen. Fred Zharoff's staff member Michael Thill, the Committee does not plan to deal with the bill for a couple of weeks and does not considerany intention to re-write the bill.

The problems with this legislation is as follows:

1). Our current use of plastic in the water mains and sewer lines in the City is prohibited by both the 1979 and 1985 Codes (as proposed to be amended).

2). The major re-model of the Water Treatment Plant using extensive plastic piping was and is illegal under these provisions as it is not considered a residential structure.

3). Future plans to repair, replace, modify or expand either the water system or the treatment plant would be prohibited by this legislation.

4). While this law would only apply to cities of at least 2,500, if the new borough would pass the law would apply to all of the cities in the new borough.

5). This legislation would also prohibit the use of plastic piping in sprinkler systems, a new technological feature which has recieved Code approval and is heralded as a significant breakthrough in lowering the cost and expanding the availability of sprinkler systems.

6). This legislation has direct and expensive impacts on our local building market as copper and cast iron drain systems are significantly more expensive than plastic drain systems, are more freeze sensitive, and create many more maintenance problems.

7). Adoption of this legislation with the continued ban on plastic pipe would make millions and millions of dollars of State-funded rural water and sewer construction in violation of the Plumbing Code. Rigid enforcement of the provisions would also make future systems utilize metal pipe for which no adequate freeze protection technology is currently available and significantly increase the cost of these future projects.

If you have any questions, please feel free to contact me.

CMH:dm

cc: Mr. Tom Bolen
Chairman, BCAB

Mr. John Ward
Public Works Director

Mr. Glen Lamkin
Maintenance Supervisor

file

REFRIGERATION
& FOOD EQUIPMENT, INC.
1901 West Tudor Road
ANCHORAGE, ALASKA 99503

March 19, 1986

Senator Fred Zharoff
Senate Labor and Commerce Committee
Pouch V
Juneau, AK. 99811

RE: HB 63 - 1985 Edition of the Plumbing Code

Dear Senator Zharoff:

I recently learned of an amendment concerning cast drain lines in commercial buildings the plumbers and pipefitters union had successfully lobbied for.

However, this ammendments presents a problem for plumbing contractors. Without uniforming between the state codes and local codes, you may get some inspectors enforcing the code in one manner, while another inspector will enforce it in a different manner. In addition, iron pipe costs more, thereby pushing up the cost of already expensive state projects.

I therefore urge you to throw out this amendment, since it did not have any justification in the beginning, and adopt a state code that is more in line with the existing local codes.

Thank you.

CC: NFIB/ALASKA

Sincerely,

Tim Agosti

Tim Agosti
V.P. Operations

(907) 248-2525

3/15/86

Dear Sen. Zharoff,

I am writing concerning HB 63, 1985 Edition of Plumbing Code. Having just completed several projects here in Petersburg I was very frustrated that I was not able to use either the 1982 or 1985 version of the plumbing code which allows plastic pipe for commercial sewer applications. Now I find that a self serving union has got the legislature to not allow plastic again under the new 1985 code. This change hurts every business man that tries to develop his land or building. Not only that but, as in my case, the Pipefitters union didn't benefit at all as I still did the work myself. The only thing that happens is the cost of my projects have gone up far more than is needed.

Thus I urge you to support development in Alaska and remove the cast iron pipe requirement from the Plumbing Code.

Thank you.

Dave Ch——

PHONE: 789-9318

AUKE BAY BIBLE CHURCH

11970 GLACIER HWY.

JOHNNY REIMER, PASTOR

Box 210116
Auke Bay, Alaska 99821

"The Church with a Warm Heart"

March 21, 1986

Senator Fred Zharoff
State Capitol
Pouch V
Juneau, AK. 99811

Dear Mr. Zharoff -

You are aware, I am sure, of the proposed House Bill concerning the plumbing code in the State of Alaska. It is to this issue that I am addressing myself in this letter.

I am the pastor of the Auke Bay Bible Church where we are in the process of erecting a two-story building which is to be used for the education and fellowship needs of the congregation. We began the installation of the roughed-in plumbing according to the 1982 codes of the City and Borough of Juneau. Following an unannounced visit by the State Inspector we were informed that what had already been done would have to be torn out and replaced with cast iron. Since the building is being erected by a lot of volunteer help and cash donations from our people, working under certified contractors, this poses an extra heavy demand upon the congregation as well as needless delay in completing the project.

I would prevail upon you, sir, to exercise your skill and your influence to insist that the State of Alaska bring its code to meet that of the rest of the country and that of the City and Borough of Juneau.

I thank you for your concern and your immediate attention to this matter.

Sincerely yours,
Johnny Reimer, Pastor

International Conference of Building Officials

Alaska Southeast Chapter

CSHB 63

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE

MEMBERS OF THE SENATE LABOR AND COMMERCE COMMITTEE,

Removing the restrictions of the use of plastic pipe in this bill would lower capital construction costs for the State of Alaska and the private sector.

Based on McGraw Hill's Dodge Digest for 1985, plumbing costs for elementary schools average 8.1% and for high schools 7.8% of the total project costs. Preliminary figures from the State Department of Education (DOE) in Alaska indicate school construction costs of 525 million dollars since FY 1982.

In DOE alone it is conservatively estimated that the State would have saved over 9 million dollars if the 1982 Uniform Plumbing Code (UPC) had been adopted as written.

By adopting the modern plumbing code savings of 1.75% could be realized on most public and private construction projects.

Statewide figures from the US Census Bureau indicate total commercial construction activity since 1982 was approximately 1.2 billion dollars.

There are no justifiable cost benefits to be gained by restricting plastic pipes beyond the provisions of the code.

Respectfully,

Stephen O. Shows, Legislative Chair
Alaska Southeast ICBO Chapter

P.O. Box 770073
Eagle River, Alaska 99577
(907) 694-2190



CURTIS PLUMBING, HEATING & HOME SUPPLY

March 28, 1986

Senator Fred Zharoff
Pouch V
Juneau, AK 99811

Dear Senator:

I am writing concerning "HB 63-Adopt 1985 Edition of Plumbing Code".

I feel the use of plastic ABS piping in a commercial plumbing waste system is both economical and safe. The argument for using cast iron instead of ABS due to the fire fume hazard is totally groundless. Plastic pipe surely will emit deadly fumes when burned, but so will any item in a building that will burn including cast iron pipe - notice the tar like substance used to preserve the pipe that in many cases is over 1/8 " thick. I feel the opposition wishes to keep cast iron only in order to keep gross costs up which in turn will make profits increase. I also suspect the larger more organized mechanical companies feel that it is more difficult to install cast iron and thus the little guy may not want to get involved due to lack of experience and/or capitol.

It is time to get rational and start using common sense in this and many other areas of state government. More and more the silent majority is getting fed up and verbalizing their views. Please represent the people and put politics aside. Even a minority view can prevail if it is right. It just takes someone willing to back his convictions.

Sincerely,

Chuck Renfro

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 63 (L & C)
Title : "An Act relating to the plumbing code"

Sponsor : Governor
Requestor : House Labor & Commerce
Date of Request : 2/10/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Mechanical Inspection

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

By Robert J. Bacolas by MB

Prepared by : Robert J. Bacolas, Sr.
Division : Labor Standards & Safety
Phone : 465-4870
Date : 2/10/86

Approved by Commissioner : By Jim Robison
Agency : Labor
Date : 2/10/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
[redacted]

Added by 1982
" " 1985

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a tank having a pump for
water inlets to the non-
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n-potable water. Other ap-
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nority, but in no case less
urrounding ground or floor.
team boilers, pumps, etc.,
potable water line, an ap-
l be installed in the supply
shall be installed at least
ounding ground or floor.
he non-potable water line
ons shall be properly iden-
Administrative Authority.
ne which may be used for
be posted: DANGER —

(p) **Vacuum breakers** shall be located outside any enclosure or hooded area containing fumes that are toxic or poisonous.

Section 1004—Materials

(a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, lead or other approved materials. Asbestos-cement, CPVC, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. CPVC and PB water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority.

(b) Cast iron fittings up to and including two (2) inches (50.8 mm) in size, when used in connection with potable water piping shall be galvanized.

(c) All malleable iron water fittings shall be galvanized.

(d) Piping and tubing which has previously been used for any purpose other than for potable water systems shall not be used.

(e) Approved plastic materials may be used in water service piping, provided that where metal water service piping is used for electrical grounding purposes, replacement piping therefore shall be of like materials.

Exception: Where a grounding system, acceptable to the Administrative Authority is installed, inspected and approved, metallic pipe may be replaced with non-metallic pipe.

Section 1005—Valves

(a) Valves up to and including two (2) inches (50.8 mm) in size shall be brass or other approved material. Sizes over two (2) inches (50.8 mm) may have cast iron or brass bodies. Each gate valve shall be a fullway type with working parts of non-corrosive material.

(b) A fullway valve controlling all outlets shall be installed on the discharge side of each water meter and on each unmetered water supply. Water pipes, supplying more than one building on any one premises shall be equipped with a separate fullway valve to each building, so arranged that the water supply can be turned on or off to any individual or separate building; provided however, that supply piping to a single family residence and building accessory thereto, may be controlled on one valve. Such shutoff valves shall be accessible at all times. A fullway valve shall be installed on the discharge piping from water supply tanks at or near the tank. A fullway valve shall be installed on the cold water supply pipe to each water heater at or near the water heater. A fullway valve shall be installed for each apartment or dwelling of more than one (1) family. In lieu of the main supply shutoff in each apartment, individual shutoff valves may be provided at each fixture.

(c) All valves used to control two (2) or more openings shall be fullway gate valves or other approved valves designed and approved for the service intended.

April 25, 1986

Testimony before the Senate Labor and Commerce Committee
On. CSHB 63 April 23, 1986

Thank you Mr. Chairman and members of the committee for the opportunity to speak here today.

My name is Stephen Shows. I am representing the Northern, Central, and Southeast Chapters of the International Conference of Building Officials. Our membership is comprised mainly of State and local inspectors, building officials and private sector professionals. Our organizational goals promote uniform and appropriate statewide construction codes.

Toward this effort we support adoption of the 1985 UPC as written without amendments.

I am not representing the Municipalities, their Assemblies and Councils, who after independent review have adopted the 1982 or the 1985 UPC. Those communities include Anchorage, Fairbanks, Juneau, Sitka, Kodiak, Kenai, Soldotna and others. By statute communities who have a population of less than 2500 do not have to comply with any plumbing code.

There are three issues I would like to address.

The first concerns the proposed amendments in the Substitute limiting plastic pipe to VN residential buildings. This insertion makes the Bill more restrictive than the states current 1979 UPC. For example a two story apartment or condominium could no longer be plumbed in plastic although it is legal today.

The term "VN" is confusing and not contained or defined anywhere in the UPC. The Uniform Building Code does contain a method of determining if a building is a type five non rated structure, however many variables must be considered.. Since each of these criteria are subject to periodic change, you should cite the applicable edition of the building code you intend to use as a reference.

This may sound confusing but to accurately determine what type of building it is a plumber will have to know the height, number of floors or basements, floor area, width of all the yards around the structure and whether the building is sprinklered or not among other things... The 85 UPC is simple and direct. It says that if the code allows the building to be made of combustible materials than the pipes can also be combustible.

The second issue I will address are the concerns expressed about plastic pipes.

Experience has shown that these products have been used throughout Alaska and the Nation for many years and have proven themselves to be safe and dependable. The Alaska Department of Environmental Conservation (ADEC) indicates that there is no reason to restrict these pipes because of water quality. In fact they can solve the lead contamination problems encountered in many Alaskan communities that use rain water as their source and copper pipe distribution systems according to ADEC.

The Alaska Department of Labor OSHA official has informed me that there are no substantiated grounds to restrict the installation of plastic pipe from a worker safety standpoint. Containers of solvents and glue are explicit in their instructions to provide adequate ventilation. The "right to know law" in Alaska allows tradesmen to obtain complete information about the contents of any product used in the workplace.

The Alaska State Fire Marshal after careful review has deleted restrictions on the use of plastic pipe formerly contained in their regulations. The Alaska State Fire Chiefs Association has indicated that the use of plastic pipes as permitted in the 85 UPC is not a significant concern from a fire safety standpoint. In fact the fire service foresees low cost plastic pipe sprinkler systems as becoming a very important future element in saving lives and property in Alaska.

Electrical trade unions and [illegible] conduit manufacturers waged this same battle nationally with recent adoptions of the National Electric Code. The State has adopted the 1984 NEC into State Law. That code permits PVC conduit to be used in most commercial and residential buildings just as the 85 UPC does. These amendments if adopted would have the State Department of Labor inspector come on jobsite and reject a PVC plumbing pipe full of water and at the same time approve a PVC electric pipe full of wires right next to it in the same wall.

The third issue speaks to the heart of the matter, economics.

Plastic pipe systems are less expensive because the materials are cheaper and it takes fewer hours to install them. Depending on the job and the contractor savings on drain waste and vent systems can range between 30 and 50%. Whether the consumer is a private individual looking for affordable housing, a small business, or a governmental agency these added costs are passed along with no tangible benefits to the owners. Real estate appraisers do not give higher values to buildings with metal pipe systems.

Finally in these times of economic restraint we ask you to carefully consider the millions of dollars individual Alaskans will be asked to spend needlessly on their construction projects in the years ahead if these restrictions on plastic pipe are not removed. We are known as a pioneering people here in the Northland, and we ask our leaders to embrace new technologies and to work together with us toward the spirit of a bright future.

Mr. Chairman, thank you.

SOS/drb

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4205 SLAB HB 63 (FILE 2)

1985

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

63

File 2

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

Telephone:(907)
Address:
(907)465-2600

February 13, 1986

Honorable Peter Goll
Alaska State House
Box V
Juneau, AK 99811

Dear Representative Goll:

In response to an inquiry from your office concerning the possibilities of contamination of drinking water carried by plastic pipe, my staff has prepared the following information:

A. Permeation of organic compounds through plastic pipe walls

Both laboratory studies and actual field incidents have shown that passage of organic contaminants contained in soil or groundwater into plastic pipe and the water that it carries is possible, and indeed has occurred in municipal water systems. Studies have shown that this mode of contamination is possible for all common varieties of plastic water pipe.

B. Leaching of organic compounds from uncontaminated plastic pipe or pipe glue materials

Existence of organic contaminants in potable water carried by non-contaminated plastic pipe has been shown to occur in laboratory studies. The origin of these compounds has been traced to the actual pipe itself and to the solvents used to cement sections of pipe together. It appears to be a phenomenon common to all types of plastic pipe.

The highest concentrations of contaminants are usually found within the first two weeks following installation of the pipe, with concentrations decreasing to below detectable levels after this period. However, use of higher than average amounts of pipe cement has been shown to increase the levels and persistence of these contaminants in the water carried.

I hope this information was sufficient to provide you with the preliminary information on this subject that you requested. Please contact Dick Farnell of my staff at (907) 465-2653 for additional information.

Sincerely,

Bill Ross
Commissioner

BR/DF

Bill No. Committee Substitute for House Bill 63 (L&C)

Title "An Act relating to the Plumbing Code."

Date February 11, 1986

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

Committee Substitute for House Bill 63 provides for the modification and adoption of the 1985 Uniform Plumbing Code; and for adoption of the Uniform Solar Energy Code, and Uniform Swimming Pool, Spa and Hot Tub Code. The 1979 Uniform Plumbing Code currently in effect in Alaska is outdated.

The International Association of Plumbing and Mechanical Officials revises its minimum standards for the installation of plumbing every three years to incorporate technological advances, and the 1985 edition is the most recent effort in this regard. The standards for the installation of solar energy and the spa and hot tub standards have not previously been adopted in Alaska; the minimum standards for swimming pools were formerly included in the Uniform Plumbing Code.

In response to a number of water quality, worker safety and fire safety questions that have been posed on the use of plastic pipe in drainage and water distribution systems, the Committee Substitute modifies several provisions in the 1985 plumbing code to limit the use of plastic pipe in Alaska. As modified in this bill, Alaska's minimum plumbing standards on the use of plastic pipe would, therefore, be less restrictive than the 1979 code presently in effect and more restrictive than 1985 code per se. This appears to be a reasonable compromise on the issue.

The Department notes that Section 4 of the Committee Substitute provides that plastic pipe which was installed in the state prior to the effective date of the bill need not comply with either the 1979 code or the 1985 code as modified in this bill. The Department's understanding is that this "grandfather" clause stems from confusion that was created when various local governments adopted the 1982 or 1985 Uniform Plumbing Codes, which permitted such installations of plastic pipe. While the Department does not object to such a "grandfather" clause, it should be noted that it may be perceived as inequitable by those persons whom the Department has required to comply with the 1979 code. In several instances the Department's enforcement action in this regard has necessitated the removal of plastic pipe and installation of permissible materials.

This bill also removes an anomalous provision that instructs the Department of Labor to adopt the specific publications that constitute the plumbing code. The current statute leaves no discretion in the department as to whether to adopt or as to what to adopt. Thus the actions of the department in going

POSITION PAPER/Department of Labor

through the formal adoption procedures are unnecessary. Under the amendment in this bill, the statute will simply declare what constitutes the plumbing code. This is the approach already employed for the electrical code under AS 18.60.580.

Committee Substitute for House Bill 63 would not have a fiscal impact on the Department of Labor.

APPROVED:

Jim Robison, Commissioner
Department of Labor

International Association of Plumbing & Mechanical Officials

PROPOSED CODE CHANGE TO A SECTION AND/OR SECTIONS OF THE UPC - USPC - USEC

1004 (A)

Note: All Code Sections that may be affected by this change must be listed.

Name Robert J. Duffey Class of Membership D

Jurisdiction/Company You Represent U.A. Local Union #393 Date January 15, 198

Mailing Address 370 Umbarger Road

City San Jose State California Zip 95111

THE FOLLOWING AMENDMENT IS SUBMITTED:

Section 1004 - Materials

(a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel or other approved materials. Asbestos-cement, CPVC, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. ~~CPVC and~~ PB water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority.

REASON FOR CODE REVISION:

The California Department of Health Services Commissioned the Montgomer Testing Laboratory (MTL) to conduct the first government-authorized stu to measure the amount of solvents that leached into drinking water fron plastic pipe.

Excessive levels of carbon tetrachloride, telbracholoroethene and tricholoroethone were found in the MTL data. Because of the cancer risk associated with some of these chemicals, EPA suggests zero the safe I.E. non-threshold assumption level.

Use additional sheets if necessary Do not wr low this li.

CODE CHANGE **COMMITTEE'S RECOMMENDATION** No. 72

International Association of Plumbing & Mechanical Officials

PROPOSED CODE CHANGE TO A SECTION AND/OR SECTIONS OF THE UPC - USPC - USEC

1004 (A)

Note: All Code Sections that may be affected by this change must be listed.

Name Robert J. Duffey Class of Membership D

Jurisdiction/Company You Represent U.A. Local Union #393 Date January 15, 198

Mailing Address 370 Umbarger Road

City San Jose State California Zip 95111

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Use additional sheets if necessary

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CODE CHANGE **COMMITTEE'S RECOMMENDATION** **No.** 72

incurred by such aggrieved parties in enforcing this agreement or in preparing the defense, preparing against, or seeking to obtain an abatement of or injunction against such action or proceeding, or in establishing or maintaining the applicability or validity of this agreement, or any provision thereof, or in prosecuting any claim or cross-claim based thereon.

10. CONSTRUCTION:

This agreement is the product of a collaboration among all parties hereto and shall not be construed against any party.

IN WITNESS WHEREOF, the parties have executed this Release and Settlement Agreement in person or by duly authorized officers or agents as of the days and years written below.

Dated: [redacted].

(Signature) [redacted]

(Signature) [redacted]

7. REPAIR:

(a) RELEASOR(S) acknowledge that RELEASED PARTIES have no obligation to investigate, design, perform, or otherwise participate in the identification and correction of any defects, deficiencies, code violations, or other dangerous or damaging conditions relating to the plumbing system in said residence.

(b) Nothing herein shall give RELEASED PARTIES a right or obligation to direct or compel RELEASOR(S) to make any repairs or perform any maintenance on the above-noted residence, with respect to the alleged plumbing-related defects in their residence.

(c) RELEASED PARTIES assume no responsibility for and have no control over the method or means of repair and bear no responsibility for the success or failure of either the method or means of which repair or replacement of the plumbing system is performed on the above-noted residence.

8. RELEASOR(S) who currently own the real property commonly known as _____, City of San Jose, County of Santa Clara, State of California, acknowledge the right of RELEASED PARTIES to record the Disclosure Statement previously executed by RELEASOR(S) in connection with this settlement.

9. ATTORNEYS' FEES:

In the event of any breach of this agreement, any party aggrieved, including third party beneficiaries to this agreement, shall be entitled to recover from the breaching party or parties, in addition to other relief awarded, all such damages, costs, reasonable attorneys' fees and expert fees,

RELEASOR(S) hereby expressly waive the provisions of §1542 on behalf of themselves, their heirs, assigns, and successors in interest.

5. HOLD HARMLESS AND INDEMNIFICATION:

RELEASOR(S), on behalf of themselves and their heirs, successors and assigns, hereby agree to indemnify, hold harmless and defend RELEASED PARTIES and their heirs, agents and assigns, and any of them, from and against any and all past, present and future claims, demands, lawsuits, arbitration, or other proceedings, including, but not limited to, claims for personal injury, property damage, economic loss, or any other form of injury or damage, or subrogated claims of any person, entity, or insurer, regardless of merit or lack thereof, made upon or initiated against any or all of RELEASED PARTIES and their heirs, agents and assigns, and any of them,, whether a party or stranger to this agreement, or by any past, present, or future owner of any interest whatsoever in the above-noted residence, arising out of or in any way related to any matter herein released.

6. EXECUTION:

This Releases and Settlement Agreement may be executed in any number of counterparts and signature pages and by different parties hereto on separate counterpart or signature pages and each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument.

Norwood Creek subdivision specifically reserve their rights to continue to pursue their claims for non-plumbing related construction defects in their residences against the William Lyon Company and expressly do not release the William Lyon Company in that regard.

(b) There is a risk that, subsequent to the execution of this release, RELEASOR(S) will suffer further damage related to the matters herein released, or which is unknown or unanticipated at the time this release is signed. There is also a risk that the damage presently known may be or may become more serious than RELEASOR(S) now expect or anticipate. RELEASOR(S) shall assume the above-mentioned risks, and this release shall apply to all unknown or unanticipated results of the matters described above, in that a portion of the settlement is premised on the entire plumbing system complained of being replaced by said RELEASOR(S).

(c) RELEASOR(S) and RELEASED PARTIES acknowledge that this Release and Settlement Agreement applies to all unknown or unanticipated injuries or damages, including claims for personal injury, property damage, economic loss, or other damage, including any and all claims now existent or which may arise in the future, arising out of the alleged defective plumbing system in said residence, and, under the terms of §1542 of the Civil Code of the State of California, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor."

attorneys, and each of them, of all claims, demands, causes of actions, damages or liabilities of any kind and character whatsoever whether known or unknown, which RELEASOR(S), or their successors and assigns can, shall, or may have against RELEASED PARTIES arising out of the plumbing system in said residence, including but not limited to, any work, materials, acts, omission, fraud, misrepresentation, non-disclosure, breach of warranty, breach of contract, or other obligations of RELEASED PARTIES in connection with the design, manufacture, installation, construction, financing, sale, or repair of the plumbing system and tools and components used in the installation thereof, contained within the above-noted residence, including, but not limited to, damage to structure or improvements thereon, personal or bodily injury, damage to personal property, or economic loss, resulting from any defects or deficiencies in design, manufacture, installation, construction, disclosure, repair, or sale, of the plumbing system contained within the above-noted residence, whether now known or unknown, and any damages or deterioration arising therefrom whether now known or unknown, latent or patent or non-existent at the present time and which may arise in the future, or arising out of the facts, circumstances of issue or issues, raised or which might have been raised or in the future could be raised, pertaining to RELEASED PARTIES in the above-referenced litigation, including any past, present or future damage which may be or may have been sustained by RELEASOR(S), with respect to the plumbing system contained within the above-noted residence. RELEASOR(S) and RELEASED PARTIES acknowledge and agree that the RELEASOR(S) who are owners or former owners of residences in the William Lyon Company/

disclosure statements and dismissals, have been obtained. It is the intent of all parties that the terms of this agreement and release be approved and accepted by all parties and that the agreement be signed as expeditiously as practical.

(e) On receipt of signed releases, disclosure statements and dismissals, JOHN R. GRIFFITHS shall tender the settlement funds plus any interest earned to RELEASOR(S)' attorneys of record.

2. DISMISSALS:

RELEASOR(S) hereby agree to dismiss with prejudice the above-noted lawsuits, save and except the causes of action against the William Lyon Company. Because litigation is still pending between RELEASOR(S) and the William Lyon Company, Inc., referrable to non-plumbing related construction defects, which claims are not settled, released or affected by this Release and Settlement Agreement, RELEASOR(S) cannot at this time dismiss with prejudice their complaint against the William Lyon Company, notwithstanding the fact that RELEASOR(S) acknowledge the fact that they have settled with and released the William Lyon Company with respect to the alleged plumbing-related defects in their residence.

3. COSTS:

Each party shall bear its own costs and attorneys' fees upon dismissal.

4. RELEASE:

(a) RELEASOR(S) hereby forever release and discharge RELEASED PARTIES, and each of them, and their respective officers, agents, servants, employees, owners, predecessors, successors, assigns, insurers, related business entities, and

(e) All parties identified in this document desire to fully settle, once and for all, all claims and controversies of any kind existing between them regarding the plumbing system in each residence to the end that RELEASOR(S) agree that no further claims, controversies, or litigation involving the parties hereto regarding the plumbing system installed in the above-noted residence may or can arise in the future and that said settlement included funds specifically for the entire replacement of the polybutylene and Celcon plumbing system.

NOW, THEREFORE, for and in consideration of the terms herein, the undersigned parties agree as follows:

1. PAYMENT:

(a) The sum of $872,500.00 shall be paid by or on behalf of RELEASED PARTIES to the RELEASORS(S), and their attorneys of record.

(b) The settlement sums, as represented by settlement drafts and/or checks shall be tendered to Special Master JOHN R. GRIFFITHS, who shall receive the sums on behalf of RELEASOR(S).

(c) The settlement sums as represented by settlement drafts and/or checks shall be made payable to Special Master JOHN R. GRIFFITHS, TRUSTEE ACCOUNT, and tendered on or before June 9, 1985.

(d) On receipt of the settlement sums, JOHN R. GRIFFITHS shall be permitted to deposit the drafts, and/or checks into an interest bearing trust account on behalf of RELEASOR(S). The settlement funds shall not be withdrawn from the trust account or otherwise used for the benefit of RELEASOR(S) until all signatures to this agreement, the

RECITALS

(a) RELEASOR(S) are past or present owners of the real property commonly known as _____, which is located in the City of San Jose, County of Santa Clara, State of California, hereinafter referred to as the RESIDENCE.

(b) RELEASOR(S) have previously brought lawsuits against released parties, and others in the Superior Court of California, County of Santa Clara. In the above-noted lawsuits, RELEASOR(S) have alleged inter alia that the RELEASED PARTIES negligently, carelessly, improperly, or defectively performed, or failed to perform, plumbing work on the above-noted residence and/or supplied defective material, or fraudulently sold or misrepresented the residence, or otherwise committed some act, omission, fraud, misrepresentation, breach of warranty, or other breach of contract or are in some way responsible for damage to RELEASOR(S) because of an alleged defective polybutylene and Celcon plumbing system.

(c) RELEASED PARTIES deny the allegations of RELEASOR(S) as raised in the lawsuits, and each further denies the allegations of any and all cross-complaints in the lawsuits.

(d) RELEASOR(S) and RELEASED PARTIES, and each of them, understand that the liability of the RELEASED PARTIES, or any of them, for the above transactions, or any damage sustained by any party to this agreement or stranger hereto is disputed, and that the payment herein provided for is not to be construed as an admission of liability, which is expressly denied, and that this Release and Settlement Agreement arises from a compromise of said liability.

RELEASE AND SETTLEMENT AGREEMENT

PARTIES

I. The following parties are referred to as RELEASOR(S):

Name:

Street:

City, State:

II. The following are collectively referred to as RELEASED PARTIES:

1. United States Brass, Inc.
2. Wallace Murray Corporation.
3. Household Manufacturing, Inc.
4. Qest Products, Inc.
5. Lionel T. Wade, Individually.
6. Lionel T. Wade Company.
7. Shell Oil Company.
8. Kaufman & Broad of Northern California, Inc.
9. Kaufman & Broad, Inc.
10. William Lyon Co., Inc.
11. Joe Amaral Plumbing, Inc.
12. H. K. Porter Company.
13. Celanese, Inc.

and any and all of their successors, any and all of their predecessors, officers, employees, heirs, administrators, executors, assigns and related business entities.

SUMMARY SHEET

PLASTIC PIPE WATER SERVICE FAILURES

Breakdown of Costs:

LOCATION	COSTS
Memphis, Tennessee	6.2 million
Napa, California	$208,000
San Antonio, Texas	50 million
El Paso, Texas	2 million
Irvine Ranch, California	38.1 - 38.25 million
Germantown, Tennessee	1.2 million (estimate)
TOTAL:	97.5 - 97.65 million

SUMMARY OF PLASTIC PIPE

WATER SERVICE FAILURES

The following is a summary of plastic pipe water service failures which have occurred throughout the United States.

MEMPHIS, TENNESSEE

This community used polybutylene from approximately 1972 to 1979. The pipe was used primarily for water service lines to the hookup to individual residences. Failures were recognized as early as 1972, and included stress cracks, pinhole leaks and cramps and creases. The water utility discontinued use, and is replacing the pipe as it fails. Estimated cost to the community is 6.2 million dollars.

NAPA, CALIFORNIA

This community used polybutylene and polyethylene from 1972 to approximately January, 1982. Polybutylene was used exclusively from 1972 to 1978, and polyethylene from 1978 to 1982. The city experienced failures which included sidewall cracks, pinholes, penetrations by pebbles, splits on the sides, stress failures and sheer breaks at a fitting. The City of Napa is replacing the plastic pipe as it fails, and the use of plastic pipe has been banned by the City Council. Estimated cost for the failures is $208,000.

SAN ANTONIO, TEXAS

This community has used polyethylene and polybutylene 2110. Polyethylene was used from 1966 to 1970, and polybutylene from 1970 to 1978. The pipe was used as standard material for all service lines and was used exclusively for new services as a replacement for copper. The failures which were experienced included pinholes, splits and sheers throughout the system. The city is replacing the plastic pipe en masse. At first, they only replaced it as the pipe failed, but then decided it was necessary to replace the entire system because of the extent of failure. The estimated cost to the city, as determined from a lawsuit which has been filed, is approximately 50 million dollars.

EL PASO, TEXAS

This community used polyethylene, 3406, Hyd-molecular. It was used for approximately eight years and began to be phased out in approximately 1979. No plastic pipe is used at this time. The failures included fine stress cracks, longitudinal cracks, caused by stress on the pipe itself. The water utility is replacing the pipes as they fail, and is not doing mass replacement. The estimated cost for the failures is approximately 2 million dollars.

SUMMARY OF PLASTIC PIPE

WATER SERVICE FAILURES

(continued)

IRVINE RANCH WATER DISTRICT, CALIFORNIA

This community used polyethylene beginning in 1961 and discontinued use in approximately November, 1982. It was used primarily in new development areas, and was not used to replace copper unless the whole line had to be replaced. Failures included the pipe splitting in half, which was attributed to a stress problem, longitudinal cracking and soil conditions. In addition, there was a hardening and shattering of pipe. A management decision was made to replace the pipe as it fails. The cost from the failures is approximately 38.1 to 38.25 million dollars.

GERMANTOWN, TENNESSEE

This community used polyethylene and polybutylene from approximately 1973 to 1978. Ninety percent of the plastic pipe was polyethylene. It was installed primarily in all new subdivisions. Failures from the pipe included breaking due to brittleness and snapping, usually very close to the connection at the main or the meter where there was the most stress. The pipe split around the circumference rather than longitudinally. Costs from the failures are estimated, due to the fact that this community is also involved in a lawsuit against the manufacturer. Estimated cost is 1.2 million dollars.

TOTAL ESTIMATED COSTS FOR FAILURES FROM THE ABOVE JURISDICTIONS:

97.5 - 97.65 million dollars

1/11/83.

Seattle Post-Intelligencer
FIRST NEWSPAPER
Saturday, June 22, 1985
25 Cents

Cloudy
High mid-60s
Details/D2

Ueberroth: teams will stay put/B1

NCAA is getting tough/B1

City fear: Plastic pipe lets poisons in

By Jane Hadley
P-I Reporter

The first time Alicia Berger, 29, drank a glass of water at the West Seattle house she was renting, she spit it out because it tasted so bad.

Soon, she and her boyfriend, Jeffrey Lewis, 38, found that their water was contaminated by xylene and toluene, two organic solvents commonly found in airplane glue, gasoline, paint solvents, plastics and other products.

As a result of five or six similar cases, the Seattle Water Department may stop using plastic water pipes, an official said.

The city already has tightened its policy within the past year on plastic water pipes, no longer installing them in industrial or commercial areas, said Jim Chapman, supervisor of water quality at the city Water Department.

Organic solvents

But now Water Department executives soon will discuss going even further and discontinuing their use altogether, he said.

The main problem with plastic pipes is that organic solvents can permeate the pipe, polluting the water they carry, said Roy Jones, an environmental scientist for the U.S. Environmental Protection Agency.

Typically, the ground around the pipe becomes saturated with a solvent, such as gas or oil or paint thinner, which passes through the pipe wall to the water.

A second problem is that certain kinds of adhesives used to join some plastic pipes also permeate the pipe and contaminate the water.

Plumbing code

The plumbing code requires that the right combination of adhesive and plastic be used, but Jones says it's hard for plumbing inspectors to know whether an installer has used the correct adhesive.

Chapman said the city began to use plastic pipe in the early 1960s and estimates that maybe half the city water lines serving residences are on plastic pipe today.

In the last two or three years, there have been about six cases in which residents have reported drinking water contaminated with organic solvents such as toluene, xylene and benzene, Chapman said.

Benzene is a known human cancer-causing agent, linked to leukemia. Xylene and toluene are

Page TWO, Page A-1



JOHN COLUMBERG / P-I PHOTO

Jeffrey Lewis and Alicia Berger had to leave a rental home because the water there was contaminated with organic solvents. Plastic water pipes may have been part of the problem.

Two leave rented house because city water there is contaminated

From Page A-1

not linked with cancer but can cause kidney, liver and central nervous system damage.

In all but one of the cases, the residents lived in commercial or industrial areas, Chapman said. But in one case, the home was in a residential neighborhood.

Chapman speculated that in that case somebody poured oil or some other petroleum product into the gutter and it leaked through an expansion joint in the concrete to saturate the soil around the water pipe.

In each case, the city replaces the plastic pipe that runs from the street to the property line with copper pipe. It's up to the property owner to replace the pipe from the property line to the house.

Berger and Lewis moved into a rented house last Nov. 28 on a sparsely populated, overgrown ridge in West Seattle just above Marginal Way Southwest. By Jan. 1, they had moved out.

The two were so upset by their experience they didn't even want to talk about it for several months, said Lewis, a teacher of Indian music.

He complained that officials at various agencies were slow to respond initially, never called back when they said they would, were timid and uninformative and tried constantly to limit their responsibility for the problem.

"Everybody was very nice, but nobody would make a commitment," he said. Meanwhile, the couple was driving 40 miles round-trip to shower every day, borrowing water from people across the street and eating elsewhere.

Berger, a graduate student at the University of Washington, and Lewis hired a private lab to test the water, because they felt the Water Department would not do a test.

But the Water Department crews digging up ground near the meter box along Marginal Way Southwest to install copper pipe, the soil was clearly contaminated and gave off a strong solvent odor, said Jones of the EPA.

Lewis said, "From 20 feet away you could smell this ground they were digging up. It stunk."

But though the Water Department did replace the pipe, nobody ever did anything about the contaminated soil.

In fact, Water Department crews started to cover over the new pipe with the old contaminated soil until Lewis questioned the wisdom of that move.

"Aren't you just asking for trouble?" Lewis asked. The crews then decided to haul the soil away and put clean dirt down instead.

Jones said he was at the site "strictly as an observer." Jane Lee of the Seattle-King County Department of Public Health said once she saw that the water department replaced the pipe, she considered her responsibility over.

Chapman said the Water Department's responsibility was only to replace the plastic pipe.

He said nobody checked to see whether the contamination is widespread or limited to the meter box area. And nobody checked the source of the contamination.

He said it would be hard to know where it came from, though he added, "Obviously, with the painting contractor next door, that would be suspicious." The meter box is adjacent to the property of Central Painting Inc. on Marginal Way Southwest.

Both Jones and Chapman said any soil contamination would be in the jurisdiction of the state Ecology Department. But the Ecology Department was never called about the case.

And Joan Thomas, director the Ecology Department's regional office in Redmond, said soil contamination is a problem that is rarely reported to her department. She said groundwater pollution almost always starts as soil pollution.

When asked whose responsibility the soil contamination would be, Thomas said: "I can't say it was anybody's responsibility. I'm saying I don't know."

Tom Hubbard, a water quality biologist for Metro, said he considers it important to follow up such reports of soil contamination. Hubbard has been meticulous in testing the shores of the Duwamish River the past several years trying to figure out where various river pollutants come from.

Jones of EPA said: "The problem is because of different jurisdictions since the delegation of programs back and forth, that has leaved some pretty big gaps in the system. I'm not saying they're right, but they exist."

Chapman said: "It's an area of mixed responsibilities. It's not entirely clear who does have responsibility. I agree it's not a terrific situation."

One person who has taken a stand on the source of the pollution is the owner of the house Berger and Lewis were renting. Landlady Carol Knox, a Cashmere resident, recently filed suit against Central Painting Inc.

Knox's Seattle lawyer, Linda Larson, said the suit alleges that the paint company released chemicals into the soil which ended up in the water line to Knox's house.

Though the new copper pipe put in by the Water Department reduced the levels of contamination, the drinking water is still contaminated, said Chapman.

Knox probably will have to replace at least some of the pipe on her property. To replace all of it up to her house, a long distance up a steep hill, would cost an estimated $23,000, said Knox's lawyer.

John Hamilton, president of

Section D | Classified D/5
Wednesday
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Seattle Post-Intelligencer

D-2 WEATHER
D-4 COFFEE BREAK
D-12 FUNERALS

City halts use of plastic pipes for drinking water

By Jane Hadley
P-I Reporter

The Seattle Water Department has placed a moratorium on its use of plastic pipe that delivers drinking water.

"We're not using any until we do come to a final decision" about the safety of the pipe, said Jim Chapman, water quality supervisor for the department.

"We've been contacted by a number of people who claim to have further information."

Water contaminated

The moratorium follows the discovery by a couple renting a home in West Seattle that their water was contaminated with toluene and xylene, two substances commonly found in airplane glue, gasoline, paint solvents and other products.

When the department investigated, it found soil around the meter box contaminated with a strong-smelling solvent. The department then replaced the plastic pipe from the street main to the meter box with copper pipe.

Plastic pipe is a problem because it can be permeated by organic solvents such as gasoline or trichloroethylene, a widely used degreasing solvent. Also, certain glues used to join the pipes are toxic and permeate the pipe to contaminate the drinking water inside.

The city first began to use plastic pipe in the early 1960s for service lines that run from the mains in the street to meters, Chapman said. He estimated that about half the service lines in the city are some type of plastic pipe. The mains are not plastic.

Many lines from the meters to the houses probably also are plastic, Chapman said, but property owners are responsible for installing those.

Forbidding use of plastic for those lines would require a change in the plumbing code, which the City Council would have to do by ordinance.

Chapman said there have been six or seven cases in Seattle within the past two or three years in which drinking water was contaminated when organic solvents penetrated plastic pipe.

All but one were in primarily commercial or industrial areas, where the likelihood of gasoline spills and other soil contamination is greater than in residential areas.

Installations halted

Consequently, the city already has stopped installing plastic water pipes in commercial and industrial areas. The new moratorium applies to residential and all other areas.

Bob Giron, business agent for the United Association of Plumbers and Fitters Local No. 82 in Seattle, said yesterday that plumbers oppose the use of plastic pipe for drinking water.

"It's not delivering as pure an item as it should be," he said. "And from the workers' standpoint, the glues and solvents we have to use we feel are dangerous."



Reeves Journal - July 1985

Southwest Gas Replacing ABS Pipe in Gas Lines

PHOENIX, — Southwest Gas Corp. has been given the central business area top priority in its program to replace an estimated 2,300 miles of possibly defective gas pipe.

The utility acquired the gas distribution system from Arizona Public Service (APS) last November.

The first phase of the project is expected to require between three and four months and will depend on several contractors working simultaneously in various sections of the target area. Some of the work is already underway, according to John Hanenburg, program manager.

Utility officials noted that the program will involve all ABS-type plastic pipe. APS had used the pipe extensively in the Greater Phoenix area and in other parts of Arizona between 1959 and 1971.

Officials said the pipe constitutes about 23 per cent of the entire system. The whole replacement program will cost an estimated $120 million and will last about six years.

The ABS pipe was involved in an explosion in Phoenix last September that killed five persons and prompted an investigation. The probe revealed that the pipe was aging more rapidly than expected initially.

Reeves JOURNAL - JULY 1985

Oregon City Seeking $3 Million to Replace Broken Plastic Pipe

by Jim Norland

MEDFORD, Ore. — This southern Oregon city of 50,000 is asking seven suppliers of plastic pipe to reimburse more than $3 million in damages the city expects to sustain in replacing the polybutylene water pipe bought between 1971 and 1981.

Attorneys for the Medford Water Commission and the City of Medford told the suppliers by letter, "It would appear . . . that this water pipe does not meet the requirements, warranties or representations made by you at the time of sale."

The city and the water commission have recently discovered defects and consequent breaking of "numerous pipe," says W. V. Deatherage, a member of Frohnmayer, Deatherage, deSchweinitz, Pratt & Jamieson, P.C., Attorneys at Law, in Medford.

Deatherage has asked each of the seven suppliers to notify his firm by June 26 whether they want to reimburse the two government entities "for the damages they have suffered as a result of said defective pipe."

"The Medford Water Commission will be required to replace all of this water pipe, which it has estimated will be at a cost in excess of $2,000,000," Deatherage's letter continues.

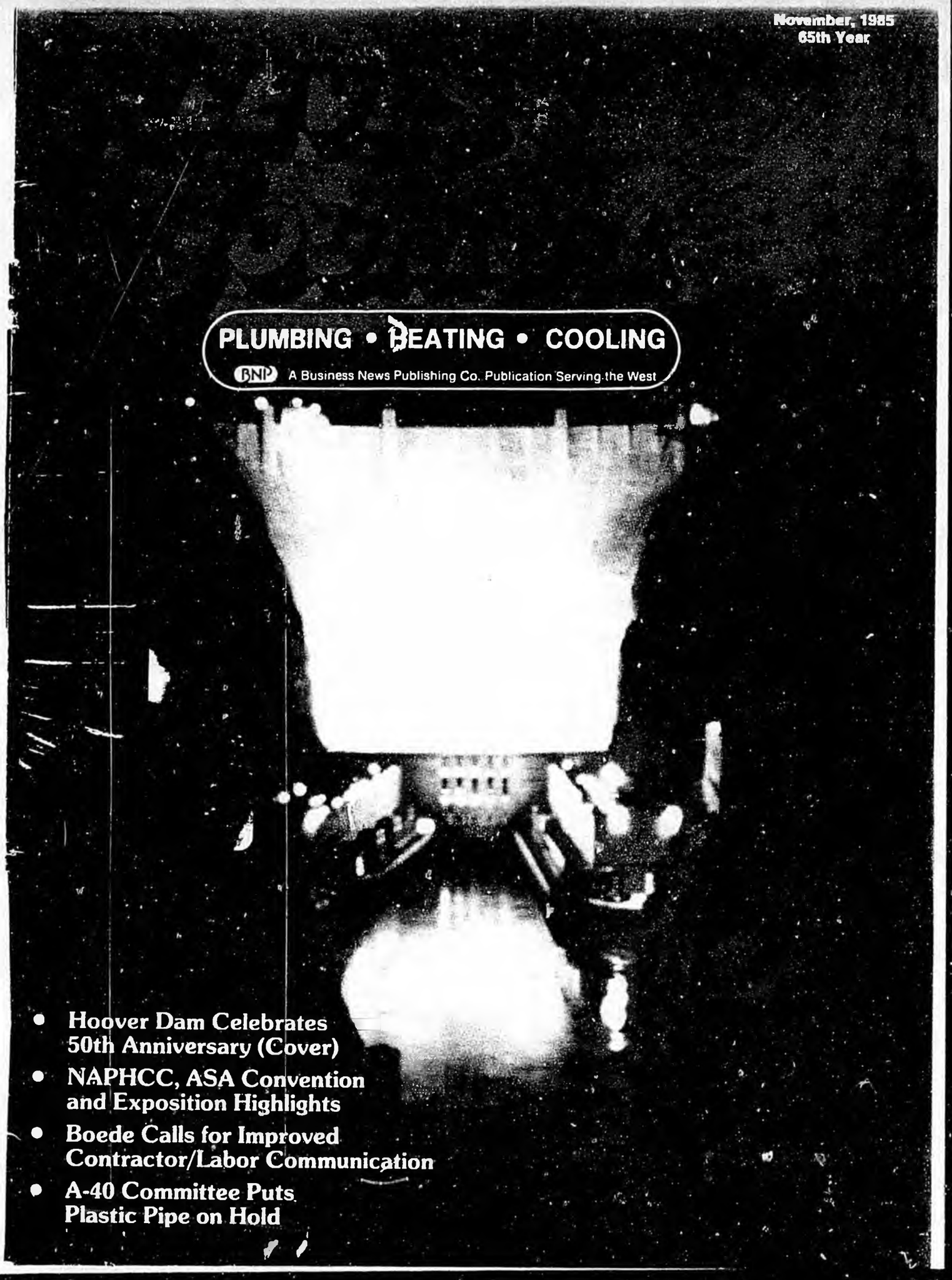
Medford City Attorney Gene Clark told **Reeves Journal** that the total damage is expected to be "in excess of $3 million, but no one supplier is expected to be responsible for more than $2 million."

Letters identical to the one quoted went to The Flintkote Co., Pipe Products Group, Orangeburg, N.Y.; Clow Corp., Plastics Division, P.V.C. Plastic Pipe, Bensenville, Ill.; Western Products Co., Union City, Calif.; Hinds Supply Co., Beaverton, Ore.; Westflex Manufacturing Co., Division of Western Plastic & Rubber Co., Richmond, Calif.; Budge-McHugh Supply Co., Medford; and Consolidated Supply Co., Portland, Ore.

November, 1985
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- Hoover Dam Celebrates 50th Anniversary (Cover)
- NAPHCC, ASA Convention and Exposition Highlights
- Boede Calls for Improved Contractor/Labor Communication
- A-40 Committee Puts Plastic Pipe on Hold

Calif. Attorney General Critical of IAPMO Decision

SACRAMENTO — California's attorney general has written a brief of amicus curiae in support of the anti-plastics factions involved in an appeal of a court decision requesting that an injunction ordered against the International Association of Plumbing and Mechanical Officials (IAPMO) in 1983 be extended to IAPMO's 1985 Uniform Plumbing Code (UPC).

A number of parties, including the State Building Constructio Trades Council of California (backed heavily by the United Association), filed suit in 1982 in an attempt to prevent IAPMO from circulating its 1982 edition of the UPC in California because of the addition of several new plumbing code changes which allowed plastic piping materials to be used for potable water within buildings for the first time under UPC guidelines.

The anti-plastics concerns attempted to stop circulation of the 1982 UPC in their lawsuit, which was also filed by the former director of the state's Department of Consumer Affairs, Richard Spohn, and a handful of environmentalist groups and individuals. The original suit alleged that IAPMO did not have the jurisdiction to make such additions to the code and that it was violati[illegible] the state's Business and Professions Code.

Los Angeles Judge Jack A. Crickard ruled in the county's superior court, however, that IAPMO was not in violation of any laws or alleged unfair business practices and ruled against the anti-plastics factions' efforts to stop the publication of the 1982 UPC.

Crickard based much of his decision in favor of IAPMO on his opinion that there was not sufficient evidence to back up the anti-plastics camp's claims that plastic piping could be hazardous to the public health. Crickard did rule in favor of an environmental impact report to provide further input and agreed to issue an injunction on the code calling for a disclaimer to be distributed with the 1982 UPC in California, stating that an environmental impact report is in progress and advising users of the newly added plastics materials to consult with their local officials as to the status of plastics.

IAPMO had already agreed to voluntarily print the disclaimer before the injunction was ordered.

The injunction was scheduled to be in effect only for the 1982 UPC. Now, as the 1985 UPC is being published (IAPMO issues a new update every three years), the plaintiffs in the case have attempted to continue the injunction through the appeals process.

California District Attorney John Van De Kamp issued his opinion, which has no enforcement powers, on Oct. 15. In his statement, Van De Kamp stated that he felt the appeals case in question falls "within the ambit of Business and Professions Code Section 17500" and that "IAPMO's conduct constitutes a violation of that section."

Van De Kamp called for the extention of the trial court's injunction to apply to the 1985 UPC and the 1985 IAPMO Research Directory (which lists approved products).

One of the primary contentions of the original lawsuit was that IAPMO did not have the authority to list products or grant product approval for products said to be in compliance with the standards of the UPC. Crickard rejected this claim and, in fact, praised IAPMO's efforts and professionalism in making such determinations, citing the input and testimony of the National Sanitation Foundation, which provides testing information for IAPMO and other model code writing bodies.

Van De Kamp's opinion challenges IAPMO's right to make such determinations and contends that the organization's operations should be governed under the Business and Professions Code.

A-40 Committee Puts Plastic on Hold

by Larry Dill

CAMBRIDGE, Mass. — In an effort to avoid becoming bogged down in a never ending materials debate that could slow progress on the American National Standards Institute's A-40 Committee on Safety Requirements for Plumbing, the committee voted during its Oct. 22-25 session here to withhold acceptance of plastic piping materials for use in domestic hot and cold water systems for potable use until it can receive more input on the subject from impartial, outside sources.

The action took place following a follow-up to the controversial discussions about plastic pipe at the committee's last session in July in Universal City, Calif. The July session of the A-40 Committee was highlighted by presentations from plastic pipe advocates and opponents. It was during the July session that both sides of the issue were provided with equal time to discuss the plastics issue.

The anti-plastics camp headed by the United Association presented a well organized and emotional program featuring its two key "expert witnesses," attorney Raymond Leonardini, and Dr. Marc Lappe, PhD., two of the key figures in the union-backed California Pipe Trades council's long running legal battle with the International Association of Plumbing and Mechanical Officials (IAPMO) over the use of plastic pipe in Uniform Plumbing Code (see page 24).

The Plastic Pipe and Fittings Association's participation in the July presentations consisted of a brief six-minute summary of its position on the issue of alleged permeation and leaching of plastic piping materials and the distribution of two documents supporting its position.

After much debate after the July program, PPFA, which had contended that it was not properly notified of the format of the July presentations (which was refuted strongly by A-40 officials), was extended a second invitation to present its case before the A-40 body during the October session. The presentations were established on a similar format with each side given 45 minutes to present its testimony. Following the testimonies equal time was also provided for rebuttals and question answering sessions.

This time it was the plastics advocates who rolled out their team of hired guns in the expert witness derby.

The United Association, which was called upon to make its presentation first, was content to have its legal counsel briefly state that the union felt it had adequately presented its case in July and that it did not feel further input was necessary to express its views on the plastics issue. The United Association then distributed new documents for the committee members' consideration including an opinion (which has no legal binding power) by California attorney general John Van De Kamp on the on-going IAPMO court case over the use of plastics in the Uniform Plumbing Code (see page 24). In his statement, Van De Kamp voiced the opinion that an injunction which called for the inclusion of a disclaimer notifying users of the 1982 UPC in California that an environmental impact report was in progress to study plastic products, be extended for distribution with the 1985 UPC in California.

The United Association also distributed copies of a study being conducted by scientific experts at the University of California, Berkeley. The study, commissioned upon the request of the state's Department of Health Services, is providing a review of recent literature and research on the permeation of plastic pipe. The materials distributed were released Sept. 30 and represent the first half of a study that is scheduled to be concluded by April 1, 1986.

Also distributed were copies of correspondence to Leonardini from a representative of the California Department of Housing and Community Development which included a recent press release explaining the suspension of the environmental impact report assigned to Versar, Inc., a Virginia based research firm. This was accompanied by an audit of the work performed by Versar before suspension of the project.

Plastics Testimony

The plastics proponents were keyed by PPFA representative Jack Lancaster, who repeated PPFA's position following the July presentations. Lancaster continued to state that "PPFA believes, as it has stated other times, that this committee is not the appropriate group to decide complex, scientific and technical issues with regard to plastics or with regard to any other materials."

"None of us has the professional expertise to decide issues like alleged permeation and leaching that have been raised against plastic pipe in this committee," Lancaster continued.

Apparently intent upon stressing its position that the members of the A-40 Committee did not have the technical or scientific background to make decisions on plastics materials, the PPFA representatives innundated the voting committee members with more than 50 documents on the plastics issue. They then presented three witnesses of their own to provide technical testimony on various aspects of the plastics issue.

PPFA's witnesses included Steven C. Packham, PhD, of Salt Lake City, a longtime toxicologist who has worked with a number of governmental and scientific agencies, who announced that he is currently conducting a study of all available data on plastics.

Another witness was Joseph Zicherman, PhD, of Innovative Fire Technology, Berkeley, who discussed his work with studies concerning plastic piping materials in fire stations.

The third PPFA witness was Alan Olson, PE, of B.F. Goodrich's chemical group. Olson addressed the charges of permeation in plastic piping.

Put on Hold

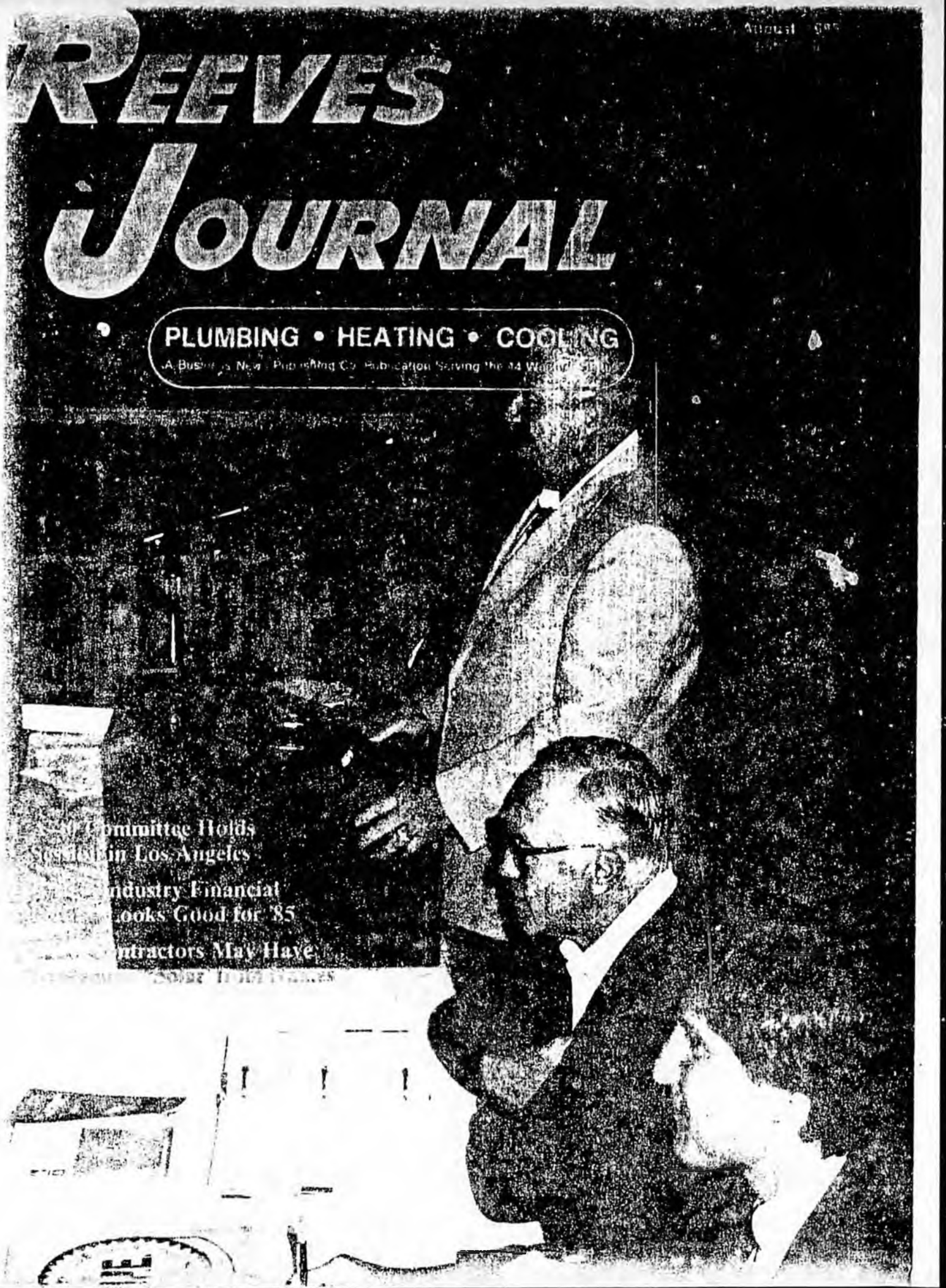
Following the presentations, the committee was still faced with the monumental task of forging ahead with the A-40 document's Table 3.1.3 which provides "standards for materials, equipment, joints and connections."

Realizing that the table, which must be passed before any definative progress can be made toward completing the document, contains hundreds of pro-

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Edward Brabec of the United Association ponders the large stack of technical materials presented to A-40 members for their study on the plastic pipe issue.


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duct listings and their relating standards, the committee members were faced with the possibility of having progress slowed by debates on every plastics product that appears in the table.

In an effort to avoid such delays, Donald Dickerson, representing the American Society of Plumbing Engineers, suggested a motion which stated:

"Serious concerns regarding the suitability of plastic pipe to convey domestic hot and cold water for potable use have been brought before this committee.

"The committee has heard presentations and received materials regarding data which has been compiled and tests performed, planned and underway which deal with and address the 'complicated chemical, medical and public health questions' involved in such issues.

"It has been stated, and we believe, that much more work must be done in order to provide those data necessary to (make) a sound decision on these important matters.

"With all of the above in mind, the A-40 Committee is withholding acceptance of plastic pipe for use in domestic hot and cold water systems for potable use until such time as clear, definitive and impartial data are available which can substantiate its use for this purpose."

After acceptance of the motion, the committee members agreed that material from an outside source should be submitted and then studied before the committee made any decisions on plastics.

Refuting the charges by PPFA that the A-40 body is not capable of making the proper decisions on plastics, Dickerson noted that the body was qualified to make such determinations provided that it was given sound and impartial study results to evaluate. "I believe we have within this body the ability to analyze pretty technical reports," Dickerson said.

Vincent Doyle, co-chairman, said, "Collectively, we're probably the finest minds in the country in the plumbing industry."

PPFA's Richard Church protested the singling out of plastics materials and asked that all piping materials be studied. His pleas fell upon deaf ears. He continued his contention that the plastics industry would be willing to participate in such studies "if it was done across the board."

The A-40 Committee scheduled its next session for January in Tampa. At that time it will resume work on Table 3.1.3, which is nearly halfway completed with the exception of the plastics materials which have been placed on hold.

Materials Controversy Continues

Anti-Plastics Forces Bring Out Hired Guns in LA A-40 Session

by Larry Dill

UNIVERSAL CITY, Calif. — It was only fitting that the American National Standards Institute's A-40 Committee on Safety Requirements for Plumbing hold its latest meeting at the Universal Sheraton Hotel here July 23-25.

Overlooking the Universal Studio lots, soundstages and outdoor arenas used for western stunt shows and the like as part of the studio's tours, the hotel was the perfect site for an old fashioned shootout between the advocates and opponents of plastic piping materials. The only trouble with the shootout, however, was that it was as one-sided as Custer's debate with Sitting Bull. If it was a fight, it would have been stopped on cuts in the third round.

While the majority of the three-day exercise was dominated by tedious reviews of the A-40 Committee's Table 3.1.3 (Standards for Materials, Equipment, Joints and Connections) and discussions regarding the chapters pertaining to such products in the developing model code being formulated by the committee, the liveliest session took place on the opening afternoon when it was announced that there would be a 90-minute discussion on permeation of plastic piping materials, providing 45 minutes for both advocates and opponents of plastic pipe to speak, to be followed by a 10-minute question-and-answer session.

The first speaker called to the podium was Jack Lancaster, spokesman for the Plastic Pipe and Fittings Association (PPFA). Lancaster briefly outlined PPFA's position on the issue of pipe permeation and reviewed two documents — a review of the plastics industry's position on permeation (which had the joint letterheads of the Plastic Pipe Institute, the Vinyl Institute, the Uni-Bell PVC Plastic Pipe Association and PPFA) and a copy of PPFA's position that characteristics of water and soil should be considered when making materials selections.

The former document listed the advantages of using plastic piping materials and the latter stressed that proper evaluation of soil and water conditions would lead to responsible selection of materials. The conclusions of the second document stated that "in order to maintain a viable supply of potable water, thought must be given to the installation of affected materials in known or suspect soil and ground water conditions which may cause permeation, corrosion or structural failure of the pipe, tubing or fittings."



Jack Lancaster, Plastic Pipe and Fittings Association, reviews PPFA's position on pipe permeation.

The point of Lancaster's presentation, it appeared, was that all piping materials are subject to failure or permeation and leaching under particular circumstances.

Lancaster's statement was concluded in approximately six minutes and he sat down with nearly 40 minutes still alotted to him. The shortness of Lancaster's presentation was surprising to many of the committee members present at the session, including one who candidly told **Reeves Journal**, "I went to the bathroom and when I got back Jack was sitting down."

Opponents Speak

After Lancaster concluded his remarks and left the podium, chairman Vincent Doyle, representing the Mechanical Contractors Association of America as part of the joint committee with the National Association of Plumbing-Heating-Cooling Contractors as joint secretariats of the committee, called for the other speakers to step forward.

If Lancaster's presentation appeared to be surprisingly short and light to the committee members, what was to follow was a grand performance.

The committee members next witnessed a very organized, polished, professional and dynamic presentation by Raymond J. Leonardini, the attorney who has represented the California Pipe Trades (consisting primarily of United Association interests) in its legal battles with the International Association of Plumbing and Mechanical Officials (IAPMO) during the last three years over the addition of certain plastic pipe products to the Uniform Plumbing Code. He was followed by Marc Lappe, PhD and the chief consultant to the California Pipe Trades on matters concerning its charges that plastic pipe contains toxic materials which are hazardous to the health of the public.

Leonardini, in his best courtroom manner, delivered a moving presentation blasting plastic piping products and their usage in plumbing systems. He also called for the A-40 Committee members to use their own judgment to keep plastics from their model code document. Lappe followed with supporting statements from a health policy consultant's viewpoint, before Leonardini delivered the closing summation.

Toxic Spills

Addressing the subject of permeation, Leonardini cited statistics that estimate 300 toxic waste spills in California every three months. "You don't know where those spills are going to be," he said, "so the idea of analyzing permeation and saying not to put them (plastic pipes) in areas where there are known toxins" is similar to "closing the corral after the horses are out."

"How are you going to know where there is going to be a toxic spill?" Leonardini asked, labeling the committee members "public policy makers and public health officials."

The attorney then pointed out that while efforts are made to determine locations that were once the sites of hazardous wastes, several cases pop up each year where housing tracts have been found to be built on waste sites three or four years after their construction.

One of Leonardini's strongest contentions was that research performed by the American Water Works Company revealed that toxic vapors, particularly from gasoline products, can permeate plastic piping as well as liquids.

"Now where are you going to put pipe to avoid infiltration and permeation by vapors?" he asked.

Leonardini went on to discuss a recent lawsuit filed in the San Jose region concerning polybutylene piping system failures. Submitting a deposition on the issue for the record, Leonardini called the failure rate of PB "time dependent."

"Because of the chemical development of that pipe (PB), if you wait long

enough that particular installation will fail," he claimed.

Leonardini concluded his opening remarks and called upon Lappe, a former official with California's Department of Health and the chief consultant in the lawsuit brought forward by the California Pipe Trades Council and the state's former director of the Department of Consumer Affairs, Richard Spohn, who lent his name to the IAPMO lawsuit under the banner of the Department of Housing.

"I want to thank this group for giving me the opportunity to speak, and the United Association for bringing me here," Lappe said in his opening remarks.

Lappe later explained that the quality of drinking water is generally measured at its source in public treatment facilities. "We assume that nothing happens to it to aid and abet any levels of contaminants in transit," he added, charging that contaminants are being picked up through plastic piping systems.

"We also know of contaminants from metal ions and we are assuming that they are not raising the level of lead, copper or arsenic above the levels that are permissible from the source."

Lappe pointed to three studies conducted by the Pipe Trades Council (under his supervision), the American Water Works Company and the Vinyl Institute.

"What each of these studies found was that there are differences as clear as day and night between plastic and metal," he said. "Plastic permeates certain organic chemicals of health concern. Metal absolutely unequivocally does not."

Leonardini Summarizes

Leonardini followed with a tight, passionate conclusion that hit home with a number of emotional charges and pleas to the committee members.

The attorney challenged IAPMO (which has successfully defended its position on plastics against the Pipe Trades Council, et al in the courts, largely from a judge's ruling that no sufficient evidence has been produced to show any health hazards from plastic piping) and its 1982 UPC additions of plastics. He also questioned the validity of the National Sanitation Foundation which presented key testimony in IAPMO's California lawsuit.

Noting that IAPMO relies upon NSF testing, Leonardini said "NSF 14 is an inadequate standard for the evaluation and analysis of leaching characteristics in plastic pipe.

"Can you trust EPA? EPA is talking about relying on NSF. EPA has not developed drinking water standards for any of the chemicals that are involved."

Leonardini concluded by stating that all of the data is yet to be received and that it would probably take at least another year and a half to gather all information and comments on the conclusions.

"You have nothing to gain and everything to lose" by acting before governmental studies are completed, he said in closing.



John Woodward, Cast Iron Soil Pipe Institute, expresses his opinion during a discussion of the A-40 Committee's proposed product standards.

Confusion Begins

The polished presentation by Leonardini and Lappe was followed by Doyle's announcement that "in the interest of fairness to both sides and everyone who is on the committee," a 10-minute question-and-answer period would follow.

Lancaster returned to the podium and began to comment on the remarks made by the other two speakers by first acknowledging that he, indeed, represented PPFA and that the other speakers were employed to represent the interest of the United Association.

Lancaster's remarks were quickly met with an objection from Edward Brabec, executive vice president of the United Association. This was followed by Doyle's announcement that the remaining time would be limited to questions from the floor, not rebuttal statements.

Lancaster protested the procedures and then left the podium where Leonardini and Lappe proceeded to answer several questions from the committee members regarding their statements.

Very Convincing

To the members of the audience, it must have appeared as though the anti-plastic speakers clearly presented a very convincing argument for their case, while the plastic concerns failed to prove any of their contentions.

When confronted with the question of why Lancaster had failed to make a more comprehensive and prepared statement, PPFA attorney Robert Creamer and Lancaster both charged that they had no prior knowledge that speakers were going to be given 45 minutes each nor were they informed of the type of presentation Leonardini and Lappe were going to make.

While the plastics representatives claimed that they had not been contacted directly by the committee, but that a message was delivered through a third party, chairman Doyle told **Reeves Journal** that he did speak to Lancaster personally by telephone. William Abernathy, committee secretary, George Kaufman, co-chairman, and at least two A-40 members told **Reeves Journal** they had been told that PPFA was notified of the anti-plastics concerns' plans to appear at the meeting more than a month prior to the sessions.

Creamer told **Reeves Journal** that PPFA did not have any plans of making a similar presentation before the committee because the organization did not feel it was the proper venue to air such testimony.

"This group, regardless of what they call themselves or how they self-anoint themselves, is not competent to make these kinds of decisions, and we are not going to engage in a debate before the A-40 Committee on scientific and technical matters.

"The union can bring in people to talk about whatever they want, but we are not going to do anything that would imply that this committee is competent enough to make those kinds of judgments.

"For us to bring in toxicologists would be, in effect, to submit this issue to this group; and it doesn't belong here. This may be a safety code in terms of traditional concern of plumbers for safety, in terms of what is a safe plumbing system, but I don't believe that makes this group competent to decide whether a particular kind of plastic pipe leaches or is permeable to

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Final Arguments Presented In Calif. Suit Challenging AC Efficiency Rates

by Larry Dill

SACRAMENTO, Calif. — A Sacramento county superior court judge is expected to deliver a final decision in early October on the lawsuit pitting air conditioning manufacturers against the California Energy Commission (CEC) over the CEC's proposed 1988 and 1993 minimum energy efficiency standards.

Judge James I. Morris heard final arguments from attorneys on July 16, and agreed to allow both sides of the litigation to file final closing briefs within 15 days. Upon filing of the briefs, which will be limited to material presented during the July 16 court session, the parties involved in the suit will then have 30 days to file written responses. Upon review of the material submitted, Morris will then deliver his written decision, probably in early October.

The suit was filed by Lennox Industries, Inc., Bard Manufacturing Co., Heil Heating and Cooling Products and Borg-Warner Central Enviromental Systems, Inc.. In a related action, American Standard's Trane Division has petitioned the CEC to reconsider its decision to adopt a minimum seasonal energy efficiency ratio (SEER) of 8.9 — beginning in 1988. The SEER would raise to 9.9 in 1993. California's current minimum SEER is 8.0.

The majority of the July 16 session centered around closing arguments by attorneys Thomas Knox, who represents Lennox Et Al. and Bruce Dodge, legal counsel for Trane.

The plaintiffs' attorneys focused their attention on charges that the CEC staff was selective in its use of reference materials, particularly data from the Department of Energy, and claims that the proposed regulations would drastically increase costs while resulting in products and requirements that would not be cost effective for consumers.

"We're very optimistic about the outcome," David F. Lewis, director of marketing for Lennox Industries, told **Reeves Journal.** "We think that the regulations will end up costing the consumer a lot more money. The key is that we don't feel it will be cost effective for the consumer."

Lewis also pointed out that the manufacturers contend CEC reached its decision through the selection of data that would only support its position.

Knox outlined a number of points raised in previous testimony which are being challenged by the manufacturers.

While questioning the methodology used to evaluate such factors as feasibility of compliance, discount rates, maintenance costs and particularly the "design life of units," Knox zeroed in on his clients' contention that the CEC did not have sufficient evidence to develop its regulation. Knox contended that CEC used the wrong "baseline" to determine the cost efficiency of air conditioners that would be subject to the regulations.

"They used the wrong yardstick to measure the cost effectiveness of the 1993 standards," Knox said. "There is no evidence considered that states SEER 9.9 will be cost effective in 1999," he added.

A large portion of the final session was spent arguing the language used in the regulation. The primary question was whether units covered by the regulation should be classified as residential or commercial or single and triple phase air conditioners.

Dodge stated that no data was submitted on a commercial category and that there is no evidence to support the contention the proposed SEERs would be cost effective. He suggested that the regulation be sent back to the CEC staff to either add language specifying commercial air conditioners or that commercial units be exempted from the action.

Exemption would be more favorable, he argued, because of the projected difficulty in enforcing such distinctions, particularly in light of the possibility of units designated for commercial applications being used for residential installations.

In challenging the CEC's selection of data in its regulation formulation process, Knox contended that the CEC staff ignored workshop testimony and input from industry sources and instead selectively referred to data that only tended to back its position on SEER minimums, particularly information from DOE.

Alan B. Lilly, deputy attorney general representing the CEC and the State of California, responded that CEC didn't rely on testimony supplied by industry because it was "just the opinions of their engineers."

CEC has been joined in the defense of the proposed regulation by Carrier Corp. and the Natural Resources Defense Council.

A-40 Committee

Continued from page 10

such a point that it should not be used in plumbing systems.

"No one on that committee is competent to make those kinds of decisions, and it's ironic to note that through all of the procedures they have said they are incompetent to decide whether lead should be used. They have decided they aren't competent to decide whether certain kinds of asbestos products should be used in the code. They have said they are not competent to make judgments whether certain kinds of pipe assemblies are fire retardant. They have denied competence to determine all kinds of issues, but yet when it comes to these extremely complex, complicated and controversial issues about plastic pipe, then all of a sudden there is a group of people that is in there who deem themselves highly competent to decide if plastic pipe should be used.

"And that's what we have, but we simply aren't going to submit that issue to this group. So we're not going to come in with our own dog and pony show."

Both Lancaster and Creamer contend that governmental agencies such as EPA and the Department of Health should be involved in the study and evaluation of the issue.

Couldn't Rebut

Lancaster protested the fact that he was not provided the opportunity to answer the charges made by Leonardini and Lappe, stating that they made several misstatements of fact.

As an example, he countered that the lawsuit in San Jose is centered around a mechanical fastening system, not issues concerning cancer. "He was pulling apples and oranges," Creamer added of his legal counterpart.

When it was pointed out to the plastics spokesmen that a member of the audience would surely have to be influenced by the presentation made by their foes, based on PPFA's lack of performance, Creamer concluded, "You got the message that the sponsors and the union people wanted you to get because, again, we were never told what was going to happen and they had a canned, rehearsed, slick presentation. The other thing to remember, and I'll stop saying it eventually, is that this is not the forum for that kind of thing."

Regardless of the contentions of PPFA, they may find that their counterparts on the committee left with a very strong impression from the presentation made by Leonardini and Lappe. If they were keeping score in the grandstands, the committee members may have concluded that it was no contest. The hired guns scored a TKO.

2 CIV. B008952
(LASC No. C395294)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

FRIENDS OF THE EARTH, CONSUMER FEDERATION OF CALIFORNIA, STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA, AFL-CIO, and AILEEN ADAMS,	)
Plaintiffs and Appellants.	)
v.	)
INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, a California corporation,	)
Defendants and Respondents.	)

ON APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE JACK A. CRICKARD, JUDGE PRESIDING

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANTS' FRIENDS OF THE EARTH, ET AL.

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

FRIENDS OF THE EARTH, CONSUMER FEDERATION OF CALIFORNIA, STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA, AFL-CIO, and AILEEN ADAMS, Plaintiffs and Appellants. v. INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, a California corporation, Defendants and Respondents.	2 CIV. B008952 (LASC #C395294)

BRIEF OF AMICUS CURIAE
IN SUPPORT OF APPELLANTS'
FRIENDS OF THE EARTH, ET AL.

* * *

INTRODUCTION

This Amicus Brief is filed by John K. Van de Kamp, Attorney General of the State of California, pursuant to his duties as chief law enforcement officer to assure uniform and adequate enforcement of state laws. (Cal. Const., art. V, § 13; Daily v. Superior Court (1977) 19 Cal.3d 132, 149-150.) The specific focus of this brief will be the applicability of Business and Professions Code sections 17500, et seq. to the type of conduct and type of defendant at issue in this case.

The central issue in this case is the applicability of section 17500 of the Business and Professions Code, forbidding false and misleading advertising, to the publication by the International Association of Plumbing and Mechanical Officials ("IAPMO") of the Uniform Plumbing Code ("UPC") and the IAPMO Research Directory. The Attorney General believes that Business and Professions Code section 17500 is applicable to these activities of IAPMO.

STATEMENT OF FACTS

The facts have been set out at length by the parties in their briefs, and will be reviewed only briefly here, as they are germane to the applicability of Business and Professions Code section 17500.

IAPMO is an organization made up of plumbing inspectors, and governmental entities and officials who enforce or administer plumbing codes, or who regulate plumbing, heating, air conditioning, and related construction matters. (Complaint, ¶ 10; Answer, ¶ 6.) IAPMO publishes a model plumbing code called the Uniform Plumbing Code, or UPC. The UPC has remarkable prestige and influence in the plumbing industry. Testimony shows that it is regarded as the industry bible, and is used widely by contractors and architects. (R.T. pp. 304-311, 388.) It is also used widely by government. The evidence

demonstrated that the UPC is widely carried by local plumbing inspectors in the field; in California, inspectors very often carry the UPC in place of the California Administrative Code sections relating to plumbing. (Id.) Many jurisdictions use the UPC, either as the basis for their plumbing codes, or by simply adopting the UPC by reference. California is among these jurisdictions, in that state law provides that the California Department of Housing and Community Development must adopt a plumbing code that imposes substantially the same requirements as the most recent edition of the UPC. (Health & Saf. Code, § 17922(a).) Evidence in the record, then, shows that the UPC is recognized, used and substantially relied upon both by private industry and by local and state government.

The UPC itself makes statements regarding the degree and type of reliance that may be made on the UPC. The UPC states that its purpose is to provide "minimum requirements and standards for the protection of the public health, safety and welfare." It also carries the IAPMO seal, bearing the inscription, "plumbing safety." (Complaint, ¶ 11; Answer, ¶ 7.)

IAPMO also publishes a Research Directory. While the UPC lists materials that may be used for specific purposes (e.g., copper piping of one-inch diameter may be used for certain applications in home plumbing), the

Research Directory lists specific products that IAPMO states are acceptable for use under the UPC (e.g., "X" brand of one-inch copper piping is acceptable for use in the applications listed in the UPC). (Respondent's Brief at p. 2.) IAPMO also affixes its seal of "plumbing safety" to the Research Directory. (Complaint, ¶ 11; Answer, ¶ 7.) The Forward to the Research Directory also states that a listing is a representation by IAPMO that the listed product has been found to "meet or exceed applicable standards and requirements of the latest edition of the Uniform Plumbing Code." (Exh. 7.)

In compiling and publishing the UPC and Research Directory, IAPMO reviews products for compliance with what IAPMO regards as "applicable recognized standards" as well as the UPC requirements. (Respondent's Brief, p. 17.) IAPMO also does a certain amount of quality control of its own on the products it lists, performing unannounced inspections at listed manufacturers' plants. (Id., at p. 18.) IAPMO recognizes that inspectors use the IAPMO publications to evaluate products. (Id., at p. 17.) However, IAPMO does no testing of the products it lists, although it sometimes requires independent laboratory testing to be done of some products. (R.T. pp. 676-677.)

IAPMO requires, and receives, a fee from any manufacturer seeking to have a product or products listed in

the IAPMO publications. In fact, the UPC is totally paid for by the fees paid by manufacturers. (Complaint, ¶ 15; Answer, ¶¶ 6 and 9.)

ARGUMENT

I

IAPMO IS ENGAGED IN ACTIVITIES THAT COMPRISE THE PERFORMANCE OF SERVICES WITHIN THE MEANING OF BUSINESS AND PROFESSIONS CODE SECTION 17500

A. The Status of IAPMO As a Nonprofit Organization Is Not Relevant

IAPMO argues that it is not engaged in the sort of activity--namely disposing of a product or performing a service--that is covered by Business and Professions Code section 17500. As support for this argument, it cites the fact that it is a nonprofit organization, which makes no profit on the publication and sale of its publications. This argument is irrelevant.

The applicability of section 17500 depends upon the nature of the activities engaged in by a person or entity, not upon the person or entity performing those activities. Whether a corporation is a for-profit or a nonprofit corporation has no bearing on the question of whether or not it offers goods or services for sale. As an example, if a charity sells goods of some kind to raise funds, and it makes a false or misleading statement in selling them, then

section 17500 would apply. The statute simply makes no exemptions for nonprofit organizations; it applies, on its face, to any person who makes false or misleading statements in the course of selling goods or services. The provisions of IAPMO's corporate charter, or the state of its balance sheet, are irrelevant. It is IAPMO's activities and intent that are germane here.

B. IAPMO Has Disseminated Statements With the Intent to Dispose of Goods or Services

IAPMO also argues that it has not made any statements with the intent of disposing of goods or services, as required by the statute. This is not correct.

It is true that IAPMO does not make the statements at issue in this case with the intent of disposing of piping or other construction materials that it manufactures itself. IAPMO appears to argue that it simply acts as a neutral umpire, impartially calling balls and strikes, and then just reporting the score, with no intent as to how its calls affect the salability of listed products. This argument does not square with what IAPMO actually does. IAPMO knows that it is widely and heavily relied upon by government and industry. It is well aware that contractors may select products, and building inspectors approve them, because IAPMO lists them. Indeed, IAPMO takes considerable pains to ensure that government and industry will rely on IAPMO's

listings. IAPMO observes listing procedures, reviews products, and inspects some manufacturers. It makes representations that it is competent to evaluate the safety and fitness of products, and that the products it lists may be trusted to meet applicable standards and to meet minimum safety requirements in the listed use. Were this not true, IAPMO's publications would not be purchased and its primary activity and purpose would vanish.

IAPMO here is in the role, not of a direct seller of goods, but of an endorser of goods, an entity that presents itself as an expert and presents its expert evaluation of products it evaluates. It cannot avoid responsibility for its representations simply by saying that it does not manufacture the products it endorses.

A similar argument was rejected in Hanberry v. Hearst Corp. (1969) 276 Cal.App.2d 680. Plaintiff in that case alleged that she had purchased defectively designed shoes bearing the Good Housekeeping Seal. Defendant argued that it had no responsibility for any consequences, since its seal constituted nothing more than a statement of opinion. Rejecting that argument, the court said:

> "Respondent was not the seller or manufacturer of the shoes; it held itself out as a disinterested third party which had examined the shoes, found them satisfactory, and gave its

endorsement. By the very procedure and method it used, respondent represented to the public it possessed superior knowledge and special information concerning the product it endorsed. Under such circumstances, respondent may be liable for negligent misrepresentations of either fact or opinion." (276 Cal.App.2d at p. 686.)

IAPMO is similarly responsible for its representations concerning the safety of plastic pipe.

More importantly, IAPMO is in the business of selling its own services as a product endorser. It is with intent to dispose of its services as an endorser that it makes its statements that the products it lists meet applicable requirements and are safe. Having presented and established itself as an expert on plumbing codes, IAPMO actively attempts to preserve that image. As a result, manufacturers come to IAPMO to be evaluated and listed, and they pay for the IAPMO seal and the IAPMO endorsement that their products may be relied upon to meet all applicable standards and to meet minimum safety requirements.

The situation of IAPMO as an endorser, selling its services as an endorser, falls within the ambit of section 17500 as surely as if such services as writing wills or repairing cars were being sold. The statute requires only that a person make certain kinds of statements with the

intent to sell goods or services for section 17500 to be applicable. IAPMO meets this test. It publishes the UPC and the Research Directory publications, which state that certain materials and products meet applicable standards and are safe, with every apparent intention that these publications will be widely bought and relied upon. IAPMO also evinces every intent that manufacturers avail themselves of IAPMO's services as an endorser, and that they pay for these services. This meets the test of section 17500.

This office has held that section 17500 is not limited to "misrepresentations in commercial situations involving a quid pro quo." (66 Ops.Cal.Atty.Gen. 40, 46 (1983).) That opinion dealt with charitable solicitations, but noted the broad sweep of the section:

> "The general purport of section 17500 evident from its language is to protect a person from being deceived or misled when statements and representations concerning the disposing of property or the performing of services seek to induce such person to expend money for a result he desires." (Id., at p. 46.)

IAPMO's publications unquestionably have such effects. Manufacturers surely would not pay to have their products listed if such listing did not have a positive effect on sales.

II

IAPMO'S STATEMENTS ARE MISLEADING WITHIN THE MEANING OF BUSINESS AND PROFESSIONS CODE SECTION 17500

A. Section 17500 Prohibits Untrue and and Misleading Statements

Business and Professions Code section 17500 makes it unlawful for any person to make any statement which the person knows or by the exercise of reasonable care should know to be untrue or misleading in order to dispose of goods or services. It is not necessary that any person be misled by the statements; the gravamen of the offense is the making of untrue or misleading statements, and the offense is "complete without regard to whether or not anyone is deceived or damaged." (In re Application of O'Connor (1927) 80 Cal.App. 647, 652.) A statement is impermissibly untrue or misleading if the statement merely has the capacity to deceive members of the public:

> "A statement is false or misleading if members of the public are likely to be deceived. Intent of the disseminator and knowledge of the customer are both irrelevant. Referring to both section 17500 and Civil Code section 3369 [the predecessor to section 17200], it has been said: 'The statute affords protection against the probability or likelihood as well as the actuality of deception or confusion.'" (Chern v. Bank of America (1976) 15 Cal.3d 866, 876; emphasis added.)

See Fletcher v. Security Pacific National Bank (1979) 23 Cal.3d 442, 451; Ball v. American Trial Lawyers Assn. (1971) 14 Cal.App.3d 289, 310; People ex rel. Mosk v. Lynam (1967) 253 Cal.App.2d 959, 965-966; People v. Wahl (1940) 39 Cal.App.2d Supp. 771, 773. These cases clearly indicate that an action predicated on violations of section 17500 is not the same as an action for fraud or common law deceit: intent to deceive, reliance, and damage are not elements of a section 17500 cause of action. (See also People v. Superior Court (Olson) 1979) 96 Cal.App.3d 181, 190, 198, cert. den. (1980) 446 U.S. 935.)

In determining whether a representation has the capacity to deceive, the courts look to the least sophisticated members of the public. (Exposition Press, Inc. v. FTC (2d Cir. 1961) 296 F.2d 869, 872.[1/] Although a statement may not deceive or mislead a sophisticated consumer, the statement may be misleading or deceptive to others who are less experienced or more vulnerable. As the United States Supreme Court stated nearly fifty years ago:

> "The fact that a false statement may be obviously false to those who are trained and

---

1. Because of the similarity between California and federal statutes in the area of deceptive business practices, decisions of federal courts are more than ordinarily persuasive. (People ex rel. Mosk v. National Research Co. of Cal. (1962) 201 Cal.App.2d 765, 772.)

experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the s spicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of caveat emptor should not be relied upon to reward fraud and deception." (FTC v. Standard Education Society (1937) 302 U.S. 112, 116.)

Accordingly, courts have ruled that:

"The law is not made for experts but to protect the public, -- that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions." (Aronberg v. FTC (7th Cir.1942) 132 F.2d 165, 167.)

IAPMO's statements may not be actively false, only misleading or incomplete. However, the law provides that words and sentences may be literally and technically true and still be used in a manner to mislead or deceive the

public. (FTC v. Sterling Drug, Inc. (2d Cir. 1963) 317 F.2d 669, 675; Koch v. FTC (6th Cir. 1953) 206 F.2d 311, 31.) If a representation is susceptible to both a misleading a truthful interpretation, the representation will be construed against the person making it. (Murray Space Shoe Corp. v. FTC (2d Cir. 1962) 304 F.2d 270, 272; Rhodes Pharmaceutical Co. v. FTC (2d Cir. 1953) 208 F.2d 382, 387, mod. for other reasons, 348 U.S. 940.) As the Court of Appeal has stated:

> "'The use of a word having a double meaning is a common device of those desiring to deceive or mislead others. One who does this cannot escape the charge of misleading or deceiving by saying that to him or as he meant the words, they were true.'" (Garvai v. Bd. of Chiropractic Exmrs. (1963) 216 Cal.App.2d 374, 379, citing Smulson v. Bd. of Dental Exmrs. (1941) 47 Cal.App.2d 584, 590.)

Further, even the failure to disclose information can be actionable, for as the California Supreme Court has noted:

> "[T]he omission of crucial information can be as misleading as a direct misstatement of fact." (Ford Dealers Assn. v. Department of Motor Vehicles (1927) 32 Cal.3d 347, 363-364.)

* * * * * *

The listing by IAPMO of certain plastic piping in the UPC and the Research Directory is such an incomplete, and therefore misleading, statement. By listing them in the Research Directory for use for potable water, IAPMO has brought plastic pipe products within the representation made as to all listed products, namely that it meets all applicable standards. By listing it in the UPC, IAPMO has brought plastic piping within the statement in the UPC that materials listed therein meet minimum safety requirements.

In the case of plastic piping for drinking water uses, such statements are, at best, incomplete when made in California. Plastic pipe is not approved for use in California in carrying potable water inside structures; plastic pipe therefore does not meet all applicable requirements in California. Any generalized statement that materials listed in the UPC meet all applicable requirements is false as to this use of plastic pipe in California; it is certainly a statement so incomplete as to be misleading. The carefully self-cultivated influence of IAPMO makes it even more likely that its listing of plastic pipe in the UPC and the Research Directory will mislead the many persons in government and private industry who use the IAPMO publications into assuming that the listed materials and products are acceptable in California for the uses IAPMO lists. This is more than sufficient to bring IAPMO's statements within the ambit of section 17500.

III

THE INJUNCTION SHOULD BE EXTENDED TO THE 1985 UPC

The applicability of section 17500 to IAPMO's conduct in this case is not an academic question of law, but a vital matter of public safety. The State of California is deeply concerned about the possibility that known or suspected human carcinogens may enter the drinking water of families and individuals because of the use of plastic piping for the carrying of potable water in homes. The state is sufficiently concerned to take the unusual step of researching and preparing a full environmental impact report (EIR) on the use of this building material for carrying water people drink, bathe in, and cook with. See judgment entered by Honorable Judge Crickard on January 24, 1984, pages 2-3.) The state has not yet approved plastic pipe for certain drinking water uses precisely because of the unknowns and the risks, and the state is attempting to ensure that sufficient time and sufficient effort is taken to evaluate the risks before it does so approve plastic pipe.

It was in this context of many unknowns and substantial potential risks that the trial court issued its injunction requiring that IAPMO inform all users of the 1982 UPC that plastic pipes are not approved for certain potable

water uses in California. The injunction reflects concerns the trial court obviously must have had for protection of public health and protection of the public against possible exposure to carcinogenic chemicals.

The injunction was well founded and, indeed, compelled by the evidence in the case. However, given the showing made by appellants, the trial court erred in limiting the injunction to the 1982 UPC and Research Directory. Under a proper application and interpretation of Business and Profession Code section 17500, the injunction should be continued until an appropriate change in circumstances occurs.

The injunction provisions connected with section 17500 create a different situation from the normal request for an injunction. Under Business and Professions Code section 17535, a court may issue an injunction upon a finding that section 17500 (or other sections of that code dealing with false advertising or unfair business practices) has been violated. The finding of a violation is all that is required; no showing of irreparable harm need be made, and no balancing of the equities need be done. Rather, a rebuttal presumption of irreparable harm arises in such a case. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63.) In effect, the Legislature has itself decided the questions of harm and of the balance of equities, and has decided that

whenever section 17500 has been violated, an injunction may issue.

Here, a very convincing showing was made that IAPMO's conduct in publishing the 1982 UPC and the Research Directory violated section 17500. The trial court very properly issued an injunction requiring appropriate disclaimers regarding the use of plastic pipe for potable water uses in structures. However, this injunction was limited to the 1982 editions of these publications, and automatically terminated when the 1985 editions were published. This was an error on the trial court's part.

The identical facts exist as to the 1985 editions of the UPC and Research Directory as existed as to the 1982 editions. The influential and well known IAPMO is widely circulating publications that imply that plastic pipe is acceptable and approved for use in carrying potable water. It expects that these publications will be relied on in both the public and private sector and, indeed, actively encourage such reliance. IAPMO circulates these publications in California, a state in which it knows that plastic pipe is not accepted for certain of these uses and is being studied by a government agency for possible health hazards, including cancer. IAPMO does not inform its California readers of what it well knows, that they cannot rely on IAPMO's implied representations of acceptability and

safety as to plastic pipe for drinking water uses in California. Now, as when the injunction issued, an EIR is being prepared. Neither the facts nor the law has changed.

Where a violation of section 17500 has been shown, and where identical facts exist to those that existed when the injunction was issued, the injunction should not be terminated but should continue until either the underlying facts or the underlying law change significantly. Amicus believes that the injunction should be extended to apply to the 1985 UPC and Research Directory.

* * * * * *

CONCLUSION

The Attorney General believes that this case falls within the ambit of Business and Professions Code section 17500, and that IAPMO's conduct constitutes a violation of that section. Accordingly, the Attorney General feels that the trial court's injunction should be extended to apply to the 1985 editions of IAPMO's publications.

DATED: OCTOBER 15, 1985

Respectfully submitted,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARIE SHIBUYA-SNELL, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS, FRIENDS OF THE EARTH, CONSUMER FEDERATION OF CALIFORNIA, STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA, AND AILEEN ADAMS, Plaintiffs, vs. INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, a California corporation, and DOES I through XX, Defendants.	CASE NO. C 395 294 JUDGMENT EXTENDING AND MODIFYING INJUNCTION

The above-captioned matter was duly and regularly called for trial on December 12, 1983, in Department 32 of the Superior Court, the Honorable Jack A. Crickard, Judge Presiding. Roger Dickinson, Esq., appeared on behalf of plaintiff Marie Shibuya-Snell, Director of the California Department of Consumer Affairs ("Director"); Michael H. Remy, Esq., and Tina A. Thomas, Esq., appeared on behalf of plaintiff California State Building and Construction Trades Council, AFL-CIO ("Union Council"); and Geoffrey Cowan, Esq.,

entered an appearance on December 12, 1983, behalf of plaintiffs Consumer Federation of California, Friends of the Earth and Aileen Adams.

John F. McKenna, Jr., Esq., appeared on behalf of defendant International Association of Plumbing and Mechanical Officials ("IAPMO").

The matter was heard on December 12, 13, 14, 15, 16, 20 and 21, 1983. Evidence, both oral and written, was submitted by all parties, and the matter was duly submitted.

IT IS NOW ORDERED, ADJUDGED AND DECREED:

1. Upon the authority of Code of Civil Procedure Section 526, Subdivision (1), the existing preliminary injunction, granted upon the application of plaintiff Director's predecessor in office, is partially modified and continued in force as the permanent order of this Court.

2. Pursuant thereto, Defendant IAPMO, its agents, officers, employees, and representatives, and all persons acting in concert or participating with IAPMO are hereby permanently enjoined from disseminating, directly or indirectly, to any individual or organization in California, the 1982 Edition of the Uniform Plumbing Code ("UPC") or the IAPMO Directory of Plumbing Research Recommendations ("Research Directory"), without including a warning notice. The warning notice required to be included shall appear in no less than 10-point bold type and shall state as follows:

> NOTICE: An Environmental Impact Report is now being prepared in California to determine whether the use of CPVC, PVC, or PB plastic pipe for transing potable water poses a danger to public health or the environment. At the time of this printing of the 1982 Edition of the Uniform Plumbing Code,

and this update of IAPMO's Directory of Plumbing Research Recommendations, the State of California does not permit any expansion of the use of such pipe, in applications permitted by the Uniform Plumbing Code, beyond those applications permitted in the 1979 Edition of the Uniform Plumbing Code.

For information on California restrictions, contact the State Housing Law Section of the California Housing and Community Development Department.

Immediately below the notice, in the same size or smaller type, the following statement may appear, at the option of IAPMO:

(This notice is inserted herein pursuant to a court Order in the case of CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS v. INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, Los Angeles Superior Court No. C-395294.)

The notice shall not contain, include, or be accompanied by any other information or materials.

3. The notice shall be affixed

(a) To the inside cover of each copy of the UPC affected by this Order, and

(b) Upon the reverse side of the division page entitled "Water Systems and Related Items" (No. 5) of each copy the Research Directory,

(c) By suitable adhesive material along the notice's top and bottom borders, in a manner calculated to ensure that the accidental removal of the notice does not occur.

4. The foregoing orders shall take effect 30 days after entry of this Judgment, and the foregoing orders shall automatically terminate, both as to the UPC and the Research Directory, upon the date the 1982 Edition of the UPC is superceded by the publication of the 1985 Edition of the UPC.

5. All relief sought by plaintiffs, other than the relief granted to plaintiff Director by the foregoing orders, is denied.

6. Each party shall bear their own court costs.

DATED: _____.

JACK A. CRICKARD
JUDGE OF THE SUPERIOR COURT

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF Consumer Affairs (916) 445-4465
1020 N STREET, SACRAMENTO, CALIFORNIA 95814

December 20, 1984

Mr. Thomas Higham
Executive Director
International Association
of Plumbing and Mechanical
Officials
5032 Alhambra Avenue
Los Angeles, CA 90032

Dear Mr. Higham:

As you know, this department actively participated in litigation concerning IAPMO last year. While our formal role in that matter has ceased, we remain abreast of current developments and are involved, in conjunction with HCD, in the ongoing environmental impact report.

I recently learned that IAPMO voluntarily has elected to include the notice concerning the use of plastic pipe in your upcoming edition of the Uniform Plumbing Code. It is also my understanding that the language to be used is identical to that which appeared in the last publication.

I applaud your decision. This action on the part of IAPMO carries forward the spirit of the trial court decision and allows all interested parties to focus their attention upon other critical problems.

While I trust that the information which I have received is correct, please don't hesitate to contact me if I have misstated your decision.

Sincerely,

Marie Shibuya-Snell

MARIE SHIBUYA-SNELL
Director

cc: Shirley Chilton
Secretary
State & Consumer
Services Agency

bcc: Mitch Wilk
Julie Nauman (HCD)
Tom Cecil

INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIAL

5032 ALHAMBRA AVENUE, LOS ANGELES, CALIFORNIA 90032-3490 • (213) 223-1471

January 14, 1985

Marie Shibuya-Snell, Director
Department of Consumer Affairs
1020 N Street
Sacramento, CA 95814

Dear Ms. Shibuya-Snell:

This is in response to your letter of December 20, 1984, regarding the insertion of the notice on the status of plastic pipe in California in the 1985 edition of the Uniform Plumbing Code.

At its recently held meeting, the IAPMO Board of Directors determined that IAPMO will voluntarily continue to insert the notice in copies of the Uniform Plumbing Code sold in California. The wording of the nctice will be substantially the same as at present. We are, however, contemplating deleting the portion in parenthesis which refers to the "pending litigation". Since the litigation is no longer pending, there is no reason to continue to refer to it.

Very shortly I will be forwarding a copy of the proofs of the 1985 edition of the Uniform Plumbing Code to John Worsley so the Building Standards Commission can proceed with its adoption in a timely fashion.

Thank you for your letter and your interest. I hope we can continue to work closely together for the mutual benefit of the citizens of California.

Cordially,

Tom Higham

TOM HIGHAM
EXECUTIVE DIRECTOR

INTERNATIONAL ASSOCIATION OF
PLUMBING AND MECHANICAL OFFICIALS

TH:jg

cc: Jack McKenna

STATE OF NEW YORK

8988

IN SENATE

March 30, 1982

Introduced by Sen. DUNNE—read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT providing for a study into the feasibility of establishing a program to analyze and measure the fire-related behavior of certain materials and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The legislature hereby finds that there is a growing concern regarding injuries and deaths related to the toxic behavior of certain building and furnishing materials when exposed to fire or high temperatures. The legislature further finds that model test methods exist for rating the toxicity of combustion products, but that no adequate program exists to improve upon and integrate such tests into the state uniform fire prevention and building code established pursuant to article eighteen of the executive law.

§ 2. The secretary of state is hereby directed to conduct or have conducted a study of the toxicity of smoke and gases given off under various temperatures by materials used in building construction and furnishings. Such study shall assess the hazards from smoke and gases produced by the combustion of such materials, and the feasibility of developing or adopting a system of rating the toxicity of such materials, and shall result in the development of a set of recommendations to the state fire prevention and building code council established pursuant to section three hundred seventy-four of the executive law. Such recommendations shall be in the form of performance standards for various materials at various temperature conditions. For purposes of effectuating this section, the secretary of state shall consider appropriate tests and standards as currently exist in the field of combustion toxicology. The secretary of state shall report the results of the study, together with his recommendations, to the governor and the legislature on or before June thirtieth, nineteen hundred eighty-three.

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD2-21-27-262

Fire Gas Toxicity

Recommendations of the Secretary of State to the Uniform Fire Prevention and Building Code Council
MAY 1984

New York State
DEPARTMENT OF STATE

Gail S. Shaffer
Secretary of State

Francis A. McGerry
State Fire Administrator
Office of Fire Prevention and Control

§ 3. The sum of three hundred thousand dollars ($300,000), or so much thereof as may be necessary, is hereby appropriated to the department of state out of any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated, for its expenses, including personal service, maintenance and operation, and travel in the state, in carrying out the provisions of this act.

§ 4. This act shall take effect immediately.

STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, N.Y. 12231

GAIL S. SHAFFER
SECRETARY OF STATE

May 4, 1984

Honorable Yvonne Scruggs-Leftwich
Chairwoman
Uniform Fire Prevention and
Building Code Council
Two World Trade Center
New York, NY 10047

Dear Commissioner Scruggs-Leftwich:

Chapter 552 of the Laws of 1982, directed the Secretary of State to conduct a study of the toxicity of smoke and gases in fires. The legislation further required the Secretary to make recommendations to the Uniform Fire Prevention and Building Code Council based upon this study. The study report and my preliminary recommendations were previously transmitted to you and the Code Council. The attached recommendations fulfill the legislative mandate and follow-up on my previous transmittal.

I will be pleased to continue to work with you to promote the implementation of these recommendations.

Sincerely,

Gail S. Shaffer

INTRODUCTION

It is estimated that 80% of the people who die in fires die not as a result of flames but from inhaling toxic smoke and gases.

The reality of this statistic and the toll it represents in terms of human life were made particularly clear in a fire at the Stouffer's Inn in Westchester County in 1980 in which 26 people died.

This tragedy prompted then-Governor Hugh L. Carey to establish the Special Fire Safety Task Force to review fire safety conditions in New York State with a special emphasis on the adequacy of existing fire codes and recommendations for their improvement. In 1981, the Task Force, working with the Department of State's Office of Fire Prevention and Control, issued its report to the Governor. Among its conclusions: most fire deaths are caused by smoke inhalation and further, the apparent increase in such fatalities has occurred as a result of the toxic gases and smoke produced when certain materials, now commonly contained in buildings and furnishings, burn.

Accordingly, the Task Force recommended that the State undertake an intensive study of "combustion toxicity" -- an increasing threat to human life and safety. The Legislature in recognition of the Department of State's lead role in fire prevention and control, authorized the Secretary of State to conduct a study of the toxicity of smoke and gases given off under various temperatures by materials used in building construction and furnishings.

In undertaking this study, New York State has assumed a leadership role in developing public policy to address the causes and effects of combustion toxicity. Our work in the field of fire safety will serve as a model for other states and for the federal government to

follow. While the study of combustion toxicity is in its early stages of development, the Department of State is committed to learning more about the problems of toxic emissions of burning materials.

Contained on the following pages is a summary of the findings issued by Arthur D. Little Inc., which conducted the Department's study, and the resultant recommendations of the Secretary of State to the Uniform Fire Prevention and Building Code Council.

LEGISLATIVE HISTORY

Chapter 552, Laws of 1982, recognized the growing concern of the people of the State of New York about injuries and deaths resulting from the toxic behavior of building materials and furnishings when exposed to fire or high temperatures. At the time Chapter 552 was enacted, the Legislature acknowledged that while model test methods exist for rating the toxicity of combustion products, no adequate program exists to improve upon and integrate such tests into the Uniform Fire Prevention and Building Code. In light of this, the Legislature directed the Secretary of State to conduct a study of the toxicity of smoke and gases given off under various temperatures by materials used in building construction and furnishings.

The specific tasks to be performed by the study were as follows:

- *to assess the hazards from smoke and gases produced by the combustion of materials used in building construction and furnishings.*
- *to assess the feasibility of developing or adopting a system of rating the toxicity of materials used in building construction and furnishings.*

The study was to result in the development of a set of recommendations to the New York State Uniform Fire Prevention and Building Code Council. Considering the appropriate tests and standards that currently exist in the field of combustion toxicology, the Legislature anticipated that the Secretary's recommendations might take the form of performance standards for various materials at various temperature conditions.

Assessing the Feasibility of Incorporating Combustion Toxicity Requirements into the Uniform Fire Prevention and Building Code

The firm of Arthur D. Little of Cambridge, Massachusetts, was awarded a contract to undertake a study on the feasibility of incorporating combustion toxicity requirements into the Uniform Fire Prevention and Building Code. Arthur D. Little considered four possible regulatory options available to the State of New York as follows:

- *data filing, which would involve submission of data on combustion toxicity to a designated agency;*
- *product labeling, which would require test results or similar information to be affixed to building materials and furnishings;*
- *performance standards, which would require products to meet or exceed specified test result limits;*
- *material-specific regulation, which would ban materials based on regulatory agency determinations.*

Fourteen test methods for evaluating combustion toxicity were identified and reviewed. Two methods, the National Bureau of Standards Test Method and the University of Pittsburgh Test Method, were selected for more intensive scientific analysis. Both are bio-assay tests involving the exposure of rodents to the products of combustion.

The study concluded that:

- *The University of Pittsburgh Test Method is the most useful test currently available for assessing the hazards of the products of combustion; and*
- *A filing requirement for numerical test data (LC_{50}) is the appropriate performance testing standard at this time. (The*

LC_{50} is the lethal concentration which will cause the death of 50% of exposed animals within the test period.)

The Secretary of State submitted the findings of the Arthur D. Little study to scientific peer review prior to formulation of the following recommendations.

Recommendations of the Secretary of State to the Uniform Fire Prevention and Building Code Council

It is recommended that the Uniform Fire Prevention and Building Code Council require that certain building materials and furnishings be subjected to performance testing to provide information related to the hazard they pose to life safety in a fire scenario. The results of these performance tests should be filed with the Department of State in a Building Materials and Furnishings Data File and this information should be made readily available to the scientific community, the building and construction industry, the fire service and consumers of these products.

The tests and standards that currently exist in the field of combustion toxicology are sufficiently refined to support such performance testing and disclosure at this time. The information subject to public disclosure as a result of adoption of these recommendations will lead to a time when specific performance standards could be considered to minimize the hazards posed by building materials and furnishings in a fire scenario.

The specific recommendations regarding the creation of a Building Materials and Furnishings Data File follow:

- *It is recommended that the Uniform Fire Prevention and Building Code Council establish a Building Materials and Furnishings Data File in the Department of State, that will contain information on specific classifications of building materials and furnishings to be subject to performance testing, and that the file be available for public scrutiny.*

There is without question a need to increase the quality and quantity of information readily available to the public regarding the various properties of building materials and furnishings. The availability of this information will advance combustion toxicology

research and enable architects, builders, owners and occupants of buildings to make better informed decisions when selecting building materials and furnishings.

- *It is recommended that the Uniform Fire Prevention and Building Code Council require that the following classifications of building materials and furnishings be subjected to performance testing, the results of which shall be filed at the Department of State at the earliest practicable date as determined by the Uniform Fire Prevention and Building Code Council:*

  - *Furniture Upholstery*
  - *Mattresses*
  - *Bed Pads*
  - *Interior Wall Finish*
  - *Interior Ceiling Finish*
  - *Interior Floor Finish*
  - *Electrical Wire Insulation and Conduit*
  - *Water Distribution and Sanitary Pipes installed in buildings*

- *It is recommended that the Uniform Fire Prevention and Building Code Council prohibit the installation of any building materials or the use of newly acquired furnishings subject to the recommended performance testing and filing requirements, if the manufacturer of such product has not complied with the performance testing and filing requirements.*

This will help to ensure that the performance test and filing requirements are enforced.

- *It is recommended that the performance testing and data filing requirements imposed by the Uniform Fire Prevention and Building Code Council on these building materials and furnishings include the use of the University of Pittsburgh bio-assay protocol for measuring combustion toxicity.*

This test method was certified by Arthur D. Little as an appropriate performance test considering those currently available in the field of combustion toxicology.

- *It is recommended that the Uniform Fire Prevention and Building Code Council require manufacturers to disclose the percentage of halogens (chlorine, bromine, iodine, fluorine) contained in the products included in the categories of building materials and furnishings listed above. This information should be incorporated into the data filed with the Department of State and should be calculated to the nearest percent.*

Bio-assay tests alone do not fully account for the action of acid gases produced by products containing halogens or other chemical elements which are inclined to release acid gases. This limitation is attributable to the differences in the way rodents and humans breathe under stress: humans, unlike rodents, breathe through the mouth, exposing the lungs and trachea more directly to acid gases.

- *It is recommended that the Uniform Fire Prevention and Building Code Council require that information regarding the ignitibility and flame spread characteristics of the building materials and furnishings listed above be included in the Building Materials and Furnishings Data File.*

The following standard fire performance tests will provide the necessary information for these classifications of materials and furnishings to which these performance testing and filing requirements should apply:

- *Wall and ceiling materials - the Steiner Tunnel Test, also known as ASTM 84, NFPA 255 and UL 723.*

- *Interior Floor Finish - Critical radiant flux of floor covering systems using a radiant heat energy source, NFPA 253 and ASTM E 648.*
- *Upholstered furniture - NFPA 260A, Standard Methods of Test and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture, 1983. This method is to be used for upholstered furniture, other than that used in facilities, such as hospitals, nursing homes, residential-custodial care, and supervisory facilities, such as (1) educational, (2) assembly, or (3) residential occupancies. NFPA 260B, Standard Method of Test for Determining Resistance of Mock-up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes, 1983. This method is to be used for upholstered furniture used in facilities, such as hospitals, nursing homes, residential-custodial care and supervisory facilities or in public areas or facilities, such as (1) educational, (2) assembly, or (3) residential occupancies.*
- *Mattresses and Mattress Pads - Standard for Flammability of Mattresses and Mattress Pads (16 CFR Part 1632).*

The public interest in arriving at a meaningful approximation of the fire hazards posed by building materials and furnishings, is further served by requiring the disclosure of flame spread and ignitibility, in addition to combustion toxicity and chemical components.

CONCLUSION

The Uniform Fire Prevention and Building Code Council will review these recommendations and has indicated an intent to act upon them in six months. In its deliberations, the Council is urged to consider whether complying products should be labeled, tagged or otherwise identified.

Furthermore, It is recommended that the Code Council conduct a series of public hearings throughout the State prior to taking final action.

Adoption of these recommendations by the Code Council will raise a number of issues for consideration by the Governor and the Members of the Legislature as follows:

- *Possible restriction on sales of affected products which have not been tested or for which appropriate data have not been filed.*
- *Extension statewide of the applicability of the performance testing, filing and labeling requirements and the related use of sales restrictions. This would provide that building materials and furnishings used in New York City, as well as any other municipality in the State not covered by the Uniform Fire Prevention and Building Code, be subject to the requirements.*
- *Appropriation of adequate funding to the Department of State to support the recommended responsibilities related to data filing and analysis.*

LEGISLATIVE ACTIVITIES OF INTEREST REGARDING ELECTRICAL NON-METALLIC TUBING AND OTHER PLASTIC CONSTRUCTION MATERIALS

CONFERENCE OF INSURANCE LEGISLATORS

The Conference of Insurance Legislators is an organization of influential state legislators whose legislative duties include or have included state insurance codes. As an organization, COIL and a number of its members have been very active in fire safety. On November 1, 1981, the Resolutions Committee of COIL and members of the Missouri Legislature held a public hearing aimed at finding legislative responses to the fires at MGM Grand and Stouffers' Inn, among other tragedies. As a result of that public hearing, COIL adopted Resolution No. 6. Of particular interest to this Committee is the following finding by COIL:

> "Whereas, there are several avenues which state legislatures can take to marshall the power of state and local governments to bring about greater safety in hotels and other facilities of public accommodation, such as the enactment of laws which:
> --improve structural and fire safety codes to include among others, recently obtained data on toxicology . . ." (emphasis added)

To further refine that finding of fact and its ultimate resolution, COIL created a Task Force on Hotel Fire and Structural Safety. That Task Force is chaired by the Honorable Charles Butts, Senator of the State of Ohio. Senator Butts addressed the Symposium on Combustion Toxicology recently held at the NFPA's Annual Meeting. During his address, Senator Butts said:

"One of the things that I think is important to say and why I am grateful for the opportunity to speak to you is that when you have the fire storms in the media as we have had with the hotel fires particularly, but some of the other things; supper clubs and others, that there will be legislative reactions good or bad, and we will enact laws. We will enact into the statutes, code changes!"

Sen. Charles Butts,
NFPA Symposium on Toxicity
May 17, 1982

Senator Butts' observations were not only prophetic in terms of future legislation but he was relating some of the reactions that law makers and public officials across the country have already had when the issue of fire-gas toxicity and codes, such as the electrical code came before them.

STATE OF NEW MEXICO

In late July, 1981, the Electrical Bureau Chief of the Construction Industries Division of the Commerce and Industry Department of the State of New Mexico added Article 331 to the 1979 National Electrical Code under which the state was then operating. Upon learning of the development Allied brought the facts regarding the potential hazards of PVC in a fire situation to the attention of the Construction Industries Committee, a group appointed by the Governor to oversee the adoption of codes throughout the State of New Mexico. Although the state's approval of proposed Article 331 was quickly withdrawn by the Electrical Bureau, the Committee, on the basis of the evidence presented by both Allied and the proponents of combustible, toxic electrical conduit decided there was sufficient evidence to warrant holding a full evidentiary hearing on the use of toxic building

materials. The Construction Industries Division held that hearing, which was chaired by Richard W. Lisle, Director of the Division on April 15, 1982. The purpose of the hearing was to gather information on the various kinds of plastic materials used in New Mexico.

The New Mexico statute, under which all minimum codes are adopted for the entire state, requires that the Division begin with model codes such as the National Electrical Code and amend those only so as to increase the standards. Prompted by the abortive attempt to gain approval for proposed Article 331, and by the facts regarding fire-gas toxicity, the state is now considering the question of whether PVC, along with other synthetics commonly used in construction materials, ought to be prohibited from use in the state.

Richard W. Lisle has now released a report recommending cutbacks on the use of synthetic building materials. His report cited growing evidence of injuries and often lethal effects of synthetic products when they decompose in a fire. New Mexico is the first state to study the issue and recommend that PVC conduit no longer be permitted in high-rise buildings or non-fire-rated high density occupancy structures.

CITY OF CHICAGO

The City of Chicago is one of the largest cities which does not authorize the use of combustible, toxic electrical wiring methods or water, drain, waste or vent systems in any of its codes. In October, 1981, the Major of Chicago proposed wide-sweeping revisions to the City's electrical, plumbing and building codes so as to promote the rehabilitation of existing but dilapidated housing in Chicago. There were several extensive hearings before the Committee on Buildings and Zoning of the City Council of the City

of Chicago. At those hearings, both the opponents and the proponents of combustible, toxic building materials had a full opportunity to present their view of the facts to the Committee. The result of those hearings was that, while extensive changes were made to Chicago's codes, the Committee and later the full City Council, voted to retain the City's ban on the use of plastic wiring and plumbing methods. The Chairman of the Building and Zoning Committee, Alderman Edward R. Vrdolyak, was quoted as saying:

> "There are too many questions the experts can't answer. I certainly am not a chemist or a toxicologist . . . but there are safety questions. We're going to take a good look until most, if not all, of the evidence is in."

Chicago Tribune
February 27, 1982

STATE OF NEW YORK

Chicago is not the only major city to protect its citizens from the unrestricted loading of its buildings with combustible, toxic materials. New York City has, for many years, prohibited the use of building materials which, in a fire, produce smoke more toxic or denser than that produced by wood. The City of New York has been requiring toxicity testing of building materials using several commercial testing laboratories for several years.

Until the unfortunate tragedy of the Stouffers' Inn fire, however, the State of New York did not have a uniform, state-wide code. Following that fire, the Governor of New York appointed a special fire safety Task Force chaired by the Honorable Basil A. Paterson, Secretary of State of New York. A key conclusion of that Task Force report, which was issued to the Governor of New York on February 19, 1981, was:

"Most fire deaths are caused by smoke inhalation with an apparent increase of involvement of petrochemical based and other synthetic materials."

Special Fire Safety Task Force Report, p. 3

The Task Force recommended that a Uniform Fire Prevention and Building Code to take effect on January 1, 1984, be adopted. That Act, which provides for mandatory and uniform state-wide construction and material requirements for public and private buildings, based on performance standards, was passed in 1981. To facilitate the work of the Council which is required to formulate this state-wide code, State Senator Dunne and Assemblyman Branca introduced legislation in March, 1982. This legislation contains very important legislative findings. It says:

"The legislature hereby finds that there is a growing concern regarding injuries and deaths related to the toxic behavior of certain building and furnishing materials when exposed to fire or high temperatures. The legislature further finds that model test methods exist for rating the toxicity of combustion products, but that no adequate program exists to improve upon and integrate such tests into the state uniform fire prevention and building code established pursuant to article eighteen of the executive law."

On May 6, 1982, the Fire Safety Subcommittee of the Senate Finance Committee held a public hearing to consider toxicity and fire safety. Several of the statements made during the course of that hearing are particularly important to note:

"Neither building codes nor fire regulations seem to have taken much account of the dangerous aspects of plastics. Such codes and

regulations are inadequate. Many buildings were made to withstand fire rather than smoke, but some flame retardants minimize burning and maximize smoke. Those codes and regulations, based on heat generated by fires, may not be sufficient for smoldering plastic."

Hon. Basil A. Paterson, p. 12
Secretary of State of New York

"We think it (N.Y. Senate Bill S8988, Attachment 3,) is a milestone piece of legislation, something that should be done on a national level. I don't foresee it at a national level, so I feel fortunate to live in the State of New York where we are assured that we will have some further study done in the area of toxic materials and the effects that it not only has on firefighters but the effects it's having on civilians.

We know it's killing people. We know it is coming from gases. If this study will help prevent some of these materials from being used in the buildings in the state, then it's a major step forward. Particularly, as I cited before, plastic pipes and plumbing should be outlawed, some of the other plastic materials that are being used in building construction."

Mr. Robert Gollnick, President
New York State Professional
Firefighters Association, p. 51

"From my experience, many thermoplastics, such as styrofoam, polyethylene, polyvinyl chloride, to name a few, used as building materials make the difficult job of firefighting more difficult. They, by virtue of their high fuel values, their ability to generate toxic thick smoke, and their thermoplastic melt-flow nature at fire

ground temperatures too often deprive firefighting [illegible] from reaching their objective to seat the fire."

Officer Scott Kirchhofer,
Ladder Company No. 40
New York City Fire Department
p. 106

"Polyvinyl Chloride (PVC), polychlorinated biphenyl (PCB) are only a few of the compounds that can produce immediate or delayed injuries or death when involved in fire. State and federal legislation is needed to control the composition of materials used in furnishings and building construction so that the public may be properly safeguarded in the case of fire."

Chief Joseph C. Hess,
Chief of Fire Prevention
New York City Fire Department
p. 218

This testimony and the clear and cogent testimony of toxicologists experienced in fire-gas toxicity such as Dr. Merritt Birky formerly of the National Bureau of Standards, Center for Fire Research and now of the Foundation for Fire Safety and Dr. Yves C. Alarie, Chairman, Department of Respiratory Physiology and Toxicology, Graduate School of Public Health, University of Pittsburgh that it was feasible to rate the toxicity of materials resulted in Senate Bill 8988 being unanimously passed in the New York State Senate. On July 3, 1982, despite enormous budgetary pressures, this legislation was passed 140 to 1 by the New York State Assembly and was signed by the Governor on July 20.

At the same time as the New York legislature was considering this landmark toxicity legislation, a dispute arose regarding PVC electrical conduit installed in the New York City subway system. As in the other

instances where the facts on fire-gas toxicity were brought to the attention of responsible lawmakers charged with the duty to protect the safety of their constituency, there was quick governmental action. The New York Subway Authority discontinued the use of PVC electrical conduit based upon their concerns about the toxic hydrogen chloride gases emitted by the PVC electrical conduit in a fire. The controversy did not end, however, with discontinuance of the use of such material. On June 2, 1982, Carol Bellamy, President of the New York City Council called for the removal of all of the PVC tubing in use in the New York subway system. Answering the standard assertion that combustible, toxic PVC conduit presents no imminent hazard, Ms. Bellamy was quoted as saying:

> "The system-wide use of PVC tubing indoors poses a clear and present danger to millions of subway passengers and transit workers, as well as to firefighters responsible for controlling fires in the system. Our first concern must be safety. Using PVC tubing is perilous economy."(emphasis added)
>
> Journal of Commerce Daily
> June 2, 1982

Finally, on June 25, 1982, the New York City Council appropriated $2,000,000 to remove PVC electrical conduit from the subway system.

TULSA, OKLAHOMA

The recent action of the Board of Commissioners of the City of Tulsa is another example of the overwhelming response of lawmakers to the facts on fire-gas toxicity. In Tulsa's case, when asked to permit the use of flexible non-metallic conduit, the Mayor and Board of Commissioners referred the matter to the Fire Marshal. His conclusion was to reject the material and said, "The danger of PVC, particularly under fire conditions,

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1086

are well known because of the hazardous, death-dealing products of combustion."

STATE OF CALIFORNIA

The Supreme Court of California recently enjoined the publication in California of a model plumbing code which would have expanded the use of plastic pipe in California. The Court decided that unless the public was adequately informed about the health hazards of such pipe, that that model code could not be sold in California until a complete environmental impact report, currently about to begin, was completed. How that report would deal with the problem and solution to the problem of combus_ible, toxic building materials was not clear enough for members of the California Assembly. As a result, on June 29, 1982, Assemblywoman Maxine Waters, a member of the majority leadership, introduced Assembly Concurrent Resolution No. 146 which would direct the development of a standard toxicity test method by the state and require the environmental impact report to include the toxicity of all building materials included in the electrical, plumbing, structural, or any other building code of the state.

On August 31, 1982, the legislature of the state of California passed the resolution with amendments requiring the establishment of tests to determine the fire-gas toxicity and combustibility of materials used in buildings. The measure calls for the Department of Industrial Relations and the State Fire Marshal to review combustion toxicology test methods and to "adopt or adapt the most appropriate existing test method to rate the relative toxicity of all materials intended for use in or as part of high-density occupancy buildings."

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allied TUBE & CONDUIT CORPORATION
16100 South Lathrop
Harvey, Illinois 60426
(312) 339-1610
NEWS

POLYVINYL CHLORIDE FUMES CAUSE LONG-TERM HEALTH PROBLEMS FOR FIRE SURVIVORS, STUDY SHOWS

Long-term health effects of exposure to polyvinyl chloride fumes from electrical fires can include permanent damage to lungs, heart, vocal cords and other organs, a study of fire survivors discloses in the November, 1981 issue of Journal of Combustion Toxicology.

The study covers survivors of the 1977 fire that claimed 161 lives in the Beverly Hills Supper Club near Cincinnati and the 1975 New York Telephone Company fire, in which 239 fireman required medical attention for toxic gas inhalation. The fires are described as two of the largest polyvinyl chloride electrical fires in the 1970's.

Deborah N. Wallace, president, Public Interest Scientific Consulting Service, reports in the study that four Beverly Hills Supper Club survivors died of severe respiratory impairments several weeks to several months after the fire. Autopsies also revealed kidney damage in three of the four victims, Dr. Wallace reports.

In-depth interviews of eight other survivors showed "a consistent picture... of severe damage to both upper and lower respiratory tract and secondary subsequent infections," Dr. Wallace notes. "Long-term diminuation of respiratory disease resistance, headaches, sleep problems, and inability to work constitute present secondary impacts of the respiratory damage....Several interviewees

experienced one or more of the following: irregular heart beat, skin problems, and visual perception impairment. Psychological effects included frequent nightmares, memory lapses, and heavy guilt characteristic of survivor syndrome."

A survey of 113 of the firefighters treated at the scene of the New York Telephone Company blaze covered the first sign of aftereffect injury and symptoms before later medical attention. "By far, the most frequent first symptoms were sore throat, irritated eyes ('burning'), dizziness, aching nostrils, and confusion. Other moderately frequent first symptoms included nausea, chest pains, chest congestion, and headache."

Nearly two-thirds of the firemen complained of persistent or permanent effects, Dr. Wallace reports. "Many men complained of being hoarse from the time of the fire to the present," she adds. "This condition became progressively worse in two men who...were found to have vocal cord lesions...The high prevalence of hoarseness indicates that the vocal cords of many of the men should be watched for growths."

Polyvinyl chloride (PVC) fumes were clearly identified in the Wallace study as the primary cause of death and injury in the two fires. She points out that in the Beverly Hills Supper Club fire, "A total of 161 people died that night without any direct involvement with the flames and long before the carbon monoxide had reached a concentration which affected the rescuers, most of whom wore no respiratory masks, and before any wood was burning in or near the...room."

During the New York Telephone Company fire, "...firefighters were collapsing or running out to the medical vans," Dr. Wallace reports. "Some men in the building depleted their airpacks and had to breathe the undiluted hot, acidic smoke. Some of the men on the outside also suffered from airpack depletion and breathed the dense downwash of smoke from the building."

Both fires have been traced to electrica. 'ein. An estimated "minimum of 4,000 and a maximum of 8,000 feet of Romex-' .ed cabling containing several PVC-insulated wires in the plenum of the Cabaret Room alone..." where most of the Beverly Hills Supper Club fatalities occurred. "Although the fire was discovered in the Zebra Room about 8:40-8:45 pm, it had been building in the wall undiscovered for abou: one-two hours. By this time, the process of thermal decomposition which is the initial stage of a polyvinyl chloride fire had already spread through the wiring to the Cabaret Room."

The New York Telephone Company fire began in the main Manhattan switching center cables entering the basement vault. The 490 cables there were clad either in polyethylene plastic or lead sheathing. "The fire remained confined to these apparently, for some time because the heat had to reach about 600° C to ignite the PVC cables leading from the vault to the upper floors," Dr. Wallace recounts. "By the time the alarm was turned on, much thermal decomposition had occurred and the PVC cables were burning.

"The initial fire was extinguished only about 3¼ hours after the alarm was sounded. However, the gases from the decomposition of the PVC cables

accumulated in the vault and burst into flames on contacting the hot wires. The second fire spread rapidly along the cables to the upper floor, and all the burning cables were of the type with each individual wire coated in PVC .... According to the New York fire department and NYS Public Service Commision inventories of what burned and was available to burn, PVC cable insulation and jacketing constituted over 80% of the fuel....No other cable insulation or jacketing was used in the building itself, and only very small quantities of wood were present on the distribution frames."

The combination of PVC electrical insulation and its ready access to combustion-supporting air thus appear to have magnified the intensity of the two fires. The Beverly Hills Supper Club wiring used reinforced plastic-jacketed wires individually insulated in PVC, and the New York Telephone Company building contained large amounts of PVC-clad wire in open distribution channels. Neither installation had the protection of metal conduit capable of both resisting high heat and blocking access of combustion air that supported the fires.

The Journal of Combustion Toxicology article notes that "by the early-to-mid 1970's, PVC had become a common electric wire insulation and cable jacket because if its electrical properties, flexibility, and high ignition temperature (600° C). Combustion toxicological research of the late 1960's-early 1970's had, however, uncovered a problem with PVC and several other halogenated plastics, namely that the combustion products were extremely toxic compared to those of most natural materials.

"Further research on PVC in the early-to-mid 1970's revealed a special pattern of thermal decomposition, characterized by evolution of anhydrous hydrogen chloride and traces of benzene and toluene from the surface of the plastic at temperatures as low as 100° C. When temperatures reach 250-300° C, the reaction accelerates to the point that significant quantities of HCl are generated. Long before actual ignition temperatures are reached, long before the presence of visible fire, and long before quantities of carbon monoxide become significant, both gaseous and soot-absorbed HCl are generated in high concentrations."

The article also notes that the pattern of decomposition of PVC into HCl varies with a number of factors, including "configuration of many wires vs few; and whether the wire is in metal conduit, PVC conduit, or no conduit."

Dr. Wallace also points out that in addition to combining with water in tissue of the upper respiratory tract (to form hydrochloric acid), "another effect of PVC decomposition products is that they impair perception and behavior. The smoke is extremely dense and drastically reduces visibility, and its irritation of the eyes, skin, respiratory tract, and possibly nervous system provokes disoriented movement, blind groping and incapacitation. The potential for escape from PVC decomposition products is low compared to that of the initial stages of a fire with natural products as fuel."

She urges that "because the decreased potential for escape appears to have contributed to increasing the number of people subjected to relatively lengthy exposure to high concentrations of PVC decomposition and combustion products,

monitoring survivors of wire insulation fires for long-term health effects would be an important contribution to both the field of combustion toxicology and to the body of data on which fire safety decisions are based."

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FIREGAS TOXICITY: THE LEGISLATIVE APPROACH

July 20, 1982, will be well remembered by advocates of greater fire and human safety. In a landmark action, New York Governor Hugh Carey signed a law appropriating $300,000 to create a system for rating the toxicity of plastics and other materials used in building construction and furnishings.

Although New York state's determination to reduce further fire tragedies is so far the most comprehensive in the nation, it is not merely an isolated occurrence. On the contrary, the apathy which once characterized the attitudes of most citizens and their elected representatives toward fire deaths is being swept aside by action.

From Maine to Oregon, there is growing recognition that America's contemptible fire death rate--8,000 a year, one every hour--is one of the worst among industrialized nations, not because of killer flames, but because of deadly gases. Smoke, not flames, kill over 80% of those who die in fires. And the plastic materials that are integral parts of modern hotel rooms and offices are being accused of increasing the toxic danger.

The expert task force appointed by Governor Carey to study the causes of the December 4, 1980, Stouffers Inn fire in Harrison, New York, reported in February, 1981: "One of the major causes of death in fire tragedies is a direct result of the hazards of petrochemical based and other synthetic construction materials and furnishings."

Recalling 287 deaths in recent tragic fires, including Stouffers, where 26 died, the Beverly Hills Supper Club near Cincinnati, MGM Grand in Las Vegas and the Westchase Hilton in Houston, California state assemblywoman Maxine Waters stated, "Strong evidence developed that decomposing plastics caused the vast majority of the fatalities. I find this intolerable--there are proven methods which can measure the toxic dangers of materials. These methods should be employed before we permit the construction of more toxic gas chambers."

Finally, the word is getting around about polyvinyl chloride, the most pervasive of the synthetic materials.

- o Congressmen Claude Pepper of Florida and Mario Biaggi of New York conducted hearings on the vulnerability of persons in nursing homes to toxic fires, a subject of direct concern to the Select Committee on Aging of the United States House of Representatives. Reportedly, legislation will soon be introduced in the United States Congress to address the danger of toxic building material in health care facilities.
- o The State of New York and the State of California have adopted landmark legislation providing for the prompt, detailed and independent study of toxic gases given off in fire situations by all materials which are now used in the construction of buildings. The New York legislation also provides for the development of performance standards for materials in a fire as a means of combatting this major hazard. Reportedly, legislation will be introduced in

the California legislature next year that will address how to limit the use of materials which are rated as hazardous under the test methods to be adopted pursuant to the California study.

- o A panel appointed by the State of New Mexico's Construction Industries Committee held hearings in April, 1982, to consider whether there was a problem posed by the use of toxic building materials. The New Mexico hearing panel found a problem existed and recommended that plastic materials currently being used in construction ought to be prohibited from use in high density occupancy structures. The full Construction Industries Committee of New Mexico is currently considering the adoption of that recommendation.
- o The City Council of Chicago, after extensive hearings, recently determined to continue its ban on the use of plastic wiring methods and plumbing materials.
- o The City of Tulsa, on the strong recommendation of its Fire Marshall, rejected an application to permit the introduction of a new flexible plastic conduit because of its toxicity in a fire situation.
- o The City of New York not only discontinued use of plastic electrical conduit in the subway system but appropriated $2,000,000 to remove such existing conduit from the system when it realized the extent of the toxicity problems.
- o The Department of Public Safety of the State of Massachusetts resolved not to permit more plastic behind the walls until a solution to this problem can be found.

Additionally, the state safety officials in such states as Colorado, Ohio, Illinois and Wisconsin are beginning to focus carefully on toxicity and how to address this problem with respect to building materials. Houston, Texas and Cincinnati, Ohio, have recently proposed severe limitations on the use of plastics behind the walls and in the ceilings of high-density occupancy buildings. Departments with safety responsibility in Peoria, Illinois; Nashville, Tennessee; Corpus Christi, Texas; Kokomo, Indiana; Modesto, California and Atlanta, Georgia have held or are considering hearings on the subject of the toxicity of commonly used building materials in a fire.

Legislators and City Councils are not the only public bodies giving consideration to how to deal with the problem of toxicity. Throughout the United States, as a result of the series of tragic deaths in fires, many courts are being asked to rule on these issues. Toxicity was a major element in the litigation which followed the Beverly Hills Supper Club fire. In Des Moines, Iowa, a $300,000,000 suit is pending against many in the plastics industry as a result of a fire there which claimed ten lives.

In a recent speech, David Miller, lawyer for many of the victims of the Stouffers Inn fire, described the suits arising out of that situation and how plastics and toxicity were a key factor.

In Las Vegas, the federal courts have been asked to rule on the liability of the manufacturers of many of the synthetic products used in the construction of the MGM Grand Hotel. One of the lawyers involved in that case has estimated the damages sought at over a half billion dollars.

At the same time, during the past year organizations such as the Foundation for Fire Safety, the National Fire Protection Association, the Society of Toxicology and the American Chemical Society have continued their studies of the problem. Similarly, the National Bureau of Standards, and various universities and other private and public institutions, have continued to refine their research designed to identify the nature of these lethal gases and to specify ways of measuring the relative toxic danger of various building materials.

Hopefully, these are just early signs of a massive national reaction against senseless fire deaths. Whether they know it or not, Americans today are literally surrounded in homes, hotels and factories by space-age plastic materials that can give off deadly gases. Indeed, modern hotel rooms are showplaces of synthetic technology, from carpets, draperies and upholstery in the rooms, to pipes, cables and ducts inside the walls.

Time was when materials were made of wood, steel and cotton which were much less toxic, but that is true no longer. Developed on a crash schedule in World War II as substitutes for national materials in short supply, plastics were cheaper and more versatile and the petroleum from which they were developed was low-cost, all-American and abundant. Soon their use proliferated, so that today, particularly in the form of polyvinyl chloride, they are present in almost every residence. Now, with vigor, fire safety and health officials are seriously questioning whether yesterday's

miracle has transformed itself into today's monstrous mistake: they are wondering whether in the name of profit and progress, human life somehow got lost.

To be sure, recognition of the lethal and hazardous properties of firegas toxicity did not just emerge overnight. Research began in the early 1970's focusing on PVC, a versatile plastic that is widely used in various types of industrial and consumer applications for airplanes, buildings and homes such as cable insulation, residential siding, electrical fittings and architectural moldings.

Research determined that when PVC decomposes (at a temperature not much hotter than that needed to bake an apple pie) it produces hydrogen chloride, which in combination with other gases, causes the intoxication syndrome and death. Reports Dr. Yves Alarie, noted toxicologist at the University of Pittsburgh:

> "The fumes from burning plastics strike victims very quickly . . . with inhalation of smoke, they lose their motor coordination, they lose their sense of perception so they really cannot escape properly. So with some of them you will find them very close to a doorway. That person did not have enough oxygen left in their blood to move."

We believe that what industrial progress did, motivated citizens and legislatures can undo. It's a large task. In recent years, a key contributor to the nation's horrible fire record has been a well-organized effort to weaken building codes, to permit greater amounts of life-threatening synthetic materials to be used in construction. Recently, the National Fire Protection Association, the nation's most prestigious building and fire safety organization, rebuffed high-pressure campaigns

designed to permit the use of more plastic conduit in its National Electrical Code. For its efforts to maintain safety oriented codes in the public interest, NFPA should be acclaimed and supported.

In the wake of recent fire tragedies, 30 states are in the process of reassessing codes. Now is the time to strengthen codes, not weaken them as some interests desire.

The proliferation of plastic materials has coincided for years with widespread inattention and apathy toward the role of building codes, standards, rules and fire fatalities. Sadly, for thousands of fire victims, many codes have not been reviewed for years, some even for several decades. Therefore, codes have fallen behind the state of the art. The state of New York is contemplating a review of the entire code structure every three years to keep pace with advancing research and technology.

In point of fact, although the National Bureau of Standards and the University of Pittsburgh each have developed sophisticated methods for determining the toxicity levels of materials, no organization or government agency responsible for the development of model building codes has yet enforced a toxicity standard. Therefore, numerous toxic products have been authorized for use in buildings, even though research reveals that synthetic materials can be from 10 to 100 times more toxic than wood. Research by the University of Pittsburgh, for example, indicates that five ounces of polyvinyl chloride can emit enough hydrogen chloride gas to kill sleeping people in ten minutes in an average sized bedroom.

Clearly, the nation needs building and fire prevention codes with easily understood minimum toxicity standards and sprinkler requirements in all new structures designed for high density occupancy. Death and serious injury by fire must not be considered inevitable.

For years we have been committed to the voluntary standards system as the best way of developing consistent, safe and technically sound codes for the nation. That system has recently come under tremendous pressure from opposing interests while attempting to come to terms with the toxicity issue. More than ever before participation from public interests are needed to keep the code-making process from being distorted by commercial interests.

Today's codes, both at the state and local level, must address the toxicity issue. Until then, Americans will live--and die--in a nation whose fire death rate is inexcusably the shame of the industrialized world.

Good codes and standards are absolutely essential to fire safety. Now is the time to strengthen codes, to protect human lives--not weaken them to protect profit margins.

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NEWS

.....FIRES, PLASTICS AND TOXIC GASES
SOME QUESTIONS AND ANSWERS

Q. ARE MODERN BUILDINGS FIRE SAFE?

A. The classic, non-combustible materials used in construction today--steel, concrete, glass--provide a basic structure which is fire safe. Fireproof? No. Factors other than basic construction materials enter into the problems of fire ignition, spread, containment and control.

Q. WHAT ARE SOME OF THESE FACTORS?

A. For one, the materials that are put into the walls and rooms of buildings. We fill our modern buildings with synthetic material products -- wall coverings, furniture, decoration, piping, conduit made of plastics. When plastics burn, they burn hotter and faster than traditional materials. Further, they emit toxic gases when burning. In fact, these poisonous fumes can be released when the temperature of plastic is as low as that of boiling water: it need not be in flames.

Q. WHAT IS THE EFFECT OF THESE TOXIC FUMES?

A. It is important to remember that flames are not the major killer in fires. Toxic gases are. At the MGM Grand fire in Las Vegas, 68 of the 84 people who died in that fire succumbed to toxic fumes, not flames. Furthermore, those victims of poison gases were found more than 20 floors away from the fire. Toxic gases kill. They can kill directly by poisoning the body or indirectly through a condition known as the Intoxication Syndrome.

Q. WHAT IS THE INTOXICATION SYNDROME?

A. The Intoxication Syndrome is a condition so named because some of the symptoms it produces are similar to those resulting from an overindulgence in alcoholic drinks. These

include loss of coordination, dizziness, blurred vision, diminished mental abilities, headaches, nausea and incapacitation. And in a fire situation it can prove fatal. At a time when a person needs all his senses intact to escape from a fire, the Intoxication Syndrome can rob him of the ability to perceive the situation, to see, to breathe, to understand the perils and most of all, to make the proper choices. It can even mask the fact that danger exists.

Q. SPECIFICALLY, WHAT CAUSES THE INTOXICATION SYNDROME?

A. The release of plastic-induced toxic fumes from burning or smoldering plastic. When plastics burn they produce an alarming roster of toxic gases. Hydrogen Chloride, Hydrogen Cyanide, Hydrogen Sulfide, Benzene, Nitrogen Oxides, Carbon Monoxide, and many more.

Q. ARE SOME PLASTICS MORE DANGEROUS THAN OTHERS?

A. In 1976, two medical doctors, Robert F. Dyer and Victor H. Esch, singled out polyvinylchloride as "causing the most serious problem in firefighting today," after a five-year study of firefighters exposed to the material. Polyvinyl chloride (PVC) is widely used in upholstery, wall coverings, siding, cable insulation, window frames and conduit. When PVC burns or smolders it gives off Hydrogen Chloride (HCl), which in combination with other gases, is a prime cause of the Intoxication Syndrome, incapacitating people trapped in fires. Further, when HCl combines with water such as the substances coating the eyes and tongue, it becomes hydrochloric acid, a powerful corrosive substance.

Q. WHAT CAN BE DONE ABOUT THE DANGER OF PLASTIC-INDUCED TOXIC GASES?

A. First, we need to keep building codes strong. There have been efforts recently to allow more plastics into the walls of buildings. In 1981, the National Fire Protection Association, an influential group which promulgates model building codes, defeated two pressure campaigns to permit more PVC

conduit in the walls of commercial buildings in the writing of its National Electrical Code. Many states and localities are now developing new building and fire codes. They must be kept strong, not weakened by plastics.

Second, we need definitive research on toxicity and plastic...research which would lead to the ability to rate the toxicity of building materials.

And finally, until a definitive research study is completed, no further incursion of plastics into construction should be considered.

* * * * *

City to weigh ban on plastic fire risk in future buildings

By Jon Schmitz
The Pittsburgh Press

Pittsburgh City Councilman Ben Woods tomorrow will propose an ordinance to outlaw the use of plastic building materials, which he says are "agents of death" in fires.

Woods' bill would prohibit plastic pipe, insulation and conduit in all commercial construction in the city. Existing buildings would not be affected, and the bill does not apply to residences.

Plastic materials have been blamed in a number of fatal fires, including the November 1980 fire at the MGM Grand Hotel in Las Vegas, which killed 84, and a 1977 inferno at a Kentucky supper club in which 165 perished.

Woods said scientific studies have shown plastics emit lethal quantities of toxic fumes when burned.

The most commonly used plastic building material, polyvinyl chloride, emits 77 different compounds when burned, including hydrogen chloride. When inhaled, hydrogen chloride mixes with moisture in the lungs and throat to form hydrochloric acid.

Studies at the University of Pittsburgh have shown that a few ounces of burning polyvinyl chloride can produce enough toxic fumes to kill everyone in an average-size bedroom within 10 minutes.

Woods said plastics burn faster, produce more dense smoke and fail to trigger smoke alarms until after lethal concentrations of fumes have built up.

His proposal has drawn opposition from the plastics industry, which contends it is "based on erroneous information and falsehoods."

Roy Gottesman, executive director of the Vinyl Institute, said the legislation here and elsewhere is being pushed mainly by plastic's competitors — the manufacturers of iron and steel pipe and conduit.

"Just about everything — wood, paper, cotton, you name it — gives off toxic fumes when burned. There is really no such thing as a non-toxic material," Gottesman said. Banning toxic materials would "eliminate virtually everything that can go into a building," he said.

The Vinyl Institute is a division of the Society of the Plastics Industry Inc., a New York-based trade association which represents 10 major producers of polyvinyl chloride and the raw material from which it is made.

Paul Imhoff, city superintendent of building inspection, said the current building code requires that plastic fixtures be in a fire-resistant enclosure.

Imhoff and Robert Anderson, chief of plumbing inspection for Allegheny County, said plastics were not used extensively in recently constructed skyscrapers Downtown.

> *"(Plastic is) one of the most dangerous materials ever invented in the name of modern civilization."*
>
> *— Lyle Hall*
> *L.A. fireman*

The cost of enclosing plastic fixtures in fire-resistant walls makes the use of plastic unfeasible in many larger structures, Anderson said. Plastic plumbing is common in residential construction, he said.

A PAT spokesman confirmed that some polyvinyl chloride is being used in construction of sewers for the new Downtown subway.

Spokesman Mike Scanlon described the use of plastic as "very minimal" and said the authority has stringent fire safety specifications.

At least 35 major cities, including New York, Los Angeles, Chicago, Philadelphia, Detroit, Boston, Dallas, Cleveland, St. Louis and Atlanta have enacted restrictions on plastic building materials, Woods said.

Public outcry forced New York to spend $1.5 million in 1982 to rip out newly installed plastic electrical tubing in several subway stations.

Investigators have blamed fumes from burning plastics for many of the MGM Grand fatalities. While the fire was contained on the hotel's ground level, 67 persons died between the 20th and 25th floors.

Gottesman, however, said investigators determined the fire was caused by electrical arcing along a metal conduit. Use of plastic conduit, which does not conduct electricity, would have prevented the fire, he said.

"The thing that solves the problem (of fire safety) is early detection of a fire and a quick-acting sprinkler system," Gottesman said. Firefighters, he said, must be properly equipped with self-contained breathing apparatus.

A different view came from Lyle Hall, president of the Los Angeles firefighters union, who last year called plastic "one of the most dangerous materials ever invented in the name of modern civilization."

Woods' bill will be referred to the city's Board of Code Review for a public hearing.

C-8 ★★★★

OAKLAND
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TODAY

Sunday, August 29, 1982

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EDITORIALS

Fighting the new fire danger

The science of fire holds mysteries that Americans must soon solve if they want their nation dethroned as the fire-death capital of the industrialized world.

The swift passage of Assembly Concurrent Resolution 146 through the Legislature is a good sign that leaders are awaking to the inadequacies of fire protection in the U.S. The resolution, sponsored by Los Angeles Assemblywoman Maxine Waters, directs the departments of Health Services and Industrial Relations to develop a standard toxicity testing method for burning building materials.

As an Emmy-award winning NOVA show on the Public Broadcasting System recently pointed out, current fire codes are largely inadequate in addressing the danger of toxic gases from burning plastics and other new building materials.

Most fire codes are written to deal with the fire dangers of an age of steel, glass and wood. They have stressed the need to keep fires in large buildings from spreading.

But as buildings are filled with new plastic and petroleum-based materials, a new danger — toxic gases from burning materials — has come to the forefront.

Experts know the gases kill. But the codes do not reflect the latest scientific knowledge about when and how fumes become lethal.

California has been spared the tragic fires of recent years, such as the MGM Grand Hotel fire in Las Vegas, which claimed 84 lives. Most of the deaths in that fire occurred 20 floors from the flames. Strong evidence suggests that burning plastics caused many of them.

But such fires could happen here. California permits more plastic materials in construction than many experts consider safe.

Yet, for a variety of reasons, there has been little movement to revise fire codes to bring them up to date.

Writing new codes requires the latest in scientific knowledge, but for many years, the physics and chemistry of fire have been neglected. The National Bureau of Standards began focusing on materials toxicity in the late 1970s only after time revealed that regulations dealing with ignition and combustion could not cope with the dangers of plastics.

Moreover, the agencies that have combined responsibility for fire prevention were ill-equipped to meet the problems of the plastics' age.

Fire departments, already spread thin fighting fires and investigating arson, have few resources to carry out basic research into fire science.

The National Fire Protection Association, which writes and sells fire codes, is first of all a commercial organization. Critics charge that NFPA investigators have been slow to see modern fire dangers because of their interest in protecting the reputation of NFPA's existing codes.

The International Society of Builders writes the Uniform Building Code with little input from fire experts. Since none of the code books is mandatory, there is a subtle pressure to keep them from being too rigorous and thus less likely to be adopted.

Congress in 1974 created the U.S. Fire Administration as a resource bank which collected data, published reports, paid for research, and had planned to train firefighters. But the Reagan administration dissolved it.

The issue of the fire danger of modern materials is further complicated by a battle between the plastics industry and the metal industry for sales of their respective building materials. With all these factors, is it any wonder that there is little hard data on the toxicity of burning building materials?

The Legislature's overwhelming support for the study of the toxicity of burning materials is a step in the right direction. But the real struggle will come when the test results are in, standards are proposed, and attempts are made to write regulations that would make California as fire-safe as the rest of the industrialized world.

Then California will have to make the tough decision whether it would rather regu-

Concern grows over potential hazards in PVC plastic

Experts trying to set standards for material's toxicity, fire resistance

By Catherine Foster
Special to The Christian Science Monitor
Boston

It's present, to some degree, in almost every American home. Now, fire safety and health officials are increasingly questioning its use.

It's PVC, or polyvinylchloride, and it's been used for 35 years in everything from telephones to automobile bumpers to wallpaper. Inexpensive, lightweight, and versatile, in the last decade it has overtaken steel as the chief ingredient in drains, vents, and underground pipes. The use of some PVC products grew from 30 percent in 1972 to 46 percent in 1980.

But the glamour appears to be wearing off:

- Statewide public hearings were held recently in New Mexico by construction industries to determine whether to ban certain PVC products from the state's electrical code.
- The New York Transit Authority decided last month against further use of PVC electrical tubing in subway stations after health officials warned of the danger posed by burning plastic.
- The Chicago City Council decided against including PVC in the city building code as electrical conduit after testimony by toxicologists.

As PVC's use has grown so have questions about its safety. Fire-safety experts say that the large quantity of plastics, including PVC, in several major fires — the MGM Grand Hotel in Las Vegas, the Stouffer's Inn in Harrison, N.Y., and the Beverly Hills Supper Club in Southgate, Ky. — contributed to the spread of the fire and to the injuries and deaths. One toxicologist says PVC burns hotter and faster than wood, and produces smoke 20 times as toxic. PVC can smolder for hours at temperatures too low to trigger certain fire detectors, releasing toxic fumes, says Gordon Vickery, director of the Foundation for Fire Safety in Arlington, Va.

Fire-safety officials express concern at the use of PVC in places where fast exits aren't always possible: prisons, high-rises, nursing homes, airplanes, and subways.

Spokesmen for two PVC manufacturers, B. F. Goodrich and Carlon, claim that steel manufacturers have fueled the uproar over the plastic. The spokesmen say steel firms don't want to lose their once-exclusive conduit and tubing markets. A steel industry spokesman denies that steel companies advocate removing all plastics.

Plastics manufacturers assert that PVC is not the only building material that releases toxic fumes when burned. Michael O'Mara, vice-president of research and development at B. F. Goodrich, claims that "although PVC does release toxic combustion products when it burns, so do other materials. And PVC is no worse."

Several of the major fires, he says, can be attributed to fire-code violations, rather than PVC. In the MGM Grand fire, for example, there was a lack of sprinklers and fire-resistant barriers, according to the National Fire Protection Association (NFPA).

Plastics and steel manufacturers alike call for stricter adherence to fire codes and more testing. One problem: Duplicating actual fire conditions in a laboratory is difficult — there is no way of determining how different elements react with one another, says Rosalind Anderson, of Arthur D. Little Inc., a Boston research firm.

Although the plastics industry and independent labs have conducted toxicity and flammability tests on PVC for the last 10 years, a national test standard has yet to be established that would utilize this research and control the application of PVC. That is changing. The NFPA is examining the toxicity issue and plans to discuss it, for the first time, at this year's annual meeting. The National Bureau of Standards has developed a test for toxicity, which it is now in the process of approving.

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Signature of Camera Operator

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Date

02-519 (REV 8/78)

HB

64

MAR 1 5 1985

Bill No. Committee Substitute House Bill No. 64 (L&C)

Title "An Act relating to elevator safety standards."

Date March 15, 1985

Contact: Robert J. Bacolas
465-4870
Eileen Plate
465-2700

Every three years, the American Society of Mechanical Engineers updates the safety code for elevators and escalators to incorporate technical advances; and in 1984 it revised the 1981 code. House Bill No. 64 provides for the adoption of the 1984 code, but specifically excludes the adoption of one new provision in the 1984 code. This section (111.12) requires installation of a positive device to prevent elevator doors from being opened if the elevator is more than 18 inches from the floor. Such a device could impede evacuation of passengers by emergency personnel in case of a fire or other emergency and, therefore, is not recommended for inclusion in Alaska's minimum elevator standards. Our understanding is that the elevator industry nationwide has petitioned the American Society of Mechanical Engineers to review the implications of this particular provision from this standpoint also.

This bill also provides for adoption of the latest Inspection Manual which is used as a guideline by the Department's elevator inspectors.

Adoption of the latest code and inspection manual will bring Alaska's minimum standards into line with those commonly accepted and used by industry and by political subdivisions in their building inspection programs.

The Department supports Committee Substitute for House Bill No. 64. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison

Jim Robison, Commissioner
Department of Labor

DOL Position Paper

POSITION PAPER/Department of Labor

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

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JUNEAU, ALASKA 99802
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February 27, 1985

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

Dear Representative Navarre:

As you requested during the February 21, 1985 hearing on House Bill 64, enclosed are copies of the seven proposals Scott Dicker of Otis Elevator Company provided us with. The specific proposals came from the Municipality of Anchorage, CMW Elevator Company of Anchorage and T.R. Slaton, a consulting electrical engineer from Anchorage.

Also enclosed are the Department's responses to the individual proposals. You will note that the Department concurs with the recommendation in proposal #4, that Section 111.12 of the 1984 Elevator Code not be adopted by the State of Alaska. The following amendments to House Bill 64 are required to achieve this.

Sec. 1, line 13, needs to be amended to read:

safety code in the state. Section 111.12, Restricted Opening of Hoistway Doors and/or Car Doors on Passenger Elevators, and Section 100.1 [100.1a], Inspection and Test Periods of the
100.1

Sec. 1, line 15, needs to be amended to read:

Escalators are [IS] not adopted as a part of the minimum elevator safety

My understanding is that the other concerns expressed in the enclosed proposals have been satisfied.

Thank you for your continued help with this bill.

Sincerely,

Jim Robison

Jim Robison
Commissioner

Enclosures

07-G9LH

DOL Response to Proposed Amendments

Department of Labor Response
to proposed Amendments to
1984 Elevator Code

Proposal 1: (Municipality of Anchorage)

Do not Adopt the National Safety Practice for the Inspection of Elevators and Escalators (Inspector's Manual--ANSI/ASME A17.2 as set out in Section 2 of House Bill 64.

Department's Response:

The A17.2 Inspectors Manual is used by the department as a guide to assure uniform application of minimum elevator standards. It is important to continue to include this provision in the law as it advises the public and industry of the procedures used by the Department when conducting inspections.

Proposal 2: (Municipality of Anchorage)

Amend Section 2000.7A of the Elevator code to provide that the travel of handicapped elevators should not exceed 6 feet.

Department's Response:

Section 2000.7 of the Elevator code provides that the travel of a handicapped elevator shall not exceed 12 feet. Since a handicapped car is required to have key operation and cannot penetrate a floor, the Department does not believe 12 feet of travel poses any safety problems.

The Department would point out that the municipality could, by local ordinance, adopt the more stringent 6 foot maximum if it wished.

Proposal 3: (Municipality of Anchorage)

The 1984 ANSI A17.1 Code for Elevators and Escalators should be adopted.

Department's Response:

The Department concurs. The 1984 code is the latest code, and the 1981 code now in effect is outdated.

Proposal 4: (Municipality of Anchorage)

Section 111.12 of the 1984 Elevator code should not be adopted.

Department's Response:

The Department concurs. This provision requires installation of a positive device to prevent elevator doors from being opened if the elevator is more than 18 inches from the floor. This could impede evacuation of passengers by emergency personnel in case of a fire or other emergency.

Proposal 5: (Municipality of Anchorage) Add a requirement to Section 101.32 of the Elevator Code to provide that access to machine rooms cannot be over the roof of unless a closed walkway is provided.

Department's Response: The Department has no particular problem with the intent of this proposal. However, here again the municipality could, by local ordinance, adopt the more stringent provision it is seeking. In the interest of minimizing deviations from the Elevator Code, the Department would prefer such a local remedy.

Proposal 6: (T.R. Slaton Consulting Electrical Engineer) The Uniform Building Code and Elevator Code contain conflicting provisions in smoke detector requirements.

Department's Response: The conflict between the Elevator Code A17.1 and the Uniform Building Code Section 5103.4(D) will not affect the Elevator Code. The Elevator Code would supersede the UBC when there are conflicts between the two codes.

Proposal 7: (CMW Elevator Company) Amend the Elevator Code to permit the use of mathematical formulas in lieu of test weights.

Department's Response: The Department is opposed to this proposed amendment. The Department has witnessed valve failures when the weight test was administered to the elevator, and the use of the mathematical formula would never have revealed this safety problem. To the department's knowledge, this is not an acceptable practice anywhere else in the United States.

II /

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 786-8160

TONY KNOWLES,
MAYOR

DEPARTMENT OF PUBLIC WORKS
(3500 East Tudor Road)

February 8, 1985

To Whom It May Concern:

I believe the adoption of ANSI A-17.1-1984 elevator is needed. The Municipality of Anchorage is now in the process of adopting the 1984 Code with a few proposals for local amendments.

However, I don't believe the A-17.2 inspector's manual should be adopted as law. The preface of the manual indicates the following:

PREFACE

This Manual is intended to serve only as a guide for the general use of inspectors. While it is in general based on the rules of the A17.1 Code, it also contains recommendations for the inspection of equipment which is not required to conform to that Code. Reference to the rules of the A17.1 Code are applicable to the 1971 edition including Supplement ANSI A17.1a-1972 thereto. While many legal codes, including additional orders, amendments, changes, or interpretations issued by the enforcement authorities are based upon the A17.1 Code, inspectors should be guided by whatever elevator code is legally in force. Any recommendations made herein apply only insofar as they conform to the legal requirements. It is not intended that this Manual be used as, or in place of a legal elevator code, but rather that it be used in whole or in part as a practical guide to the inspection of elevators, escalators and moving walks.

The terms *Section*, *Rule*, or *Table* refer to the identifying section, rule, or table, in ANSI A17.1–1971. The term *Item* refers to a numbered portion of this Manual.

Michael J Smith

Michael Smith
Elevator Inspector
Building Safety Division
Department of Public Works

[redacted]

Additional Back Up

#2

FORMS FOR PROPOSALS FOR THE 1985 MUNICIPAL CODE(S)

Proposals are to be received no later than January 31, 1985.

INSTRUCTIONS

Please type or print in BLACK ink. Use separate copy for each proposal. Limit each proposal to a single section or article.

Date 2/7/85 Proposer's name Michael Smith, Elevator Inspector Telephone No. 786-8322

Address Municipality of Anchorage, Dept. Pub. Works, Bldg. Safety Div., Pouch 6-650
Anchorage, AK 99502-0650 3500 East Tudor Road (Street Address)

PROPOSED CHANGE:

1 - CODE/Amendment identification number PART XX Sec/parag 2000.7A

2 - Proposal (include proposed new wording, or identification of wording to be deleted):

The travel shall not exceed 6 feet

3 - Statement of problem and substantiation for proposal:

12 feet of travel could be used for an elevator. I feel the 12 foot is too high for the type safetys on this type equipment.

#3

FORMS FOR PROPOSALS FOR THE 1985 MUNICIPAL CODE(S)

Proposals are to be received no later than January 31, 1985.

INSTRUCTIONS

Please type or print in BLACK ink. Use separate copy for each proposal. Limit each proposal to a single section or article.

Date 2/7/85 Proposer's name Michael Smith, Elevator Inspector Telephone No. 786-8322

Address Municipality of Anchorage, Dept. Pub. Works, Bldg. Safety Div., Pouch 6-650
Anchorage, AK 99502-0650 3500 East Tudor Road (Street Address)

PROPOSED CHANGE:

1 - CODE/Amendment identification number_____ Sec/parag _____

2 - Proposal (include proposed new wording, or identification of wording to be deleted):

Adopt 1984 ANSI A-17-1 Code for elevators/escalators.

3 - Statement of problem and substantiation for proposal:

It is latest elevator and escalator code.

#4

FORMS FOR PROPOSALS FOR THE 1985 MUNICIPAL CODE(S)

Proposals are to be received no later than January 31, 1985.

INSTRUCTIONS

Please type or print in BLACK ink. Use separate copy for each proposal. Limit each proposal to a single section or article.

Date 2/7/85 Proposer's name Michael Smith, Elevator Inspector Telephone No. 786-8322

Address Municipality of Anchorage, Dept. Pub. Works, Bldg. Safety Div., Pouch 6-650
Anchorage, AK 99502-0650 3500 East Tudor Road (Street Address)

PROPOSED CHANGE:

1 - CODE/Amendment identification number PART 1 Sec/parag 111.12

2 - Proposal (include proposed new wording, or identification of wording to be deleted):

Delete Section 111.12 completely.

3 - Statement of problem and substantiation for proposal:

Passengers would not be able exit the and emergency personnel personnel, fire fighters, etc. would not be able to enter the car.

II-5

FORMS FOR PROPOSALS FOR THE 1985 MUNICIPAL CODE(S)

Proposals are to be received no later than January 31, 1985.

INSTRUCTIONS

Please type or print in BLACK ink. Use separate copy for each proposal. Limit each proposal to a single section or article.

Date 2/7/85 Proposer's name Michael Smith, Elevator Inspector Telephone No. 786-8322

Address Municipality of Anchorage, Dept. Pub. Works, Bldg. Safety Div., Pouch 6-650
Anchorage, AK 99502-0650 3500 East Tudor Road (Street Address)

PROPOSED CHANGE:

1 - CODE/Amendment identification number _____ Sec/parag _____

2 - Proposal (include proposed new wording, or identification of wording to be deleted):

Add to 101.32 requirements for means of access to machine rooms can not be over the roofs or closed walkway out of the weather will be provided.

3 - Statement of problem and substantiation for proposal:

Do to weather conditions in Alaska, roof access is very hazardous.

#6

FORM FOR COMMENT ON 1985 CODES AND ANCHORAGE MUNICIPAL CODE TITLE 23

FINAL DATE FOR RECEIPT OF COMMENTS: _____

Return or
Mail to:

T. R. SLATON, P.E.
CONSULTING ELECTRICAL ENGINEER
3020 Kirk Avenue
Anchorage, AK 99503
(907) 561-3512

Date _____ Name _____ Telephone _____

Address _____

Organization Represented self

1. Comment on: A. Code UBC chap 51, B. Section No. 5103.4(a),
C. Title 23 _____
Amendment No.

2. Comment (include proposed wording, or identification of wording to be deleted):

UBC chapter 51 and the elevator code disagree on when lobby smoke detectors are required: any elevator, or three landings or over 25' travel.
The use of toggle non-fused disconnects for elevator car lighting circuits in the machine room, instead of SPST fused switches should be allowed for more convenient maintenance.

3. Statement of Problem and Substantiation for Comment:

. suggest deleting 5103.4(d) and leave ANSI Elevator code in effect.

4. ✓ This comment is original material.
_____ This comment is not original material; its source (if known) is as follows: _____

(Note: Original material is considered to be the submitter's own idea based on or as a result of his own experience, thought, or research and, to the best of his knowledge, is not copied from another source.)

I agree to give the Municipality of Anchorage all and full rights, including rights of copyright, in this Comment and I understand that I acquire no rights in any publication of Title 23 in which this Comment in this or another similar or analogous form is used.

T R Slaton
Signature

PLEASE USE SEPARATE FORM FOR EACH COMMENT AND EACH CODE SECTION

#7

FORMS FOR PROPOSALS FOR THE 1985 MUNICIPAL CODE(S)

Proposals are to be received no later than January 31, 1985.

INSTRUCTIONS

Please type or print in BLACK ink. Use separate copy for each proposal. Limit each proposal to a single section or article.

Date 1/29/85 Proposer's name CNW Company Telephone No. 278-1732

Address P.O. Box 101433 Anchorage, ALASKA 99510

PROPOSED CHANGE:

1 - CODE/Amendment identification number_____ Sec/parag _____

2 - Proposal (include proposed new wording, or identification of wording to be deleted):

In lieu of Test weights mathematical formula may be used

3 - Statement of problem and substantiation for proposal:

Documentation for changes has been submitted to ANSI Code can be for adoption.

Offered: 3/8/85
For Today's Calendar

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 64 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to elevator safety standards."

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

* Section 1. AS 18.60.800(a) is amended to read:

(a) Except as provided in this subsection, the 1984 [1981] edition of the American National Standards Institute Safety Code for Elevators and Escalators (ANSI/ASME A17.1) published by the American Society of Mechanical Engineers is adopted as the minimum elevator safety code in the state. Section 111.12, Restricted Opening of Hoistway Doors and/or Car Doors on Passenger Elevators, and section 1001.1 [SECTION 1001.1a], Inspection and Test Periods of the American National Standards Institute Safety Code for Elevators and Escalators are [IS] not adopted as a part of the minimum elevator safety code in the state.

why excluded

* Sec. 2. AS 18.60.800(c) is amended to read:

(c) Inspections of elevators by the department must [SHALL] be performed in accordance with the procedures set out in the National Safety Practice for the Inspection of Elevators and [,] Escalators [AND MOVING SIDEWALKS] (Inspector's Manual -- ANSI/ASME A17.2) as approved in 1982 [FEBRUARY 15, 1979].

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CS HB 64 (L&C)
Title: "An Act relating to elevator safety standards"
Sponsor: Governor
Requestor: House Labor & Commerce
Date of Request: 03/01/85

FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

NB

Prepared By: Robert J. Bacolas, Jr. Phone: 465-4870
Division: Labor Standards & Safety Date: 03/01/85

NB

Approved by Commissioner: Jim Robison Date: 03/01/85
Agency: Labor

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

DOL Fiscal Note

PRIME SPONSOR: RULES COMMITTEE BY REQ OF THE GOVERNOR
CO-SPONSORS:

CURRENT STATUS: (S) L&C

DATE		PAGE	ACTION
01/16/85	(H)	38	READ THE FIRST TIME - REFERRAL(S)
01/16/85	(H)	38	GOVERNOR'S TRANSMITTAL LETTER
01/16/85	(H)	38	FISCAL NOTE ZERO
01/21/85	(H)	96	SA WAIVED, L&C REFERRAL ADDED
03/08/85	(H)	538	L&C RPT W/CS,LETTER OF INTENT 7DP
03/08/85	(H)	538	FISCAL NOTE ZERO
03/08/85	(H)	538	RLS TO CALENDAR 3/8/85
03/08/85	(H)	544	READ THE SECOND TIME
03/08/85	(H)	544	CSHB 64(L&C) ADOPTED UNAN CONSENT
03/08/85	(H)	544	ADVANCED TO THIRD READING UNAN CONSENT

DATE		PAGE	ACTION
03/08/85	(H)	544	READ THE THIRD TIME
03/08/85	(H)	545	PASSED Y31 N1 X5 A3
03/08/85	(H)	545	L&C LETTER OF INTENT ADOPTED
03/08/85	(H)	545	FURNACE NOTICE OF RECONSIDERATION
03/11/85	(H)	566	RECON TAKEN UP - IN THIRD READING
03/11/85	(H)	566	RET TO SECOND FOR AM 1 FLD Y10 N27 X3
03/11/85	(H)	567	PASSED ON RECONSIDERATION Y34 N2 X3 A1
03/11/85	(H)	567	LETTER OF INTENT ADOPTED
03/11/85	(H)	568	TRANSMITTED TO (S)
03/12/85	(S)	516	READ THE FIRST TIME
			LABOR&COMMERCE
			RULES

Chairman's Information:

1) CSHB 64 (L&C) "An act relating to elevator safety standards"

   a) Introduced: Rules CS by House L&C
   b) Co-Sponsors:

2) INTENT: This legislation was introduced by the Governor for the Department of Labor and updates the safety code for elevators and escalators by providing for the adoption of the 1984 code. One provision of the 1984 code was not adopted in the House Labor and Commerce CS and that provision related to the installation of a device which would prevent elevator doors from being opened if the elevator was more than 18 inches from the floor. Such a device would impede the efforts of emergency personnel in the event of a fire, and this provision was intentionally deleted from the bill.

   FISCAL NOTE: 0

   Note: The House Labor and Commerce Committee attached a letter of intent which we may wish to adopt.

3) COMMITTEE COMMENTS:

4) PUBLIC HEARINGS:

   a) Sponsor

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

66

Bill No. House Bill 66

Date January 21, 1985

Title "An Act relating to workers' compensation; and providing for an effective date."

Contact J. L. McClintock 465-2790

The Department of Labor and the Workers' Compensation Board recommends passage of House Bill 66, providing an additional board panel for Southcentral Alaska. This increases the composition of the board from eight lay members to ten lay members.

The additional board panel is required for the Southcentral region in order to expeditiously handle the heavy board hearing load for that area. In the past, it took up to four months for parties to obtain a board hearing in the Anchorage area. By scheduling additional hearing rounds, which more than doubles the days Southcentral board members sit hearings compared to the other panels, we have been able to schedule parties for hearing within 45 to 60 days. However, the lay board members are unable to dedicate that much time to hearings because of their job commitments in the private sector. During the last two years, three Southcentral board members have been forced to resign board positions due to the expanded hearing schedule.

It is critical that an additional board panel be added in Southcentral so that the expanded hearing schedule will be met, allowing the parties to be scheduled for hearing within 45 days.

APPROVED

Jim Robison

Jim Robison
Commissioner

- Position Paper -

POSITION PAPER/Department of Labor

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

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

January 30, 1985

The Honorable Fred Zharoff
Chairman
Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Zharoff:

The Department's Workers' Compensation bill, House Bill 66, is presently before your committee.

After this bill passed the House, it came to our attention that it should have carried an immediate effective date instead of the July 1, 1985 date reflected. Accordingly, I would appreciate your assistance in amending Section 2 of House Bill 66 to read:

> This Act takes effect immediately in accordance with AS 01.10.070(c).

This will provide immediate relief to our existing board members who are having difficulty dedicating so much time to Workers' Compensation Board hearings.

I apologize for the Department's oversight in this regard.

Thank you for your help.

Sincerely,

for Jim Robison
Commissioner

07-G9LH

- Justification for effective date change -

STATE OF ALASKA

DEPARTMENT OF LABOR

DIVISION OF WORKERS' COMPENSATION

BILL SHEFFIELD, GOVERNOR

1111 WEST 8th, Rm 305
BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2790

February 4, 1985

Michael Thill
Professional Assistant
Labor and Commerce
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Michael:

Attached are the workload figures you requested on the Alaska Workers' Compensation Board.

Not included in the workload figures are the number of days the full Board meets in two executive sessions per year for three to four days each in Juneau, Anchorage or Fairbanks; the five day training sessions for new Board members; and the part of days Board members spend in reviewing the decisions and orders drafted by the hearing officers and keeping abreast of decisions issued by other Board panels and the Superior and Supreme Courts.

Please contact me if you have further questions.

Very truly yours,

Jacquelyn L. McClintock, Director
Workers' Compensation Division

Attachment

cc: Commissioner Jim Robison

07-GL WORK LOAD FIGURES

	Total	Southern Panel Juneau, Sitka , Ketchikan	Northern Panel Fairbanks	Southcentral Panel Anchorage
Number of Board Hearing Days				
CY84	122	22	26	74
CY85	141	18	29	94
Number of Cases Scheduled				
FY84	855	104	133	618
* FY85 (6 mos. data)	517	61	83	373
Average Number of Days to Obtain Hearing				
FY84	68.0	42.7	48.6	80.5
* FY85 (6 mos. Data)	60.1	24.8	56.1	66.7
Average Number of Day for Board Decision				
FY84	31.0	51.1	33.0	27.1
* FY85 (6 mos. Data)	27.7	38.5	23.0	28.2

BILL SHEFFIELD
GOVERNOR

NB 66

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 15, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Workers' Compensation Board. This bill establishes an additional Workers' Compensation Board panel for the south-central region to deal with the increased load of hearings held in the Anchorage area. (Currently it takes up to four months to obtain a hearing.) Additionally, the bill proposes to bring the law into conformity with actual practice by stating that the lay members of the board, but not the commissioner of labor or his designee, are subject to confirmation by the legislature. (As a department head, the commissioner is, of course, already subject to confirmation.)

This bill is a high priority for the Department of Labor, and I urge your prompt and favorable consideration of it.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

- GOVERNOR'S TRANSMITTAL LETTER -

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Chairman's Information:

1) HB 66 "An Act relating to workers' compensation; and providing for an effective date."

   a) Introduced: Governor
   b) Co-Sponsors:

2) INTENT: To provide for an additional board panel for Southcentral Region to expedite the hearing process for the Workers Comp Board. Increases the composition of the board from 8 lay members to 10 lay members. Additionally, statutory changes are made with regard to the confirmation of board members. Spells out that only the lay members require legislative confirmation.

   L&C CS contains an immediate effective date as requested by the Department of Labor.

   FISCAL NOTES: $0 (In FY85 Budget; Continuation FY86)

   IMPORTANT: Need a motion to adopt the CS before the committee

   BILL HISTORY: 6 Do pass in H (L&C); House Floor: 33y 5nay

3) COMMITTEE COMMENTS:

4) PUBLIC HEARINGS:

   a) Sponsor

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committe for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption? (I have a draft CS which provides for an immediate effective date)

SCS HB 66 (L&C)

INTENT: The intent of this legislation is to expedite the Workers' Compensation Board hearing process by creating an additional panel for the Southcentral Region. The bill increases the composition of the Board from 8 lay members to 10 lay members and makes clear that only the lay members require confirmation by the Legislature.

Funding required is contained within the Department of Labors operating budget and a zero fiscal note accompanies this bill.

The Labor and Commerce CS contains an effective date change which was requested by the Department. The CS provides for an immediate effective date.

WORKER'S COMP BOARD:

Administers the workers comp act; sits as judge/jury for irreconcilable disputes between injured worker and insurer.

Receives $50 per day and standard travel/per diem

Include — recommend passage by the body.

move for adopt C.S.

Ford
2/4/85

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR HOUSE BILL NO. 66 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

* Section 1. AS 23.30.005(a) is amended to read:

(a) The Alaska Workers' Compensation Board consists [SHALL CONSIST] of [NINE MEMBERS, INCLUDING] a southern panel of three members sitting for the first judicial district, a northern panel of three members sitting for the second and fourth judicial districts, two southcentral panels [A SOUTH-CENTRAL PANEL] of three members each sitting for the third judicial district, and one panel of three members that may sit in any judicial district. Each panel must [SHALL] include the commissioner of labor or the designated representative of the commissioner, a representative of industry, and a representative of labor. The latter two members of each panel shall be appointed by the governor and [. ALL PANEL MEMBERS] are subject to confirmation by a majority of the members of the legislature in joint session.

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

-SCS HB 66 L&C-

Worker's Compensation

MEMBER	APPT	REAPPT	TERM
Joe H. Butler P.O. Box 704 Anchorage 99510 At Large/Labor	83/03/15		85/07/01
Thomas W. Chandler 1217 Water Street Ketchikan 99901 1st JD/Industry	82/06/18		85/07/01
Elmer Eller 7801 Lotus Drive Anchorage 99501 3rd JD/Industry	85/01/02		85/07/01
Mary A. Pierce 2040 Sturbridge Circle Anchorage 99501 3rd JD/Industry	84/07/31		87/07/01
Delia I. Pruhs P.O. Box 1735 Fairbanks 99707 2/4th JD/Industry	83/08/19		86/07/01
David W. Richards 3112 Wild Meadow Lane Juneau 99801 1st JD/Labor	80/06/06	83/08/19	86/07/01
Jim Robison Labor Juneau 99802 Comm./Designee - Chair	82/12/06		
Jackie S. Russell P.O. Box 4157 Kenai 99611 At Large/Industry	83/03/15		85/07/01
Joe J. Thomas II 879 Vide Way Fairbanks 99701 2/4th JD/Labor	83/08/19	84/07/02	87/07/01

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 66

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

* Section 1. AS 23.30.005(a) is amended to read:

(a) The Alaska Workers' Compensation Board consists [SHALL CONSIST] of [NINE MEMBERS, INCLUDING] a southern panel of three members sitting for the first judicial district, a northern panel of three members sitting for the second and fourth judicial districts, two southcentral panels [A SOUTH-CENTRAL PANEL] of three members each sitting for the third judicial district, and one panel of three members that may sit in any judicial district. Each panel must [SHALL] include the commissioner of labor or the designated representative of the commissioner, a representative of industry, and a representative of labor. The latter two members of each panel must [SHALL] be appointed by the governor and [. ALL PANEL MEMBERS] are subject to confirmation by a majority of the members of the legislature in joint session.

* Sec. 2. This Act takes effect July 1, 1985.

COMMITTEE COPY

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 66

Title: "An Act relating to workers' compensation."

Sponsor: Rules Committee

Requestor: Rules Committee

Date of Request: December 4, 1984

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Jacquelyn L. McClintock Phone: 465-2790

Division: Workers' Compensation Date: 12/4/84

Approved by Commissioner: Jim Robison Date: 12/4/84

Agency: Labor

LEG:B:5

Distribution (by Agency preparing fiscal note):

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

- FISCAL NOTE -

7/1/84

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

6 8

Fred

January 28, 1986

The Honorable Richard Shultz
House of Representatives
Juneau, Alaska 99811

Dear Mr. Shultz;

It is my understanding, that you were the sponsor of House Bill # 68, dealing with the Mandatory Insurance Law. I would appreciate a few minutes of your valuable time to relate an incident that occurred recently and the resulting frustrations I encountered.

Last Christmas morning, while returning from my daughter's house, my new Thunderbird was struck by an old beat up Volkswagon, causing $809.56 in damages. The other driver clearly stated to the investigating trooper "I was driving too fast because I was late for breakfast." However, the trooper did not cite him. Later when I called the trooper to ask why he was not cited, the trooper replied, he would look at the accident reports before making a judgement. At the scene of the accident, the trooper "ran" our cars and licenses, they apparently came back with the correct information or at least the trooper did not indicate anything to the contrary. The trooper then asked if we were both covered by insurance. We both answered to the affirmative.

The next day when I pursued the matter a little more, I found in my investigations, the driver was only licensed to drive a Toyota and had a limited SR 22 license. Also, I found, the owner of the Volkswagon did not have insurance either.

Within the next few days, after making numerous phone calls to various state and insurance people, I was informed that the best way to receive restitution would be to file in small claims court, against the driver and owner. Having done this, I am still stuck with a rusting and damaged car, which used to be my pride and joy. My insurance company will change a $200.00 deductible fee if I should decide to file with them. However, I am very mad at the whole system. Why should I be penalized when the owner and the other driver are still driving around free and clear?

[redacted]

BACK UP INFORMATION

Sir, I feel an amendment should be added to House Bill # 68, that would and could prove immediately, to the investgating officer, verification of insurance, to both parties involved in an accident. Such an addition to the law, would alleviate some of the problems and frustrations I have been going through plus it would aid the police and courts, and would make this law, a law more efficient, fair and effective.

Sincerely;

Myke Augustus

Michael (Myke) A. Augustus
4300 Marion Drive
Juneau, Alaska 99801

cc: The Honorable Ben Grussendorf
The Honorable Don Bennett
The Honorable Bill Ray
The Honorable Jim Duncan
The Honorable Mike Miller
The Honorable Robin Taylor
The Honorable Mitch Abood
The Honorable Virginia Collins
The Honorable Jack Fuller
The Honorable Don Clocksin
file

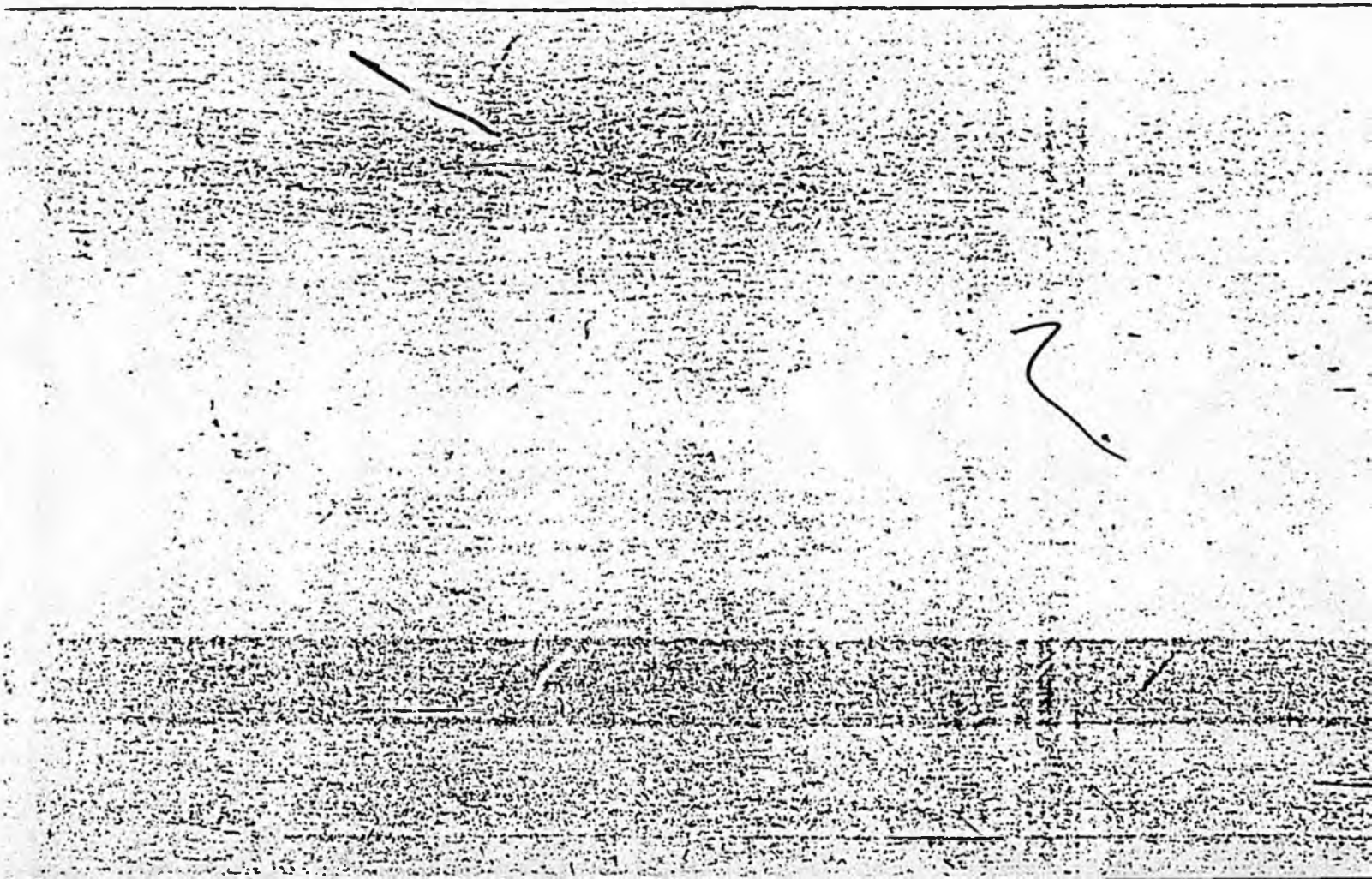
KCAM TALK

THIS IS REP. DICK SHULTZ SPEAKING TO YOU FROM JUNEAU.
LAST WEEK I MENTIONED I WOULD DISCUSS HB 68 MY ALTERNATE MANDATORY INSURANCE BILL. THIS BILL IS INTRODUCED ONLY AS AN ALTERNATIVE TO THE PRESENT INSURANCE LAW AND IS NOT MEANT TO REPLACE IT.

IT IS MY BELIEF THE DRIVER SHOULD BE INSURED--NOT THE VEHICLE. HB 68 ACCOMPLISHES THIS. I ALSO CONTEND THE DRIVER'S DRIVING RECORD SHOULD DETERMINE THE POLICY PREMIUM--NOT THE AGE OF THE VEHICLE OR WHETHER IT HAS 4 CYLINDERS OR 16 CYLINDERS. FOR EXAMPLE--IF THE INSURANCE RECORDS RATE ME A AS POOR DRIVER AND MY WIFE AS A GOOD DRIVER THEN I DON'T BELIEVE OUR INSURANCE PREMIUMS SHOULD REFLECT A HIGHER RATE FOR BOTH OF US BECAUSE OF MY INEPTNESS. UNDER THIS BILL ONLY I WOULD BE REQUIRED TO PAY THE HIGHER PREMIUM. UNDER THE PRESENT LAW, IF A PERSON HAS NUMEROUS PIECES OF EQUIPMENT BUT ONLY USES IT FOR PART OF THE YEAR ~~HE OR SHE~~ You ARE REQUIRED TO PAY THE FULL PREMIUM. EVEN IF ONE IS LUCKY ENOUGH TO FIND AN INSURANCE COMPANY WHO WILL ALLOW A WAIVER ON DEAD-LINED EQUIPMENT THE REPORTS NECESSARY FOR THIS ALLOWANCE CAN BE TIME CONSUMING AND VERY TEDIOUS. FOR EXAMPLE--UNDER THE PRESENT LAW IF YOU HAVE A PICK-UP TRUCK THAT IS USED ONLY FOR HAULING YOUR GARBAGE TO THE DUMP 2 OR 3 TIMES A MONTH--YOU ARE REQUIRED TO CARRY FULL LIABILITY INSURANCE ON THIS PICK-UP. THIS CAN MAKE YOUR GARBAGE HAULING PRETTY EXPENSIVE . HB 68 IS DESIGNED EXPRESSLY FOR THE FAMILY WHO OWNS A LOT OF VEHICLES THAT MUST BE LICENSED BUT ARE ONLY DRIVEN ON A PART-TIME BASIS.

INSURANCE COMPANIES AND THE STATE OF ALASKA DO NOT SUPPORT THIS BILL. INSURANCE COMPANIES CLAIM IT WILL FORCE THEM TO RAISE THEIR RATES

BECAUSE OF THE NECESSITY FOR ADMINISTRATIVE CHANGES. NO ONE LIKES CHANGES--ESPECIALLY IF THEY THINK IT IS GOING TO COST THEM MONEY. INSURANCE COMPANIES CAN FORCE US AS INDIVIDUALS TO ACCEPT THEIR CHANGES IN POLICY BUT WHEN THE SHOE IS ON THE OTHER FOOT--IT IS AN ENTIRELY DIFFERENT STORY. LIKEWISE THE STATE HAS PUT A VERY LARGE FISCAL NOTE ON THIS BILL BECAUSE OF THE MANY ADMINISTRATIVE CHANGES REQUIRED. THE STATE CLAIMS IT WILL TAKE YEARS TO COMPILE DATA TO USE AS A BASIS FOR REGULATING INSURANCE RATES. THE STATE INSURANCE COMMISSION MAKES THE STATEMENT THEY WOULD HAVE NO REAL WAY OF DETERMINING WHETHER INSURANCE RATES ARE JUST OR NOT. WELL--- THE REASON I INTRODUCED THIS BILL IS BECAUSE A GREAT MANY CONSTITUENTS AND I THINK OUR PRESENT INSURANCE RATES ARE UNJUST.





112 Signatures

P.S.

Some other ideas from people were —

① each person should show liability insurance when getting / renewing their license to drive.

② do not wait until 1st accident over $500.00 for insurance, Also follow #1

③ motorcyclists should have to pay for only ½ year of motorcyle liability because of our short driving season.

④ a wife + husbands driving records should be individualy considered — not one penalized for anothers poor driving, but each rewarded for good driving. The same for a minor.

REP DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1, 85

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

NO 40 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

	NAME	ADDRESS	AGE	PHONE
1.	LEON SACKISSEN	1584 NORENE	36	562 6467
2.	William H. Ekanger	3307 Denver ANCHORAGE AK 53	42	563-3253
3.	Amelia Gibson	4227 Dorothy DR	28	337-4672
4.	Douglas R. Miller	8801 Pioneer Dr.	30	338-0605
5.	Colleen Keating	P.O. Box 772304, Eagleriver -99577-	20	mess. 272-0477
6.	[illegible]	7800 Old Seward 475	45	333-4272
7.	Joyce V. Nettles	BOX53 ELEONORA ST. Eagle River 99577	38	694-5549
8.	[illegible]	1013 E Dimond BLVD #521 Anchorage, AK 99515	39	345-4354
9.	David Chandler	1001 Bayface Blvd #D Anchorage 99514	34	
10.	LOEA CLAIBORNE	5711 TONGA ST. ANCHORAGE AK - 99507	41	907-562-5446
11.	Clarence L. Beaboat	PO BOX 8158 ANCH, AK 99508	53	907-345-0711
12.	[illegible]	11720 NIV CT ANCHORAGE AK	40	349-6755
13.	Jean A. Cordery	1280 SOUTHAMPTON. ANCHORAGE AK 99503	47	5625126
14.	[illegible]	1686 Jewell Dr ANCH AK 99502	21	272-3701

REP DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1995

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 49 MEASURE-----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

NAME	ADDRESS	AGE	PHONE
1. Harold Gilbertson	6522 Rosewood Anch.	35	349-2161
2. Edwin F Hubert	1578 PRIMROSE St	32	276-8475
3. JACK B. COTTRILL	3403 DORBRANDT Anch.	35	248-5398
4. Donald Longsdale	3403 DORBrandt	37	561 9246
5. Kim Welch	1313 Dead End Lane Port Heiden 99549	42	561-5547
6. John Welch	6532 Primrose Anch Alc 99502	35	344 0778
7. THERESA YOUNES	446 E 23rd AVE	42	276-5990
8. Daryl Martin	4803 Hillcrest #5	32	245 5131
9. Lennin Powers	" " "	25	" "
10. MICHAEL S. HURN Michael S. Hurn	3404 COPE	34	562 5676
11. PAUL HIBBITS	3605 ARCTIC BVD #1792 ANC AK	36	745 8816
12. Barbara A. Hook	Box 875627 Wasilla AK	21	745-8816
13. Ron Thompson	852 W 72nd	39	349 2972
14. PERRY Herbert Perry K. Herbert	1578 Primrose	26	276-8475

REP DICK SHULTZ

JANUARY 1995

JUNEAU, ALASKA

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 40 MEASURE-----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE! DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

NAME	ADDRESS	AGE	PHONE
1. [illegible]	[illegible] Alaska. 390 [illegible]	72	345-1477
2. Rosalie Runyan	Box 3-4057 Anch. AK 99501	27	—
3. Pete Velle	5021 DeArmoun Rd Anchorage, AK 99516	38	345-2874
4. [illegible]	POBX 3-4057 Anch AK 99501	54	344-2285
5. Dan Wright	Box 104401 Anc AK 99510	34	345-5120
6. Bill Davis	3605 Arctic #885 Anch AK 99503	28	562-2161 x885
7. Dale Ikes	7853 SPRUCE DR	44	349 1947
8. [illegible]	2357 [illegible]	HC	338-2637
9. Nelda Plummer	1317 E 72nd Anch AK	48	349 1439
10. [illegible] M Dickens	POB 874189 Wasilla AK	61	376 ~~1156~~ 1275
11. Harriet Cassidy	801 Airport Hts. #173 Fnch AK	64	279-7191
12. Dash Watson	330 N. Price	23	—
13. Lonnie M. Smith	3605 ARCTIC BLVD #885	31	562-2161 ext. 885
14. Dan Rogers	6532 Rosewood	24	344-0778

REP DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1995

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 49 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE: DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

NAME	ADDRESS	AGE	PHONE
1. Richard Boyles	3105 Cheechako	42	563-6182
2. Frank J. Dueck	Eagle River	48	694-9515
3. Judy Nelson	E. 46th	33	561-3517
4. William Bailey	2221 Muldoon #133	52	333-4483
5. Jean Bailey	2221 Muldoon #133	49	333-4483
6. Floyd M. Dubyne	4000 Coventry Dr	50	562-3281
7. Angela Brandt	2150 Bonifacio	over 21	—
8. Virginia Brainard	2150 Bonifacio	over 21	—
9. George Dueck	1001 Bonifacio Sp16 N	42	333-6610
10. Rachelle Dueck	1001 Bonifacio Sp16 N	36	333-6610
11. Terry Sublett	2827 E 48th ANCH	41	563-6638
12. Teresa Sublett	2827 E 48th ANCH	35	563-6638
13. Walt Dodd	9476 73rd Ave Anch	33	349-3364
14. Jesse Ross Adams	P.O. Box 381 Crowell, TX 79227		

REP DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1985

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 69 MEASURE-----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE! DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

	NAME	ADDRESS	AGE	PHONE
	Judy Bowers	102 Huntzleman	37	278-4986
	Jamie Foldy	1739 Boerne	31	344-4789
3.	[illegible]	2398 Waldorf Dr. Anc. AK	49	563-7858
4.	Norford J Henry	800 W 56th Anc Apt 2	56	563-4145
5.	W. L. Lolos	Box 42142 ANCH.	39	274-9279
6.	Tawana Powell	Box 110172 Anch AK 99511	47	349-2457
7.	Stan Childs	6711 CUTTY SARK, ANC	53	243-3755
8.	Sherill Powell	Box 110172 Anc 99511	34	349-2457
9.	Karen Pekovsek	1410 Richardson 99504	25	337-8532
10.	Ronald Berry	13801 Vennoway 99515	46	345-3460
1.	Brian K. Rose	P.O. Box 101341 ANC. 99510	28	563-7180
2.	Phoebe Rose	P.O. Box 101341 Anc. 99510		563-7180
3.	M. Kraus	Box 87553 WASILLA AK	30	
N.L.	Max Otey	9200 Glen haven #1	46	243-0674

REP. DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1995

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 68 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE! DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

NAME	ADDRESS	AGE	PHONE
1. Ryan McCuistion	7800 Debora Sp 477	29	276-2906
2. Michael R Russo	635 Chugiak AK	29	688 2755
3. David E Estey	4511 Laurel #11	29	563-6698
4. Steve Stein	4880 Cambridge Way	44	562-405
5. [illegible]	2002 Potter	27	
6. Cliff Mashburn	636 Wild Rose Ct	38	563 7570
7. [illegible]	1725 Palmer	34	—
8. James L. Dunda	2644 W No Lights	28	—
9. [illegible]	4275 Spenard Rd #32	63	248-1897
10. KATHLEEN V. OAKES	7540-A FAIRVIEW WAY	38	←
11. [illegible]	3541 Blueberry	36	243 7635
12. Mike Heck	P.O. Box 644 Barrow AK	35	378-1717
13. Alberta S. Hopkins	2905 Dunmagin	31	243-5360
14. Maxine Martinez	2701 W. 32nd	22	243-7829

REP DICK SHULTZ

JANUARY 1995

JUNEAU, ALASKA

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 43 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

	NAME	ADDRESS	AGE	PHONE
1.	Alice A. Day	4225 Spenard Rd. #172		
2.	Alfred Trumbell	2308 W 45 HA AVE		
3.	Georgy Matthews	511 E 54 Ave		
4.	Susan Brissette	2103 W. 46th Ave,		
5.	Barbara Parker	3913 Barbara Dr. 99		
6.	Kurt Trumbell	2221 Muldrow 237	25	337-5279
7.	[illegible] Kevin T Antrim	9100 Noble Circle	27	248-6629
8.	Dawn Turner	3306 Spenard Rd.	29	276-9164
9.	Retta Scott	3461 Tudor	42	345-2401
10.	Joseph A Wells	6605 McGillivray	43	348 4419
11.	Shannon Stein	9030 EMERALD DR	26	248-3140
12.	Ronald L Mayo	6416 Lemon Point	38	345-5605
13.	Theresa Mello	P.O. Box 3-434 Eagle Rock 99501	31	
14.	SAM PARKER	BOX 691 FAIRBANKS	43	488-9756

6522 Lakeshore Dr
Anc. AK 99502

REP. DICK SHULTZ
JUNEAU, ALASKA

JANUARY 1985

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 69 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

NAME	ADDRESS	AGE	PHONE
1. Bob Lemmons	1009 E. 6th Ave. # C	33	278-3311
2. Mary Ann. Clark	P.O. Box 1143 Homer, Ak	53	235-6211
3. Patricia C Mizzele	6503 Rosewood	62	349-4250
4. Carol Nedowas	4303 North Star St, Anch Ak	37	561-0645
5. Carol Adams	5637 Sanora Anchorage	40	———
6. Virginia Hicks	4515 E 8th Anchorage AK	45	338-2220
7. T Buchan	P.O. Box 87-2046 Wasilla	41	376-4651
8. Kelly Marchi Young North	P.O Box 232 Girdwood, AK 99587	38	783-2717
9. Ellen O'Malley	2906 W. 29th St Anchorage AK 99503	30	248-4576
10. Margaret Chiles	2348 Dimond Dr. Anchorage AK 99504	43	337-4510
11. Donna Schmidt	P.O Box 4-491 Anch AK 99509	31	3495708
12. Susan Protzman	8701 Blackwood 99502	27	243-2315
13. Randy C Cook	2131 west 48th anch	25	562-4512

REP DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1995

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 60 MEASURE-----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE! DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

	NAME	ADDRESS	AGE	PHONE
1.	JACK MIZE Jack Mize	300 EGAVIK DR #1 ANCHORAGE 99503	40	562-4491
2.	Jason Wilson	15331 Pollock Dr Anch AK 99516	20	345 9975
3.	Mark Ott	1340 Blackberry	41	243-3645
4.	C Westfall	P O Box 112056	34	345-3203
5.	Sandra Hoyster	2405 W. 3rd st #3	37	561-9017
6.	Tom C. Rochon	1863 Cleveland st.	28	561-2629
7.	Scott Montgomery	316 EKLUTNA	35	338-1873
8.	LEE A. WYATT	BOX ET-2261 WASILLA, ALASKA 99687	42	376 6554
9.	Connie Geist	1919 E. 75th Anchorage AK	25	344-4396
10.	Pete Casanova	1200 W Dimond #550 Anch, Alaska 99515	27	349-9904
11.	MARGARET STURGILL	7036 WEIMER ANCH AK	32	248-4997
12	DARRYL R. BROWN	Box 111475 Anchage AK	30	—
13.	Scott Burnett	PO Box 60997-Fairbanks	30	907-452-6134
14.				

REP DICK SHULTZ

JUNEAU, ALASKA

JANUARY 19[illegible]

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 19 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

	NAME	ADDRESS	AGE	PHONE
1.	[illegible]	[illegible]	45	—
2.	[illegible]	4927 W-80 Th	55	243-2084
3.	Charles Black	3810 CARLSON DR	[illegible]	248-4281
4.	[illegible]	6580 Aspland Anch Alaska	31	349-7893
5.	[illegible]	4403 Spenard Anchorage Alk	29	243-4365
6.	JOE WELSH	8001 E 3rd AVE #4	34	333-7278
7.	Diane Baumgartner	530 Fairbanks St. 99501	33	276-4072
8.	[illegible]	12730 HACE ST ANCH.	29	345-5314
9.	[illegible]	3521 Telstar Anch Ak	25	243-0221
10.	[illegible]	1421 E 17th Ave 99501	25	279-5060
11.	[illegible]	12730 Hace St Anch	26	345-5314
12.	[illegible]	328 Bonifacio #2 Anch	39	—
13.	[illegible]	1433 "P" Street Anch	41	278-4357

ETC.

REP DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1985

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 43 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE: DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

NAME	ADDRESS	AGE	PHONE
Sharon L. Proteman	6522 Rosewood St		
1. Sharon L Proteman	Anc. AK. 99502	34	349-2161
2. John F Schmidt	7411 WOEURN #4 Anc. AK 99502	31	345 4055
3. Ken D Gates	6331 Air Guard Rd Anc AK 99502	23	248-3837
4. [illegible]	4334 SPENARD Rd Anch. Alaska 99503	33	349-5300
5. [illegible]	4334 SPENARD RD Anch AK 99503	31	—
6. Angela C Clemons	4334 Spenard Rd #1 Anchorage Alaska 99503	25	248-0560
7. Kim Hoggatt	11521 TRAILS END RD. 99516	41	USA
8. [illegible]	SR 2586 BA 99576	42	
9. Barry Matheson	4334 Spenard Rd. 99503	41	348-5301
10. D.W. CHERRIE D.C.	3441 ARCTURUS CIRCLE ANCH 995	45	561-4421
11. Kevin Thompson	9449 Brayton Blvd #301 ANCH 995	44	344-7027
12. Kenneth E Woods	SAME	60	SAME
13. Robert E Hazell	PO Box 10441 FBKS AK	25	452-8913
[illegible] Hazell	110 BERKELEY CT. FBKS	27	452 8913

REP. DICK SHULTZ

JUNEAU, ALASKA

JANUARY 1985

WE RECENTLY READ A BRIEF BUT INFORMATIVE ARTICLE IN THE NEWSPAPER...

HB 69 MEASURE----INSURE THE DRIVER, NOT THE VEHICLE.

WE WOULD LIKE YOU TO KNOW THAT WE BACK THIS KIND OF INSURANCE, WHEREAS, A VEHICLE: DRIVER WOULD BUY ONE INSURANCE ON HIMSELF..NO MATTER WHAT VEHICLE HE/SHE MAY DRIVE OR OWN.

WE AS RESIDENTS OF THE STATE OF ALASKA STAND STRONG BEHIND THIS MEASURE.

NAME	ADDRESS	AGE	PHONE
CELESTE BURNETT	Box 103767 - Anchorage	28	3335513
Sandra Hazell	P.O. 871287 - Wasilla	34	376-2641

POSITION PAPER / Department of Commerce & Economic Development

CSHB 68 (L&C): "An Act relating to motor vehicle liability insurance."

The department is in favor of this legislation, if amended. This legislation offers a third form of automobile insurance that may comply with the provisions of the mandatory automobile insurance law which became effective on January 1, 1985.

Under current law, there are two forms of automobile liability insurance recognized. The first is "owner's" coverage which insures an owner for a specified vehicle or vehicles and anyone operating the specified vehicle with the consent of the owner. Typically, there is also a limited extent of nonowned vehicle coverage extended for temporary replacement vehicles.

The second form is "operators" coverage which covers the insured person's use of nonowned vehicles only. Typically, this coverage is written for a person who does not own a motor vehicle but may be driving nonowned vehicles.

The two available forms can work a financial hardship on persons owning a number of vehicles, where that person is the sole operator of a motor vehicle. For this person and others who wish to avail themselves of the option, a third choice is proposed. This option is called the "personal" policy and it is a combination of the first two forms. This form covers all vehicles operated by only the person named, whether the vehicle operated is owned or not. No vehicles are specified and coverage would not extend to other operators. This kind of coverage will be particularly attractive to the owner and sole operator of a number of vehicles.

During work on the CS, a provision was unintentionally added to the description of the "owner's" coverage. The language on page 1, lines 15-16, "or the use by an insured person of a nonowned motor vehicle" should be removed. Inclusion of this language substantially and unnecessarily broadens that form of coverage.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/26/86

John L. George, Director of Insurance

Date: 2/25/86

Alaska State Legislature
Senate
Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 68 (Rules): Sectional Analysis

Section 1) Requires an "owner's" motor vehicle liability policy to designate the vehicles covered, and the name of the person being insured.

"Operator's" liability policy must insure the policy holder for liability arising from the use of a car which is not owned by the insured.

"Personal" motor vehicle liability policy must insure the named person for liability on owned or unowned vehicle.

All 3 types of motor vehicle liability insurance must provide the following coverage for use in the US and Canada:

1) $50,000 bodily injury/death for one person
$100,000 for 2 persons;

2) $25,000 property destruction/per accident

Requires the same coverage limits for 28.22.1[illegible]-130 (Uninsured and Underinsured Motorist Coverage)

Policy must state name and address of insured and meet the requirements of 21.42.160-170;

Section 2) If the owner and operator of a vehicle are unknown, payment under the uninsured or underinsured coverage maybe made only where direct contact between motor vehicles has occured. If one person leaves the scene of an accident, the other person is presumed to be insured if he or she reports the accident to the authorities within 24 hours.

Sections 3 and 4) technical changes to conform with changes made earlier.

Section 5) Definitions

CHAIRMAN'S INFORMATION: CSHB 68 (Rules)

1) BILL TITLE: "An act relating to motor vehicle liability insurance."

a) Introduced: Rep Schultz

b) Co-sponsors:

2) INTENT: This measure expands the two forms of motor vehicle liability insurance currently permitted, and creates a category of "personal" motor vehicle liability insurance. This type of liability insurance would cover all vehicles driven by the person named in the policy, whether the person owned them or not.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 68 (L&C)
Title : An Act relating to motor vehicle liability insurance

Sponsor : Shultz
Requestor : House Judiciary
Date of Request : 1-31-86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Motor Vehicles

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No fiscal impact.

Prepared by : Bill Brown BB — Phone : 465-2650
Division : Motor Vehicles — Date : 1-31-86

Approved by Commissioner : _____ — Date : 1/31/86
Agency : Public Safety

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 68 (L&C)
Title: An Act relating motor vehicle liability insurance

Sponsor: Labor and Commerce
Requestor: Labor and Commerce
Date of Request: _____

FISCAL DETAIL

Agency Affected: ~~Alaska Public Utilities Comm.~~
BRU: ~~Commerce and Econ Dev.~~

Components: Public Protection
Division of Insurance

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Alaska Public Utilities Commission
Phone: 465-2515
Date: February 20, 1986

Approved by Commissioner: Joan H. Tousley
Agency: Commerce and Economic Development
Date: February 20, 1986

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

10/25/85

0201k22086a

AS21.42.160 DOCUMENT
CHAPTER = 21.42
SECTION = 21.42.160
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 42.
The Insurance Contract.
CITATION Sec. 21.42.160.
CATCH LINE
CONTENTS OF POLICIES IN GENERAL.
TEXT (a) Each policy shall specify
(1) the names of the parties of the contract;
(2) the subject of the insurance;
(3) the risks insured against;
(4) the time when the insurance thereunder takes effect and the period during which the insurance is to continue;
(5) the premium;
(6) the conditions pertaining to the insurance.

(b) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.

(c) Subsections (a) and (b) of this section do not apply to surety contracts, or to group insurance policies.

(d) Each policy and annuity contract issued by a domestic insurer, and the forms thereof filed with the director, shall have printed on them an appropriate designating letter or figure, or combination of letters or figures or terms identifying the respective forms of policies or contracts, together with the year of adoption of the form. When a change is made in the form, the designating letters, figures or terms and year of adoption shall be correspondingly changed.

HISTORY (Sec. 1 ch 120 SLA 1966)

END OF DOCUMENT

AS21.42.170 DOCUMENT
CHAPTER = 21.42
SECTION = 21.42.170
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 42.
The Insurance Contract.
CITATION Sec. 21.42.170.
CATCH LINE
ADDITIONAL POLICY CONTENTS.
TEXT A policy may contain additional provisions not inconsistent with this title that are

(1) required to be inserted by the laws of the insurer's domicile;

(2) necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included in it.

HISTORY (Sec. 1 ch 120 SLA 1966)

END OF DOCUMENT

AS28.15.221 DOCUMENT
CHAPTER = 28.15
SECTION = 28.15.221
TITLE = 28
HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 15.
Drivers' Licenses.
ARTICLE 3.
Point System.
CITATION Sec. 28.15.221.
CATCH LINE
POINT SYSTEM.
TEXT (a) For the purpose of identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic laws, the commissioner shall adopt regulations establishing a uniform system for the suspension, revocation, limitation or denial of a driver's license or driving privilege by assigning demerit points for convictions for violations of traffic laws which are required to be reported to the department under AS 28.15.191.

(b) The regulations adopted under (a) of this section shall include a designated level of point accumulation which identifies drivers who are habitually reckless or negligent or who are habitual or frequent violators of traffic laws, so as to show a disrespect for traffic laws and a disregard for the safety of other persons. In formulating the point system authorized by this section, the commissioner shall, in the interest of interstate uniformity, provide for suspension, revocation or denial of a driver's license or privilege for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 18 or more points as a result of offenses committed during any 24-month period.

HISTORY (Sec. 19 ch 178 SLA 1978)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS28.20.400 DOCUMENT
CHAPTER = 28.20
SECTION = 28.20.400
TITLE = 28
HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 20.
Motor Vehicle Safety Responsibility Act.
CITATION Sec. 28.20.400.
CATCH LINE
SELF-INSURERS.
TEXT (a) A person in whose name more than 25 vehicles are registered in this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in (b) of this section.

(b) The department may issue a certificate of self-insurance when it is satisfied that the person has and will continue to have ability to pay judgments obtained against the person. The certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both, or within the limits the department prescribes.

(c) Upon not less than 10 days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay a judgment within 30 days after judgment becomes final is a reasonable ground for the cancellation of a certificate of self-insurance.

HISTORY (Sec. 42 ch 163 SLA 1959)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4207 SLAB HB 68 - HB 78

1082

AS28.22.010 DOCUMENT
CHAPTER = 28.22
SECTION = 28.22.010
TITLE = 28
HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 22.
Motor Vehicle Liability Insurance.
ARTICLE 1.
Description of General Policy Provisions.
CITATION Sec. 28.22.010.
CATCH LINE
MOTOR VEHICLE LIABILITY POLICY.
TEXT (a) The owner's policy of liability insurance shall

(1) designate by description or appropriate reference all vehicles that it covers;

(2) insure the person named against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the vehicle in the United States or Canada, subject to limits exclusive of interest and costs, with respect to each vehicle, as follows:

(A) $50,000 because of bodily injury to or death of one person in any one accident, and, subject to the same limit for one person, $100,000 because of bodily injury to or death of two or more persons in any one accident; and

(B) $25,000 because of injury to or destruction of property of others in any one accident;

(3) contain coverage prescribed in AS 28.22.100 - 28.22.130 in the amounts set out in (2) of this subsection for the protection of the persons insured under the policy who are legally entitled to recover damages from the owner or operator of an uninsured or underinsured motor vehicle because of bodily injury or death, or damage to or destruction of property arising out of the ownership, maintenance, or use of the uninsured or underinsured motor vehicle.

(b) The operator's policy of liability insurance shall insure the person named as insured against loss from the liability imposed on the operator by law for damages arising out of the use by the operator of a motor vehicle not owned by the operator, within the same territorial limits and subject to the same limits of liability as are required for an owner's policy of liability insurance.

(c) The motor vehicle liability policy shall state the name and address of the named insured, the coverage, the premium charges, the policy period, and the limits of liability, and shall contain an agreement or an endorsement that insurance is provided in accordance with the coverage defined in (a) of this section for bodily injury and death or property damage, or both.

HISTORY (Sec. 13 ch 70 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS28.22.600 DOCUMENT
CHAPTER = 28.22
SECTION = 28.22.600
TITLE = 28
HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 22.
Motor Vehicle Liability Insurance.
ARTICLE 4.
Miscellaneous Provisions.
CITATION Sec. 28.22.600.
CATCH LINE
DEFINITION.
TEXT In this chapter, "motor vehicle liability policy" means an owner's policy or an operator's policy containing an agreement or endorsement and issued by an insurance carrier authorized to transact business in the state to or for the benefit of the person named as insured.
HISTORY (Sec. 13 ch 70 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

77

Chairman's Information:

1) HB 77 am: "An act relating to the capital funds required of domestic and foreign insurers"

   a) Introduced: Cato
   b) Co-Sponsors: none

2) INTENT: This legislation increases the capital and surplus requirements for insurance companies to operate in the state. The justification for this proposed increase is to assure that the insurer is able to meet its financial obligations. The capital and surplus minimums were last increased in 1976, and the proposed increases would restore the purchasing power of the minimums to slightly over the 1976 level.

   The bill also has "grandfather" provisions for domestic life companies (we have one) and for domestic reciprocals (we have two).

   The Div of Insurance feels that the domestic reciprocals (Alaska Timber Insurance Exchange and Alaska Rural Electric Cooperative Association) are watched closely, and that as non profit corporations the increased minimums would present a hardship to them.

   NOTE: The proposed increases will make it more difficult for new companies (in Alaska and outside) to do business in the state. Although there is no demonstrable evidence that this will impact the "bush" negatively, it would be a good question to pose. Don Koch from the Div of Insurance should be present to give testimony.

   FISCAL NOTES: 0

3) COMMITTEE COMMENTS: SCS drafted regarding the "grandfathering" of the one domestic life insurer. Language occurs on page 3, lines 18 thru 21 and states that the "grandfathering" will not occur if the ownership is changed, or the class, line, and volume of business written is "materially" changed from that written on Dec 31st, 1984.

4) PUBLIC HEARINGS:

a) Sponsor

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committe for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption? Need to adopt CS

Fred: As a reminder each committee member has been given until today to report objections to confirmation resumes.

Chairman's Information:

1) HB 77 am: "An act relating to the capital funds required of domestic and foreign insurers"

   a) Introduced: Cato
   b) Co-Sponsors: none

2) INTENT: This legislation increases the capital and surplus requirements for insurance companies to operate in the state. The justification for this proposed increase is to assure that the insurer is able to meet its financial obligations. The capital and surplus minimums were last increased in 1976, and the proposed increases would restore the purchasing power of the minimums to slightly over the 1976 level.

   The bill also has "grandfather" provisions for domestic life companies (we have one) and for domestic reciprocals (we have two).

   The Div of Insurance feels that the domestic reciprocals (Alaska Timber Insurance Exchange and Alaska Rural Electric Cooperative Association) are watched closely, and that as non profit corporations the increased minimums would present a hardship to them.

   NOTE: The proposed increases will make it more difficult for new companies (in Alaska and outside) to do business in the state. Although there is no demonstrable evidence that this will impact the "bush" negatively, it would be a good question to pose. Don Koch from the Div of Insurance should be present to give testimony.

   FISCAL NOTES: 0

3) COMMITTEE COMMENTS:

4) PUBLIC HEARINGS:

   a) Sponsor

Div Inc Co

Seth George / Don Coke / Dick Block AK Nat'l Ins

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committe for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

PRIME SPONSOR: CATO
CO-SPONSORS:

CURRENT STATUS: (S) L&C

DATE		PAGE	ACTION
01/18/85	(H)	64	READ THE FIRST TIME - REFERRAL(S)
02/01/85	(H)	229	L&C RPT 6DP 1AM 0 FISCAL NOTE
02/01/85	(H)	229	RLS TO CALENDAR 2/1/85
02/01/85	(H)	245	READ THE SECOND TIME
02/01/85	(H)	245	AMD NO 1 ADOPTED UNAN CONSENT
02/01/85	(H)	245	AMD NO 2 ADOPTED UNAN CONSENT
02/01/85	(H)	246	ADVANCED TO 3RD READING UNAN CONSENT
02/01/85	(H)	246	READ THE THIRD TIME
02/01/85	(H)	246	PASSED Y36 N3 X1
02/01/85	(H)	246	CLOCKSIN NOTICE OF RECONSIDERATION

DATE		PAGE	ACTION
02/04/85	(H)	265	RECONSIDERATION NOT TAKEN UP
02/04/85	(H)	265	TRANSMITTED TO (S)
02/05/85	(S)	220	READ THE FIRST TIME
			LABOR&COMMERCE
			RULES

Ford
2/22/85 ✓

Original sponsor: Cato

Schuman

BY THE LABOR AND COMMERCE COMMITTEE

IN THE HOUSE

SENATE CS FOR HOUSE BILL NO. 77 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the capital funds required of foreign and domestic insurers."

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

* Section 1. AS 21.09.070(a) is amended to read:

(a) To qualify for authority to transact any one kind of insurance as defined in AS 21.12, or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer applying for its original certificate of authority in this state, or an insurer reapplying for a certificate of authority in this state after having withdrawn from this state for any cause, shall possess and thereafter maintain unimpaired basic paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual insurer or foreign reciprocal insurer), and shall possess when first so authorized additional funds in surplus as follows:

Kind or Kinds of Insurance	Basic Capital or Basic Surplus		Additional Surplus	
Life	$\underline{\$800,000}$	[$400,000]	$\underline{\$800,000}$	[$400,000]
Disability	$\underline{800,000}$	[400,000]	$\underline{800,000}$	[400,000]
Life and Disability	$\underline{1,000,000}$	[500,000]	$\underline{1,000,000}$	[500,000]
Property	$\underline{600,000}$	[400,000]	$\underline{600,000}$	[400,000]
Casualty excluding vehicle	1,000,000	[500,000]	1,000,000	[500,000]

Vehicle	800,000	[400,000]	800,000	[400,000]
Marine & Transportation	1,000,000	[450,000]	1,000,000	[450,000]
Surety	1,000,000	[500,000]	1,000,000	[500,000]
Title	300,000	[250,000]	300,000	[250,000]
Any two or more of the following kinds of insurance: property, marine and transportation, vehicle, casualty excluding vehicle, surety and disability	1,500,000	[550,000]	1,500,000	[550,000]
[MULTIPLE LINES (ALL LINES EXCLUDING LIFE AND TITLE INSURANCE)		750,000		750,000]
Legal Expenses	600,000	[400,000]	600,000	[400,000]
Mortgage Guarantee	1,000,000	[400,000]	1,000,000	[400,000]

* Sec. 2. AS 21.09.080 is repealed and reenacted to read:

Sec. 21.09.080. CAPITAL FUNDS REQUIRED OF OLD DOMESTIC INSURERS. (a) A domestic insurer holding a valid certificate of authority to transact insurance in this state immediately before January 1, 1985, may continue to transact the same kinds of insurance permitted by the certificate of authority provided that after January 1, 1985, the insurer maintains unimpaired no less paid-in capital stock (if a stock insurer) and no less minimum surplus (if a mutual insurer) than the amount required of the insurer by AS 21.09.070 on December 31, 1984, as if the law had continued in force.

(b) An insurer described in this section may not, after January 1, 1985, declare a dividend or distribute assets to its

shareholders, members or subscribers until it has a total capital and surplus equal to the total capital and surplus required for a like insurer under AS 21.09.070.

(c) Annually on December 31, beginning in 1985, each domestic insurer described in this section with less paid-in capital stock (if a stock insurer) or less surplus (if a mutual insurer) than required by AS 21.09.070 as to new domestic insurers shall increase their unimpaired basic paid-in capital stock or surplus by an amount equal to 20 percent of the difference between the actual paid-in capital stock or surplus on December 31, 1983, and that required by AS 21.09.-070 as to new domestic insurers. By December 31, 1989, all domestic insurers shall maintain paid-in capital stock and surplus in amounts no less than required by AS 21.09.070 as to new domestic insurers.

(d) Notwithstanding the provisions of this section, a domestic life insurer duly licensed and capitalized on December 31, 1984, shall have and maintain the capital and surplus required under the laws of this state on December 31, 1984, as if the laws had continued in force. This subsection does not apply to a domestic life insurer if the ownership of the insurer is changed, or the class, line, and volume of the business written is materially changed from that written on December 31, 1984.

* Sec. 3. AS 21.69.220(b) is amended to read:

(b) When applying for an original certificate of authority, the insurer must be otherwise qualified under this title, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium at a rate not less than that usually charged by stock insurers for comparable coverages, must have surplus funds on

hand and deposited as of the date the insurance coverages are to become effective, or, in lieu of the applications, premiums and surplus, may deposit surplus, all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer proposes to transact:

(A) Kind of Insurance	(B) Minimum No. of Applicants Accepted	(C) Minimum No. of Subjects Covered	(D) Minimum Premium Collected
Life (1)	500	500	annual
Disability (2)	500	500	quarterly
Property (3)	100	250	annual
Casualty (4)	250	500	annual
With Workers' Compensation	250	1,500	quarterly
Marine, Wet Marine, and Transportation	50	50	annual

(E) Minimum Amount of	(F) Maximum Amount of Insurance	(G) Minimum Surplus	(H) Deposit

Insurance Each Subject	Each Subject (5)	Funds Deposited (6)	of Surplus in Lieu of (6)
$1,000	$ 2,500	$800,000 [$ 50,000]	$800,000 [$100,000]
$ 10 (weekly indem.)	$ 25 (weekly indem.)	$800,000 [$ 50,000]	$800,000 [$100,000]
$1,000	$ 3,000	$600,000 [$100,000]	$600,000 [$200,000]
$1,000	$10,000	$1,000,000 [$150,000]	$1,000,000 [$200,000]
$1,000	$10,000	$1,000,000 [$200,000]	$1,000,000 [$300,000]
$1,000	$25,000	$1,000,000 [$100,000]	$1,000,000 [$200,000]

* Sec. 4. AS 21.75.050 is amended by adding a new subsection to read:

(d) Notwithstanding (a) and (c) of this section, or AS 21.09.-080, domestic reciprocal insurers duly licensed and capitalized on December 31, 1984, shall have and maintain the capital and surplus required at the date of their original license.

Introduced: 1/18/85
Referred: Labor & Commerce

IN THE HOUSE BY CATO

HOUSE BILL NO. 77 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the capital funds required of foreign and domestic insurers."

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

* Section 1. AS 21.09.070(a) is amended to read:

(a) To qualify for authority to transact any one kind of insurance as defined in AS 21.12, or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer applying for its original certificate of authority in this state, or an insurer reapplying for a certificate of authority in this state after having withdrawn from this state for any cause, shall possess and thereafter maintain unimpaired basic paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual insurer or foreign reciprocal insurer), and shall possess when first so authorized additional funds in surplus as follows:

Kind or Kinds of Insurance	Basic Capital or Basic Surplus		Additional Surplus	
Life	$800,000	[$400,000]	$800,000	[$400,000]
Disability	800,000	[400,000]	800,000	[400,000]
Life and Disability	1,000,000	[500,000]	1,000,000	[500,000]
Property	600,000	[400,000]	600,000	[400,000]
Casualty excluding vehicle	1,000,000	[500,000]	1,000,000	[500,000]

Vehicle	800,000	[400,000]	800,000	[400,000]
Marine & Transportation	1,000,000	[450,000]	1,000,000	[450,000]
Surety	1,000,000	[500,000]	1,000,000	[500,000]
Title	300,000	[250.000]	300,000	[250,000]
Any two or more of the following kinds of insurance: property, marine and transportation, vehicle, casualty excluding vehicle, surety and disability	1,500,000	[550,000]	1,500,000	[550,000]
[MULTIPLE LINES (ALL LINES EXCLUDING LIFE AND TITLE INSURANCE)		750,000		750,000]
Legal Expenses	600,000	[400,000]	600,000	[400,000]
Mortgage Guarantee	1,000,000	[400,000]	1,000,000	[400,000]

* Sec. 2. AS 21.09.080 is repealed and reenacted to read:

Sec. 21.09.080. CAPITAL FUNDS REQUIRED OF OLD DOMESTIC INSURERS. (a) A domestic insurer holding a valid certificate of authority to transact insurance in this state immediately before January 1, 1985, may continue to transact the same kinds of insurance permitted by the certificate of authority provided that after January 1, 1985, the insurer maintains unimpaired no less paid-in capital stock (if a stock insurer) and no less minimum surplus (if a mutual insurer) than the amount required of the insurer by AS 21.09.070 on December 31, 1984, as if the law had continued in force.

(b) An insurer described in this section may not, after January 1, 1985, declare a dividend or distribute assets to its

shareholders, members or subscribers until it has a total capital and surplus equal to the total capital and surplus required for a like insurer under AS 21.09.070.

(c) Annually on December 31, beginning in 1985, each domestic insurer described in this section with less paid-in capital stock (if a stock insurer) or less surplus (if a mutual insurer) than required by AS 21.09.070 as to new domestic insurers shall increase their unimpaired basic paid-in capital stock or surplus by an amount equal to 20 percent of the difference between the actual paid-in capital stock or surplus on December 31, 1983, and that required by AS 21.09.070 as to new domestic insurers. By December 31, 1989, all domestic insurers shall maintain paid-in capital stock and surplus in amounts no less than required by AS 21.09.070 as to new domestic insurers.

(d) Notwithstanding the provisions of this section, a domestic life insurer duly licensed and capitalized on December 31, 1984, shall have and maintain the capital and surplus required under the laws of this state on December 31, 1984, as if the laws had continued in force.

* Sec. 3. AS 21.69.220(b) is amended to read:

(b) When applying for an original certificate of authority, the insurer must be otherwise qualified under this title, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium at a rate not less than that usually charged by stock insurers for comparable coverages, must have surplus funds on hand and deposited as of the date the insurance coverages are to become effective, or, in lieu of the applications, premiums and

surplus, may deposit surplus, all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer proposes to transact:

(A) Kind of Insurance	(B) Minimum No. of Applicants Accepted	(C) Minimum No. of Subjects Covered	(D) Minimum Premium Collected
Life (1)	500	500	annual
Disability (2)	500	500	quarterly
Property (3)	100	250	annual
Casualty (4)	250	500	annual
With Workers' Compensation	250	1,500	quarterly
Marine, Wet Marine, and Transportation	50	50	annual

(E) Minimum Amount of Insurance Each	(F) Maximum Amount of Insurance Each Subject	(G) Minimum Surplus Funds Deposited	(H) Deposit of Surplus in Lieu of

Subject	(5)		(6)	(6)	
$1,000	$ 2,500	$800,000	[$ 50,000]	$800,000	[$100,000]
$ 10 (weekly indem.)	$ 25 (weekly indem.)	$800,000	[$ 50,000]	$800,000	[$100,000]
$1,000	$ 3,000	$600,000	[$100,000]	$600,000	[$200,000]
$1,000	$10,000	$1,000,000	[$150,000]	$1,000,000	[$200,000]
$1,000	$10,000	$1,000,000	[$200,000]	$1,000,000	[$300,000]
$1,000	$25,000	$1,000,000	[$100,000]	$1,000,000	[$200,000]

* Sec. 4. AS 21.75.050 is amended by adding a new subsection to read:

(d) Notwithstanding (a) and (c) of this section, or AS 21.09.-080, domestic reciprocal insurers duly licensed and capitalized on December 31, 1984, shall have and maintain the capital and surplus required at the date of their original license.

HB 77 AM
ALASKA STATUTES

AS21.09.070

CHAPTER = 21.09
SECTION = 21.09.070
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 09.
Authorization of Insurers and General Requirements.
CITATION Sec. 21.09.070.
CATCH LINE
CAPITAL FUNDS REQUIRED OF FOREIGN INSURERS AND NEW DOMESTIC INSURERS.
TEXT (a) To qualify for authority to transact any one kind of insurance as defined in AS 21.12, or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer applying for its original certificate of authority in this state, or an insurer reapplying for a certificate of authority in this state after having withdrawn from this state for any cause, shall possess and thereafter maintain unimpaired basic paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual insurer or foreign reciprocal insurer), and shall possess when first so authorized additional funds in surplus as follows:

Kind or Kinds of Insurance	Basic Capital or Basic Surplus	Additional Surplus
Life	$400,000	$400,000
Disability	400,000	400,000
Life and Disability	500,000	500,000
Property	400,000	400,000
Casualty excluding vehicle	500,000	500,000
Vehicle	400,000	400,000
Marine & Transportation	450,000	450,000
Surety	500,000	500,000
Title	250,000	250,000
Any two of the following kinds of insurance: property, marine and transportation, casualty excluding vehicle, surety and disability	550,000	550,000
Multiple Lines (all lines excluding life and title insurance)	750,000	750,000
Legal Expenses	400,000	400,000
Mortgage Guarantee	400,000	400,000

(b) Notwithstanding (a) of this section, a domestic insurer holding a valid certificate of authority to transact insurance in this state immediately before July 1, 1966, may continue to transact the same kinds of insurance permitted by the certificate of authority by maintaining after that date unimpaired not less than the same amount of paid-in capital stock (if a stock insurer) or not less than the same amount of surplus (if a mutual or reciprocal insurer) for that authority as required under the laws of this state in force immediately before July 1, 1966, as if the laws had continued in force.

AS21.69.220

CHAPTER = 21.69
SECTION = 21.69.220
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 69.
Organization and Corporate Procedures.
CITATION Sec. 21.69.220.
CATCH LINE
INITIAL QUALIFICATIONS OF DOMESTIC MUTUALS.
TEXT (a) When newly organized, a domestic mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in
(b) of this section.

(b) When applying for an original certificate of authority, the insurer must be otherwise qualified under this title, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium at a rate not less than that usually charged by stock insurers for comparable coverages, must have surplus funds on hand and deposited as of the date the insurance coverages are to become effective, or, in lieu of the applications, premiums and surplus, may deposit surplus, all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer proposes to transact:

(A) Kind of Insurance	(B) Minimum No. of Applicants Accepted	(C) Minimum No. of Subjects Covered	(D) Minimum Premium Collected
Life (1)	500	500	annual
Disability (2)	500	500	quarterly
Property (3)	100	250	annual
Casualty (4)	250	500	annual
With Workers' Compensation	250	1,500	quarterly
Marine, Wet Marine, and Transportation	50	50	annual

(E) Minimum Amount of Insurance Each Subject	(F) Maximum Amount of Insurance Each Subject (5)	(G) Minimum Surplus Funds Deposited (6)	(H) Deposit of Surplus in Lieu of (6)
$1,000	$ 2,500	$ 50,000	$100,000
$ 10 (weekly indem.)	$ 25 (weekly indem.)	$ 50,000	$100,000
$1,000	$ 3,000	$100,000	$200,000
$1,000	$10,000	$150,000	$200,000
$1,000	$10,000	$200,000	$300,000
$1,000	$25,000	$100,000	$200,000

AS21.75.050

CHAPTER = 21.75
SECTION = 21.75.050
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 75.
Reciprocal Insurers.
ARTICLE 1.
General Provisions.
CITATION Sec. 21.75.050.
CATCH LINE
SURPLUS FUNDS REQUIRED.
TEXT (a) A domestic reciprocal insurer formed in accordance with the provisions of this chapter shall have and maintain a surplus no less than an amount equal to the total of the capital and one-half of the surplus that would be required of a domestic stock insurer writing the same lines for which the reciprocal insurer seeks to be authorized.

(b) A foreign reciprocal insurer shall have and maintain a surplus no less than an amount equal to the total capital and surplus that would be required of a domestic stock insurer writing the same lines for which the reciprocal seeks to be authorized.

(c) A domestic reciprocal insurer formed under this chapter by and insuring only 10 or more municipalities shall

(1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized; and

(2) maintain a surplus of $250,000 in admitted assets or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater.

HISTORY (Sec. 1 ch 120 SLA 1966; am sec. 4 ch 150 SLA 1978; am sec. 2 ch 104 SLA 1983)

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 77

Title:

Sponsor: Cato

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Donald Koch Phone: 465-2577

Division: Division of Insurance Date:

Approved by Commissioner: Loren H. Lounsbury Date: 1/29/85

Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

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

1587W12985a

Fiscal Note

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

HB 77am Sectional Analysis:

Section 1) Increases the amount of capital and surplus requirements for "new" foreign and domestic insurers applying for a certificate to operate in the state. Also requires insurers who were previously certified in the state but withdrew to provide the increased capital and surplus amounts. Scheduled increases are established in this section.

Section 2) (a) Allows those domestic insurers presently holding valid certificates to continue to transact the same kinds of insurance as long as they maintain no less capital or surplus than they are currently required to have.

(b) prohibits insurers from declaring a dividend or distributing assets to their shareholders, members, or subscribers until they have the total capital and surplus required under this proposed legislation.

(c) Allows domestic insurers currently holding valid certificates of authority until Dec 31st 1989 to increase their capital and surplus requirements to the schedule adopted in section 1). Starting on December 31st, 1985, and then annually, domestic insurers with less than the required minimums proposed in this bill must increase their capital and surplus minimums by 20% of the difference between the amounts held on Dec 31st 1983 and the new required amounts.

(d) "Grandfathers" domestic life insurance companies at the capital and surplus requirement levels in effect on Dec 31st, 1984.

Section 3) Amends the "minimum surplus funds deposited" and the "deposit surplus in lie of" for insurers who are applying for a certificate of authority.

Section 4) Exempts domestic reciprocal insurers licensed and capitalized on Dec 31st, 1984 from the requirements of the new provisions.

Sectional Analysis

Department of Commerce & Economic Development / POSITION PAPER

FEB 6 1985

HB 77 An Act relating to the capital funds required of foreign and domestic insurers.

An insurance company desiring to do business in Alaska must have, among other things, certain amounts of unimpaired paid-in basic capital and unimpaired basic surplus before it can open its doors for business. These amounts, which are specified in Alaska Statutes, are intended to be a minimum cushion to assure that the insurer is able to meet its financial obligations.

These minimums were last revised in 1976. Since that time, the purchasing power represented by the specified limits has substantially diminished. For example, the value of a limit of $1,000,000 in 1976 has diminished as follows:

1976	$1,000,000	1981	$625,000
1977	$939,000	1982	$590,000
1978	$873,000	1983	$574,000
1979	$797,000	1984 est.	$559,000
1980	$693,000	1985 est.	$543,000

The proposed bill would effectively restore the purchasing power of the minimums to slightly over the 1976 level.

This proposal has grandfather provisions for domestic life companies (we have one) and for domestic reciprocals (we have two). All other domestics would have four years to reach the new required minimums. We view this as appropriate.

The Department lends its full support to this measure as proposed with a few minor nonsubstantive amendments. We urge the committee to consider the bill on its merits. The proposal is timely and we encourage its passage.

Loren H. Lounsbury, Commissioner

Date: 1/30/85

0105K13085b

Alaska National
INSURANCE COMPANY
A policy of service and protection

January 11, 1985

The Honorable Betty Cato, Representative
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Betty:

I very much appreciate your undertaking to draft, prefile and introduce the legislation requiring increased capital and surplus minima for the formation and operation of insurance companies in the State of Alaska.

BACKGROUND

Insurance companies formed and doing business in the state of Alaska are closely regulated by Title 21 as implemented and enforced by the Division of Insurance.

Historically, and still today, the most important consideration in regulating insurance companies and the whole insurance business is to insure the solvency of the industry, that is to ensure that the insurance companies selling policies will have the financial resources to pay obligations under those contracts when claims are made. This becomes a particularly acute problem when one realizes claims under our casualty insurance policies may not be made for three, four even five years after the policy has been paid for and for life insurance companies the claims may not be made for as much as twenty years, for title companies an equally long period of time.

The insurance regulatory scheme, which is directed towards assuring the financial capability of all of the carriers selling insurance, attempts to meet this challenge by overseeing almost all phases of an insurance company's activities; its pricing, its investments, its management, its ownership and its significant business transactions.

Perhaps the most important control which statutes give the insurance department is to require that insurance companies have a minimum amount of cash in its capital and free surplus accounts before they are licensed and further requiring that it maintain those levels so long as it is licensed to do business in the state.

Periodically it is necessary for these requirements to be reviewed to determine if they are still adequate to meet current needs.

chorage, Alaska 99510 • Telephone (907) 248-2642 • Telex (090) 25-456

In 1966 the minima were doubled over what they had been prior to that time. The capital and surplus requirements were last reviewed by the legislature in 1976 at which time they were increased by 100% over the requirements on the books at that time.

Since 1976 there has been no change in the capital and surplus requirements but there have been significant changes in the exposures for insurance companies not the least of which has been double digit inflation which has so decreased the value of money since 1976 making it extremely important that these be again reviewed.

CAPITAL AND SURPLUS REQUIREMENTS

Basic capital or basic surplus and additional surplus are the accounts denominated in Alaska statutes as policyholders' surplus. This is the statutory accounting term applied to the accounts which are more commonly known by accountants as a company's net worth.

I was one of the key people responsible for starting Alaska National Insurance Company in October of 1980. I have been in the insurance industry since 1968, from October of 1975 through December of 1978 I was the director of the Division of Insurance and have been involved as a lawyer or as an executive officer for insurance companies

With this background I believe I can say with assurance that one of the most important concerns that the insurance industry has is the adequate capitalization of new entrants into the insurance business.

There are two reasons why the insurance industry is concerned about the financial security of other insurance companies:

(a) Those in the industry know full well that for the first several years of an insurance company's operation, capital and surplus is marketedly reduced partly because of genuinely incurred operating expenses and losses during the formative years and partly because of the peculiarities of statutory accounting, and that, if a company is not adequately capitalized it will quickly become insolvent even though it may be operating in accordance with rates, forms and procedures common to the rest of the industry.

(b) In Alaska there is an insurance guarantee association which provides among other things that all of the property and casualty insurance companies doing business in the state of Alaska must pay for losses which an insolvent insurance company doing busines in the state are unable to pay. We understand that it is the desire of the Division of Insurance to introduce a life insurance guarantee association which will have the same function with respect to life insurance companies.

Since losses left unpaid by an insolvent insurance carrier whether property, casualty or life must be paid for by those of us who are attempting to act responsibly in the industry we have a good and sufficient reason to be concerned that no company be started in the state of Alaska or allowed to enter the state from another state unless it has at least a minimum capital and surplus which in our judgement is necessary to properly operate a good insurance company.

POLICYHOLDER SURPLUS LEVEL

This legislative proposal requires that all the existing capital and surplus requirements be essentially doubled. If this legislation were adopted as proposed it would put Alaska near the top but not among the highest capital and surplus requirements for all of the states; that is, there are several states such as California, New York and Colorado which have capital and surplus requirements which are even higher than those which would be required by Alaska even after this bill were adopted.

It is my judgement that these minima are, particularly for Alaska, essential given the higher cost of workers' compensation claims, the higher property values involved, the higher exposure on auto and general liability claims and so forth.

ACCEPTABILITY

This measure was essentially drafted over a year ago and discussed among the insurance industry but never introduced as legislation.

At the time it was drafted, in November of 1983, it was presented to the then director of the Division of Insurance, Kenneth Moore who approved the language of the bill and agreed that he would suppport it if it were introduced.

I do not have a specific committment from him but I believe that the new director, John George likewise approves of this proposal.

In addition, the measure was submitted to the Board of Governors of the Alaska Insurance Guarantee Association for their comment. Their response was that all members of the Board Governors except one for themselves and for whatever trade associations in the insurance industry they represent, either approved of or did not disapprove of the measure.

IMPACT ON INSURERS

Enclosed is an exhibit showing the capital and surplus of domestic insurers in the state of Alaska. It can be seen that the bill would not adversely affect any of the existing domestic insurance companies except Umiliak Insurance Company, Life Insurance Company of Alaska, The Alaska Timber Insurance Exchange and a newly formed reciprocal owned by the Alaska Rural Electric Association. All other companies either meet or exceed the capital requirements or are wholly owned by large insurance companies which could easily downstream capital without any loss or expense to themselves in order to meet the requirements. Umiliak Insurance Company would have to come up with additional monies, but I have discussed this matter with the manager of Umiliak who informed me that on his behalf and on behalf of his ownership they approved of the bill and would meet the requirements.

Language has been included in the bill which would grandfather the Alaska Timber Exchange the only other reciprocal in the state and the Life Insurance Company of Alaska the only domestic life insurance company.

Should you have any further questions concerning the general purpose of the proposed bill or its specific language, I would be happy to have you or your staff call upon me.

Yours cordially,

Richard L. Block
President

DLB:jmd
Enclosure

CAPITAL AND SURPLUS OF
DOMESTIC INSURERS
DECEMBER 31, 1982

	Paid-In Capital	Paid-In and Contributed Surplus	Policyholder's Surplus
Alaska Insurance Company	600,000	2,160,092	2,760,092
Alaska Pacific Insurance Company	1,024,080	22,920,775	23,944,855
Alaska Timber Insurance Exchange		1,442,383	1,442,383
Great American Insurance Company of Alaska	750,000	880,359	1,630,359
Industrial Indemnity Company of Alaska Revolving Fund	750,000	2,869,016	3,619,016
MICA	3,000,000 *	1,749,059	4,749,059
Pacific Marine Insurance Company of Alaska	1,000,000	973,973	1,973,973
Providence Washington Insurance Company of Alaska	650,000	1,707,856	2,357,856
Umialik Insurance Company	750,000	616,464	1,366,464
Security Title Insurance Company of Alaska	950,010	1,318,128	2,268,138
Life Insurance Company of Alaska	103,859 *	1,259,124	1,362,982

* Grandfather's Rights

SOURCE: ALASKA DIVISION OF INSURANCE 11-14-83.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

78

Chairman's Information:

1) CSHB 78(L&C)am "An act relating to occupational licensing fees; and providing for an effective date."

a) Introduced: Governor

b) Co-Sponsors:

2) INTENT: This bill will authorize the establishment of occupational licensing fees by regulation, giving the department the flexibility to set fees which reflect the actual cost of licensing functions.

FISCAL NOTE: none

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 78(L&C): Sectional

Section 1) Identifies the occupations administered by the Division of Occupational Licensing and adds new language to include those occupations which are administered by the division but which do not have governing boards.

Section 2) Adds a new section which allows the department to establish fees by regulation. The department may not adopt a fee in regulation without the concurrence of the board regulating the occupation, and fees must reflect, to the extent possible, the actual cost to the department for which the fee is charged.

Section 3) Provides authority for the department, with the concurrence of the board, to establish a penalty fee by regulation for permit renewals that have lapsed for more than 60 days. This penalty is in addition to delinquent renewal fees.

Sections 4 thru 53) Makes cleanup changes which reflect the changes authorized in sections 1 thru 3, i.e. fees established by regulation.

Section 54) Repealers

Section 55) Sections 1 thru 3 take effect immediately

Section 56) Sections 4 thru 54 take effect on the effective date of regulations adopted under 08.01.065, enacted in section 2 of this bill.

1/31/85

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BILL ANALYSIS

HB 78: "An Act relating to occupational licensing fees; and providing for an effective date."

HB 78 was requested by the Division of Occupational Licensing, Department of Commerce and Economic Development. It would authorize the establishment of all occupational licensing fees by regulation. Currently, most fees are set by statute, and revisions to the fees to reflect changing costs of licensing programs are infrequent.

Passage of this legislation will give the members of licensed professions and trades a greater opportunity to assist in regulating their own fees. The Administrative Procedure Act, AS 44.62, provides for public input at the time new regulations are being proposed and also gives the public the opportunity to petition an agency for adoption, amendment or repeal of a regulation. When petitioned, an agency must take action within 60 days.

This bill will also give the department flexibility in balancing the costs of licensing activities with the fees changed.

The granting of fee setting authority to occupational licensing boards is not an entirely new venture. Last year, the Legislature revised statutes relating to dentists and dental hygienists (Sec. 10, Chap. 100 SLA 1984) and in that bill there was authorization for the department to set fees by regulation. Additional precedent is found in the following statutes:

AS 08.48.091	Architects, Engineers and Land Surveyors. This provides that fees for examinations will be set by the board.
AS 08.48.231(c)	Architects, Engineers and Land Surveyors. This provides that regulations shall establish fees for reexamination and penalty fees for failure to renew.
AS 08.64	Medical Board. Fees for paramedics and physicians' assistants are currently set by the board.

0053k

[redacted]

Backup

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

HB 78 Sectional Analysis

HB 78: "An Act relating to occupational licensing fees; and providing for an effective date."

Section 1: This section identifies the occupations administered by the Division of Occupational Licensing. It adds new language to include the four occupations administered by the division which do not have governing boards.

Section 2: This section is the body of the entire bill. It directs the department to set occupational licensing fees by regulation. It directs the division to consult with the appropriate licensing boards before adopting regulations. It also states that the fees established by regulation must, to the extent possible, reflect the actual cost of the activity for which the fee is assessed.

Section 3: Provides the authority to establish a penalty for renewing a license which has been lapsed for 60 days or more.

Section 4 through Section 52: These sections bring the statutes of the individual licensing boards into compliance with the new regulatory fee language set out in Section 2.

Section 53: This section deletes statutory redundancy. With one exception, these all repeal statutes which say that the revenues generated by licensing fees shall be deposited into the general fund. This is already provided for in Title 37 and Article IX, Section 7 of the constitution.

Section 54: Effective date clause. Sections 1 through 3, the base sections of the bill, take effect immediately.

Section 55: Effective date clause. Sections 4 through 53 take effect on the effective date of regulations adopted under Section 2 of this bill. Until the effective date of new regulations, the current fee schedule will remain in effect.

0058k

Department of Commerce & Ec. Dev. 2/6/85

Div. of Occupational Licensing

FY 84
BOARDS AND COMMISSIONS

BOARD/TRADE:	# LICENSEES	* AVERAGE ANNUAL REVENUES	EXPENDITURES	+/-
ATHLETIC COMMISSION:	57	1.1	11.3	-[10.2
A.E.L.S.:	4097	144.2	167.9	-[23.7
BARBERS & HAIRDRESSERS:	2595	106.2	96.5	9.7
CHIROPRACTORS:	168	2.9	37.2	-[34.3
COLLECTION AGENCIES:	51	7.9	26.0	-[18.1
CONTRACTORS:	7495	671.6	137.7	533.9
CONCERT PROMOTERS:	7	1.2	21.0	-[19.8
DENTAL:	760	18.9	103.1	-[84.2
DISPENSING OPTICIANS:	67	2.2	33.3	-[31.1
ELECTRICAL ADMINISTRATORS:	487	71.0	71.7	-[.7
GEOLOGISTS:	121	-0.0-	21.0	-[21.0
GUIDES:	1348	46.2	126.4	-[80.2
MEDICAL:	1393	48.6	92.3	-[43.7
MARINE PILOTS:	76	1.7	43.8	-[42.1
MORTUARY SCIENCE:	121	1.2	23.9	-[22.7
NURSING:	6261	87.2	191.1	-[103.9
NURSING HOME ADMIN.:	56	1.7	28.1	-[26.4
OPTOMETRY:	92	2.1	35.8	-[33.7
PHARMACY:	338	22.5	93.3	-[70.8
PHYSICAL THERAPY:	149	5.0	34.5	-[29.5
PSYCHOLOGY:	104	4.0	40.0	-[36.0
PUBLIC ACCOUNTANCY:	638	41.8	79.5	-[37.7
VETERINARY:	161	5.0	39.0	-[34.0
		1,294.2	1,554.4	[illegible]

* Average Annual Revenues are based on an average of revenues collected within a renewal period. The licensing renewal periods vary among the various occupation some expiring annually, biennial, and others quadrennial.

COMMENTS:

1) The expenditures do not include costs of legal services.

2) The Division of Occupational Licensing provides support to:

17 Professional Boards
1 Commission
5 Trades
1 Committee

---

24 Licensing Functions

(Within the 24 licensing functions, the division issues licenses in 100 different categories.)

3) Expenditures include:

Board travel & per diem
National Membership Dues
Examinations
Examination Proctors
Printing and Advertising
Telephones

Expenditures also include the allocated division personal services costs for the particular board.

FY 84
BOARD ALLOCATIONS vs. ACTUAL EXPENSES
(Travel and Per Diem only)

BOARD:	ALLOCATION	EXPENSE	+/-
ATHLETIC COMMISSION:	(not applicable)		
A.E.L.S.:	18.2	19.8	-[1.6]
BARBERS & HAIRDRESSERS:	10.1	12.6	-[2.5]
CHIROPRACTORS:	5.5	5.7	-[.2]
COLLECTION AGENCIES:	(not applicable)		
CONTRACTORS:	(not applicable)		
CONCERT PROMOTERS:	(not applicable)		
DENTAL:	12.2	10.4	1.8
DISPENSING OPTICIANS:	3.0	3.8	-[.8]
ELECTRICAL ADMINISTRATORS:	8.6	11.2	-[2.6]
GEOLOGISTS:	(not applicable)		
GUIDES:	10.2	8.2	2.0
MEDICAL:	11.1	14.1	-[3.0]
MARINE PILOTS:	6.8	5.9	.9
MORTUARY SCIENCE:	(not applicable)		
NURSING:	15.0	14.6	.4
NURSING HOME ADMIN.:	3.3	2.6	.7
OPTOMETRY:	3.4	4.0	-[.6]
PHARMACY:	10.6	11.6	-[1.0]
PHYSICAL THERAPY:	5.2	5.1	.1
PSYCHOLOGY:	7.8	7.2	.6
PUBLIC ACCOUNTANCY:	12.1	9.8	2.3
VETERINARY:	6.4	5.7	.7
	149.5	152.3	
TOTAL BUDGET ALLOCATION	152.4 -	152.3 =	.1

PROPOSED FEE FORMULA

1) Actual Division cost allocated to a particular board for a fiscal year;

+

2) Cost of Board and License Examiners travel and per diem for a fiscal year;

+

3) Contractual costs for the Board for a fiscal year;

-

4) Subtract examination costs from the contractual costs;

÷

5) Divide the above total by the number of licensees;

=

6) Base application fee (i.e. comity, credentialling, endorsement);
Exam application fee = Base fee + cost of examination.

(Total Division Cost) + (Board/Examiner) + (Contractual) - (Examination Costs)
Tvl & Per diem

BASE LICENSE/APPLICATION FEE

EXAMPLES

Based on the proposed fee formula, the following two examples are suggested:

1) MEDICAL LICENSURE: (High)

70.8 (Div. cost) + 14.1 (Tvl/PD) + 7.4 (Contractual) = 92.3 - .8 (Exam cost) = 91.5 (Total Bd cost

91.5 ÷ 1393 (licensees) = $ 65.69 (Base annual license fee)

$65.69 x 4 = $262.76 for current 4 year license. A reduction from the current cost of $600 for four years.

This example is the basic formula that will be used with the additional computations for each category under a particular licensing authority.

2) NURSING LICENSURE: (Low)

166.4 (Div. cost) + 14.6 (Tvl/Pd) + 10.1 (Contractual) = 191.1 (Total Bd cost)

191.1 (Total Bd cost) - 3.0 (Exam cost) = 188.1 ÷ 6261 (licensees) = $ 30.04 (Base annual fee)

Base annual license fee = $30.04
Examination application/license fee = $30.04 + 25.00 = $ 55.04

30.04 x 2 = $60.08 (Biennial license fee); an increase from the current license fee of $50 for RN's and $30 for LPN's.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Title 08 Chapter Reference:

08.01: Licensing

08.04: Accountancy

08.13: Barbers and Hairdressers

08.18: Construction contractors

08.20: Chiropractors

08.24: Collection Agencies

08.32: Dental hygenists

08.36: Dentistry

08.40: Electrical Examiners

08.42: Morticians

08.48: Architects, engineers, land surveyors

08.52: Explosive handlers

08.54: Guides

08.62: Marine Pilots

08.64: Medicine

08.68: Nursing

08.70: Nursing Home Administrators

08.71: Dispensing Opticians

08.72: Optometry

08.80: Pharmacy

08.84: Physical therapy

08.86: Psychologists and psychological associate examiners

08.88: Real Estate Brokers and Real Estate Salesman

08.92: Concert Promoters

08.98: Veterinarians

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 25, 1985

Honorable John Sackett
Co-Chair
Senate Finance Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCSHB 78(L&C) -- occupational licensing fees
Our file: 377-006-85

Dear Senator Sackett:

This letter is to clarify and correct my responses to two questions you asked me about this bill at the Senate Labor and Commerce Committee hearing on April 24.

First, HE 78 affects all occupational licensing fees collected by the Department of Commerce and Economic Development for professions licensed under AS 08. This means the 22 professions listed in AS 08.01.010 which is amended in sec. 1 of the bill plus the real estate profession which is included in secs. 2 and 50 of the bill. However, the bill does not affect the fees for the licensing of attorneys under AS 08.08, the Integrated Bar Act. Those fees are already fixed by the Board of Governors of the Alaska Bar Association under AS 08.08.080(b)(2), rather than by statute. Also, the bill does not include licensing fees for the insurance profession under AS 21. Another bill now in the Senate Finance Committee, CSHB 80(L&C), would authorize setting these fees by regulation rather than by statute. Nor does the bill affect commercial fishing permit fees which are set by regulation by the Limited Entry Commission under AS 16.43.160. Finally, of course, the bill does not affect statutorily set fees collected by non-occupational licensing regulatory agencies like the Public Utilities Commission, the division of banking, securities, and corporations, and the athletic commission.

In summary, the direct answer to your question about which I equivocated somewhat at the hearing is that SCSHB 78(L&C) authorizes all statutorily set occupational licensing fees to be set by regulation except for the fees for the insurance profession which are covered by CSHB 80(L&C).

Secondly, I was mistaken when I said that I thought most of the repealers in sec. 54 of the bill were repealers of fee setting statutes. In fact, only three of the statutes repealed set fees. They are AS 08.48.201(b), AS 08.48.241(e), and AS 08.54.170(c). With one exception, the other repealed statutes all state that fees will be deposited in the general fund. These statutes are repealed because they unnecessarily restate the obvious and for only some professions. Under art. IX, sec. 7, of the Alaska Constitution, dedication of license fees for all professions is prohibited. The other repealed statute is AS 8.48.290 concerning refunds and the time for payment of medical board exam fees.

I hope this letter adequately narrows, clarifies, and corrects my responses to your questions. Please let me know if I can provide any further information on this bill.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Peter Froehlich
Peter B. Froehlich
Assistant Attorney General

PBF:md

cc: Honorable Fred Zharoff, Chair
Senate Labor & Commerce Committee

Carol Derfner
Special Assistant
Governor's Office

Harry Traeger, Director
Division of Occupational Licensing
Dept. of Commerce & Economic Development

Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

SCS CSHB 78(L&C): "AN ACT RELATING TO OCCUPATIONAL LICENSING FEES; AND PROVIDING FOR AN EFFECTIVE DATE"

Need to move the CS; (p.8 7-10 Sec. 21

THIS BILL WAS INTRODUCED BY THE GOVERNOR TO AUTHORIZE THE ESTABLISHMENT OF OCCUPATIONAL LICENSING FEES BY REGULATION. IT GIVES THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT THE FLEXIBILITY TO SET FEES WHICH REFLECT THE ACTUAL COST OF LICENSING FUNCTIONS.

THE SENATE LABOR AND COMMERCE CS INSERTED LANGUAGE WHICH HAD BEEN DELETED BY AN AMENDMENT ON THE HOUSE FLOOR. THIS LANGUAGE PERTAINED TO NONRESIDENT COLLECTION AGENCIES AND OPERATORS AND REQUIRES THEM TO PAY DOUBLE THE FEES IMPOSED ON RESIDENT COLLECTION AGENCIES AND OPERATORS.

ADDITIONALLY, PORTIONS OF THE BUDGET PROCESS WERE PREDICATED ON PASSAGE OF THIS BILL, AND I URGE THE SUPPORT OF THE ENATE.

Excludes
1. APUC
2. Athletic comm
3. Ak. Bar Assoc. (one else)
4. Insurance - (covered HB 80)
5. L.E. Fee
6. Div. Banking & Securities

Original sponsor: Rules/Governor

SCS Changes Page 8, lines 7-10

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 78 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to occupational licensing fees; and providing for an effective date."

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

Section 1. AS 08.01.010 is amended to read:

Sec. 08.01.010. APPLICABILITY OF CHAPTER. This chapter applies to the

(1) Board of Public Accountancy (AS 08.04.010);

(2) [REPEALED

(3) REPEALED

(4)] Board of Chiropractic Examiners (AS 08.20.010);

[(5) REPEALED]

(3) [(6)] Board of Dental Examiners (AS 08.36.010);

(4) [(7)] Board of Electrical Examiners (AS 08.40.010);

(5) [(8)] State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);

(6) [(9)] State Medical Board (AS 08.64.010);

(7) [(10)] Board of Nursing (AS 08.68.010);

(8) [(11)] Board of Examiners in Optometry (AS 08.72.010);

(9) [(12)] Board of Pharmacy (AS 08.80.010);

[(13) REPEALED]

(10) [(14)] Board of Veterinary Examiners (AS 08.98.010);

(11) [(15)] Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);

[(16) REPEALED

(17) REPEALED]

(12) [(18)] Board of Marine Pilots (AS 08.62.010);

(13) [(19)] Board of Dispensing Opticians (AS 08.71.010);

(14) [(20)] Guide Licensing and Control Board (AS 08.54-.010);

(15) [(21)] State Physical Therapy Board (AS 08.84.010);

(16) [(22)] Board of Nursing Home Administrators (AS 08.-70.010);

(17) [(23)] regulation of professional geologists under AS 08.02.011;

(18) [(24)] Board of Barbers and Hairdressers (AS 08.13-.010);

(19) regulation of construction contractors under AS 08.18;

(20) regulation of collection agencies under AS 08.24;

(21) regulation of morticians under AS 08.42;

(22) regulation of concert promoters under AS 08.92.

* Sec. 2. AS 08.01 is amended by adding a new section to read:

Sec. 08.01.065. FEES ESTABLISHED BY REGULATION. (a) The department shall adopt regulations that establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by this chapter and for real estate brokers and salesmen under AS 08.88.

(b) The department may not adopt a regulation under (a) of this section unless the board responsible for regulating the affected occupation concurs.

(c) A fee established under this section must reflect, to the extent possible, the actual costs to the department of the activity for which the fee is charged.

* Sec. 3. AS 08.01.100(b) is amended to read:

(b) A registration, license, permit, or certificate [CERTIFICATES] requiring renewal to continue to be effective must be renewed on or before the date set by the department or it will lapse. With the concurrence of the appropriate board the department may establish by regulation a [A] penalty [OF $10 SHALL BE CHARGED IN ADDITION TO ALL DELINQUENT RENEWAL FEES] for reinstatement of a registration, license, permit, or certificate that [WHICH] remains lapsed for more than 60 days. The penalty is in addition to delinquent renewal fees.

* Sec. 4. AS 08.04.190 is amended to read:

Sec. 08.04.190. EXAMINATION FEE. An [THE BOARD SHALL CHARGE EACH APPLICANT A FEE OF $50 FOR THE INITIAL EXAMINATION AND FOR EACH REEXAMINATION. THE] applicant shall pay the appropriate fee at the time of application for examination or reexamination.

* Sec. 5. AS 08.04.390 is amended to read:

Sec. 08.04.390. PERMIT FOR INDIVIDUAL PRACTICE AS A PUBLIC ACCOUNTANT. The board shall issue a permit to engage in the practice of public accounting to a holder of a certificate or license if all offices of the certificate holder or licensee are maintained and registered as required by AS 08.04.350 - 08.04.380. The permit is valid for two years [THE BIENNIAL PERMIT FEE IS $60].

* Sec. 6. AS 08.04.400 is amended to read:

Sec. 08.04.400. PERMIT FOR PARTNERSHIP OR CORPORATE PRACTICE AS A PUBLIC ACCOUNTANT. The board shall issue a permit to engage in the practice of public accounting as a partnership or as a corporation to a partnership or corporation registered under AS 08.04.240. The permit is valid for two years [THE BIENNIAL PERMIT FEE IS $60]. A permit is valid only for practice under the registered name of the partnership or corporation. A partnership registered under

AS 08.04.330 - 08.04.340 on June 29, 1980, qualifies for a permit under this section as long as each partner personally engaged in the practice of public accounting in this state holds a license or permit under AS 08.04.661.

* Sec. 7. AS 08.04.410 is amended to read:

Sec. 08.04.410. PERMIT FOR PERSON NOT ENGAGED IN PRACTICE. A person holding a certificate or license who is not engaged in the practice of public accounting may maintain the certificate or license in good standing by registering with the board and paying an annual registration fee [OF $10].

* Sec. 8. AS 08.04.420 is amended to read:

Sec. 08.04.420. PERMIT FOR GENERAL PRACTICE AS A CERTIFIED PUBLIC ACCOUNTANT. A certified public accountant, or a partnership or corporation of certified public accountants in good standing in a state, not holding a permit under AS 08.04.390 or 08.04.400 nor maintaining an office in this state but engaging in the practice of public accounting in this state, shall apply to the board for a permit to practice. The board shall determine whether the applicant is eligible for the permit. [THE ANNUAL FEE FOR THE ISSUANCE OF A PERMIT IS $100.]

* Sec. 9. AS 08.04.430 is amended to read:

Sec. 08.04.430. EXPIRATION AND RENEWAL. A permit or registration under this chapter, unless revoked or suspended, must [SHALL] be renewed biennially upon payment of a renewal fee [IN THE SAME AMOUNT AS THE INITIAL BIENNIAL FEE].

* Sec. 10. AS 08.04 is amended by adding a new section to article 4 to read:

Sec. 08.04.495. FEES. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for examinations,

reexaminations, permits, licenses, certificates and registrations.

* Sec. 11. AS 08.13.185 is repealed and reenacted to read:

Sec. 08.13.185. FEES. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for initial licenses and renewals for the following:

(1) schools;

(2) school owners;

(3) instructor;

(4) shop owner;

(5) practitioner of barbering;

(6) practitioner of hairdressing;

(7) practitioner of cosmetology;

(8) temporary permit;

(9) student permit.

(b) The Department shall set fees under AS 08.01.065 for examination and investigation.

* Sec. 12. AS 08.18.041 is repealed and reenacted to read:

Sec. 08.18.041. FEES. The Department of Commerce and Economic Development shall set registration and renewal fees under AS 08.01.065 for the following:

(1) general contractor;

(2) specialty contractor.

* Sec. 13. AS 08.20.130(d) is amended to read:

(d) An applicant may take a reexamination within one year after failing the examination [UPON PAYMENT OF A FEE OF $10].

* Sec. 14. AS 08.20.180 is repealed and reenacted to read:

Sec. 08.20.180. FEES. (a) An applicant for an examination, reexamination, issuance of a temporary permit, or initial issuance or renewal of a license shall pay a fee established under AS 08.01.065.

(b) License renewal fees are due every four years.

* Sec. 15. AS 08.24.100(b) is amended to read:

(b) The [ANNUAL] operator's license <u>is</u> [SHALL BE] renewable on or before July 1 of each second year [BEGINNING ON JULY 1, 1968, AND THE BIENNIAL FEE IS $100].

* Sec. 16. AS 08.24.110(a) is amended to read:

(a) To qualify for an operator's license, the applicant shall:

(1) [REPEALED,

(2)] be a high school graduate, or have the equivalent education of a high school graduate;

<u>(2)</u> [(3)] be of good moral character;

<u>(3)</u> [(4)] not have been convicted of violating this chapter, nor have any unsettled complaints under this chapter against the applicant;

<u>(4)</u> [(5)] not have been convicted of a felony or a crime of larceny or embezzlement or a crime involving moral turpitude;

<u>(5)</u> [(6)] be 19 years of age or older at the time of application;

<u>(6)</u> [(7)] not be a disbarred attorney or have filed bankruptcy;

<u>(7)</u> [(8)] pay the biennial license fee [WHICH IS FIXED AT $100].

* Sec. 17. AS 08.24.120(a) is amended to read:

(a) An application for an operator's license <u>must</u> [SHALL] be made on forms furnished by the department and <u>must</u> [SHALL] contain the information required in AS 08.24.110 and[, IN ADDITION,] the following:

(1) a complete set of fingerprints;

(2) a 2" x 3" photograph showing a front view of head and

shoulders;

(3) if it is an original application, the [AN] application fee [OF $40];

(4) the biennial license fee [REQUIRED BY AS 08.24.100].

* Sec. 18. AS 08.24 is amended by adding a new section to read:

Sec. 08.24.135. FEES. The department shall set fees for licenses and applications under AS 08.01.065 and shall set fines under AS 08.01.100.

* Sec. 19. AS 08.24.140(a) is amended to read:

(a) The application must [SHALL] be accompanied by:

(1) if it is an original application, the [AN] application fee [OF $100];

(2) the biennial license fee for a collection agency [WHICH IS FIXED AT $200] for the principal place of business and the same amount [$200] for each branch office;

(3) a bond running to the state with a surety or sureties to the satisfaction of the department, and conditioned that the licensee shall, within 30 days after the close of each calendar or fiscal month, report and pay to the licensee's customers the net proceeds due and payable of all collections made during the calendar or fiscal month that exceed [WHICH EXCEEDS] $20.

* Sec. 20. AS 08.24.200(b) is amended to read:

(b) If a licensee under this chapter is delinquent for a period of 15 days in applying for the renewal of a license, the department shall suspend the license and notify the licensee by certified mail or by personal service. The notice must [SHALL] state that the license will be revoked if application for renewal is not made within 15 days after [FROM] the date on which the notice was mailed or personally served. When a licensee has been delinquent more than 60 days in

renewing a license or certificate, the department shall charge an additional penalty established under AS 08.01.100(b) before [FEE OF $50 FOR THE] renewal of the license.

* Sec. 21. AS 08.24.370 is amended to read:

Sec. 08.24.370. NONRESIDENTS. A nonresident may apply for and receive a collection agency license or an operator license or both on the same basis as a resident. The application fee and the biennial license fee for a nonresident operator or nonresident agency license are double the same fees established by regulations under AS 08.01.065 for a resident operator or agency [THE APPLICATION FEE FOR A NONRESIDENT OPERATOR LICENSE IS $100, AND THE BIENNIAL LICENSE FEE IS $200. THE APPLICATION FEE FOR A NONRESIDENT AGENCY LICENSE IS $200, AND THE BIENNIAL LICENSE FEE IS $400 FOR THE PRINCIPAL PLACE OF BUSINESS AND $400 FOR EACH BRANCH OFFICE].

* Sec. 22. AS 08.32.097 is amended to read:

Sec. 08.32.097. FEES. The Department of Commerce and Economic Development [DEPARTMENT] shall, by regulations adopted under AS 08.01.065 [AS 08.01.080], establish fees for dental hygienists for the following:

(1) filing an examination and licensing application;

(2) examination fee;

(3) credential fee;

(4) initial license;

(5) registration fee;

(6) filing a reexamination application;

(7) duplicate license;

(8) delinquent registration.

* Sec. 23. AS 08.36.290 is amended to read:

Sec. 08.36.290. FEES. The department shall, by regulations

adopted under AS 08.01.065 [AS 08.01.080], establish fees for dentists for the following:

(1) filing an examination and licensing application;

(2) examination fee;

(3) credential review;

(4) initial license;

(5) registration fee;

(6) filing a reexamination application;

(7) specialty license;

(8) branch office registration;

(9) duplicate license;

(10) delinquent registration.

* Sec. 24. AS 08.40.135(b) is amended to read:

(b) A lapsed license may be reinstated upon proof of continued competency by payment of all unpaid renewal fees and any [A] penalty fee established under AS 08.01.100(b), [OF $25 FOR EACH YEAR THE LICENSE HAS BEEN LAPSED] unless the license has been lapsed for more than two years. If a person's license has been lapsed for more than two years, the person is required to take an examination under AS 08.-40.120.

* Sec. 25. AS 08.40.150 is repealed and reenacted to read:

Sec. 08.40.150. FEES. Each applicant and each licensee shall pay application and renewal fees established by regulations adopted under AS 08.01.065.

* Sec. 26. AS 08.42.100 is amended to read:

Sec. 08.42.100. FUNERAL ESTABLISHMENT PERMIT. After January 1, 1977, a person may not conduct, maintain, manage, or operate a funeral establishment unless a permit for each establishment has been issued by the department and is conspicuously displayed in the funeral

establishment. Each permit is [SHALL BE] valid only for one specific location, and each firm [SEPARATE PERMITS SHALL BE REQUIRED OF TWO OR MORE FIRMS] operating from the same funeral establishment shall obtain a separate permit. The department shall issue a [A] permit to operate a funeral establishment [SHALL BE ISSUED BY THE DEPARTMENT] upon application for the permit on a form provided by the department. All permits [SHALL] expire at the time established under AS 08.01.100 [ON DECEMBER 31 OF EACH YEAR] and may be renewed for successive [ONE-YEAR] terms. Violation of a provision of AS 08.42.090 by a person operating a funeral establishment or, with that person's knowledge or consent, by an employee is [SHALL BE] considered sufficient cause for suspension or revocation of the funeral establishment permit.

* Sec. 27. AS 08.48.091 is amended to read:

Sec. 08.48.091. WRITTEN EXAMINATIONS AND EXAMINATION FEES. Written examinations must [SHALL] be held at least twice each year at places determined by the board unless the examination administered by the board is a national examination prepared only once each year, in which case the examination must [SHALL] be held at least once each year. A candidate failing an examination may apply for reexamination. [THE EXAMINATION FEE FOR APPLICANTS SHALL BE ESTABLISHED BY THE BOARD AND SHALL ACCOMPANY THE APPLICATION.]

* Sec. 28. AS 08.48.231(b) is amended to read:

(b) The renewal of a certificate does not require reapplication if the certificate has not expired or has not been suspended or revoked. [THE RENEWAL FEE FOR A CERTIFICATE MAY NOT EXCEED $100.]

* Sec. 29. AS 08.48.231(c) is amended to read:

(c) An [RENEWAL OF AN] expired certificate may be renewed [EFFECTED] under regulations adopted [PROMULGATED] by the board establishing [REGARDING] requirements for [OF] reexamination [AND PENALTY

FEES].

* Sec. 30. AS 08.48 is amended by adding a new section to article 2 to read:

Sec. 08.48.265. FEES. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for examinations, registrations, certificates of authorization, and renewals of a certificate.

* Sec. 31. AS 08.52.050 is amended to read:

Sec. 08.52.050. FEE [FEES]. An applicant for a certificate of fitness shall pay a fee [OF $75] at the time of application in the amount established by regulations adopted by the department.

* Sec. 32. AS 08.54.160 is amended to read:

Sec. 08.54.160. LICENSING OF MARINE MAMMAL GUIDES. The board may establish qualifications [, SET LICENSE FEES,] and issue licenses for marine mammal guides.

* Sec. 33. AS 08.54.170(a) is repealed and reenacted to read:

(a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

(1) master guide;

(2) registered guide;

(3) class A assistant guide;

(4) assistant guide;

(5) transporter.

* Sec. 34. AS 08.54.180 is amended to read:

Sec. 08.54.180. EXAMINATION FEE. An applicant for a guide examination shall pay a fee established by regulations adopted under AS 08.01.065 [OF $25].

* Sec. 35. AS 08.62.140 is repealed and reenacted to read:

Sec. 08.62.140. FEES. The department shall set fees under

AS 08.01.065 for applications, licenses, and agent registrations.

* Sec. 36. AS 08.64.260(c) is amended to read:

(c) Applicants failing portions of part I or part II of the examination may retake the portions failed at a prorated fee [PRESCRIBED IN THE REGULATIONS BY THE BOARD].

* Sec. 37. AS 08.64.260(d) is amended to read:

(d) Applicants failing part III of the examination shall retake the entire part at a prorated fee [PRESCRIBED IN THE REGULATIONS BY THE BOARD].

* Sec. 38. AS 08.64.275(d) is amended to read:

(d) Within 10 days <u>after</u> [FROM] the <u>permit has been granted</u> [GRANTING OF THE PERMIT], the board member shall forward [THE FEE] to the department [WITH] a report of the issuance of the permit.

* Sec. 39. AS 08.64.315 is repealed and reenacted to read:

Sec. 08.64.315. FEES. The department shall set fees under AS 08.01.065 for each of the following:

(1) application;

(2) license by examination;

(3) license by endorsement or waiver of examination;

(4) temporary permit;

(5) locum tenens permit;

(6) license renewal, active;

(7) license renewal, inactive;

(8) license by reexamination.

* Sec. 40. AS 08.68.220 is repealed and reenacted to read:

Sec. 08.68.220. FEES. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for each of the following:

(1) registered nursing:

(A) application;

(B) license by examination;

(C) license by endorsement;

(D) license renewal;

(E) temporary permit;

(2) practical or vocational nursing:

(A) application;

(B) license by examination;

(C) license by endorsement;

(D) license renewal;

(E) temporary permit.

* Sec. 41. AS 08.70.150 is repealed and reenacted to read:

Sec. 08.70.150. FEES. The department shall set fees under AS 08.01.065 for examination and investigation of persons applying for a license, initial license, and license renewal.

* Sec. 42. AS 08.71.120 is repealed and reenacted to read:

Sec. 08.71.120. FEES. The department shall set fees under AS 08.01.065 for examination, initial license, and license renewal.

* Sec. 43. AS 08.71.130(b) is amended to read:

(b) If the license is not renewed on or before <u>the</u> [THAT] date <u>set by the department under (a) of this section, the license lapses. Before</u> [, IT SHALL LAPSE. A PENALTY OF $10 SHALL BE CHARGED, IN ADDITION TO ALL DELINQUENT FEES, FOR THE] reinstatement of a license <u>that has remained</u> [WHICH REMAINS] lapsed for more than 60 days<u>, the applicant must pay all delinquent renewal fees and any penalty established under AS 08.01.100(b)</u>.

* Sec. 44. AS 08.72.191 is repealed and reenacted to read:

Sec. 08.72.191. FEES. The department shall set fees under AS 08.01.065 for the following:

(1) examination;

(2) reexamination for the written portion;

(3) waiver of examination;

(4) certificates;

(5) renewal;

(6) branch office registration and renewal.

* Sec. 45. AS 08.80.160 is repealed and reenacted to read:

Sec. 08.80.160. FEES. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for the following:

(1) examination;

(2) reexamination;

(3) investigation for licensing by credentials;

(4) pharmacist license;

(5) temporary license;

(6) wholesale drug dealer license;

(7) retail pharmacy license;

(8) pharmacy intern registration;

(9) emergency permit;

(10) hospital pharmacy license (inpatient and outpatient);

(11) hospital drug room license (inpatient);

(12) nursing home and related facilities license for inpatient dispensing;

(13) license amendment or replacement.

* Sec. 46. AS 08.84.032 is amended to read:

Sec. 08.84.032. FOREIGN-TRAINED PHYSICAL THERAPY OR PHYSICAL THERAPY ASSISTANT APPLICANTS. To be eligible for licensure by the board as a physical therapist or physical therapy assistant, an applicant who is a graduate of a school of physical therapy <u>that</u> [WHICH] is located outside of the United States shall

(1) have completed, to the satisfaction of the board, a resident course of study and professional instruction equivalent to that provided by a school approved by the Council on Medical Education and Hospitals of the American Medical Association or the American Physical Therapy Association, and furnish documentary evidence of compliance with this paragraph, translated, if necessary, into the English language by a person verifying the accuracy of the translations;

(2) have completed, to the satisfaction of the board, an internship under the continuous direction and immediate supervision of a physical therapist in an institution that [WHICH] ordinarily provides physical therapy and is approved by the board, for that period of time specified by the board, and furnish documentary evidence of compliance with this paragraph;

(3) pass an oral examination administered by a member of the board;

(4) have met applicable requirements under the federal Immigration and Nationality Act (8 U.S.C. 1101 et seq.), unless a United States citizen;

(5) pass the examination administered by the board under AS 08.84.030(3); and

(6) pay the fee required [PRESCRIBED] under AS 08.84.050 [AS 08.84.050(2) AND (3)].

* Sec. 47. AS 08.84.050 is repealed and reenacted to read:

Sec. 08.84.050. FEES. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for the following:

(1) application;

(2) license by examination;

(3) license by acceptance of credentials;

(4) renewal;

(5) temporary permit.

* Sec. 48. AS 08.84.100(b) is amended to read:

(b) Before [A PENALTY OF $10 SHALL BE CHARGED IN ADDITION TO ALL DELINQUENT RENEWAL FEES FOR] reinstatement of a license that [WHICH] remains lapsed for more than 60 days, the applicant must pay all delinquent renewal fees and any penalty established under AS 08.01.100(b). If a [THE] license remains lapsed for more than three years, the board may require the applicant to take and pass the examination given under AS 08.84.030(3).

* Sec. 49. AS 08.86.140 is repealed and reenacted to read:

Sec. 08.86.140. FEES. (a) The department shall set fees under AS 08.01.065 for the following:

(1) application;

(2) examination;

(3) credential review;

(4) initial license;

(5) license renewal.

(b) A license must be renewed every four years.

* Sec. 50. AS 08.88.221 is repealed and reenacted to read:

Sec. 08.88.221. FEES. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for a real estate broker, associate broker, or salesman licensee or applicant for the following:

(1) examination;

(2) reciprocity;

(3) initial license;

(4) renewal of an active license;

(5) renewal of an inactive license;

(6) amending or transferring a license.

* Sec. 51. AS 08.92.020 is amended to read:

Sec. 08.92.020. FEES. (a) An applicant for a promoter's certificate of registration shall pay an original registration fee established by regulations adopted under AS 08.01.065 [OF $75].

(b) The biennial fee for the renewal of a registration certificate is also established by regulations adopted under AS 08.01.065 [$40].

* Sec. 52. AS 08.98.180 is amended to read:

Sec. 08.98.180. TEMPORARY LICENSE. A person who meets the requirements of AS 08.98.165(a)(1) and (5) is entitled to be temporarily licensed after applying for examination, if the person works under the supervision of a licensed veterinarian. A license issued under this section is valid until the results of the examinations are published. A person may not receive more than one temporary license. An application for a temporary license must be signed by the supervising veterinarian and accompanied by the temporary license fee required [AS PRESCRIBED] under AS 08.98.190.

* Sec. 53. AS 08.98.190 is repealed and reenacted to read:

Sec. 08.98.190. FEES. The department shall set fees under AS 08.01.065 for the following:

(1) application;

(2) examination;

(3) investigation of credentials;

(4) license;

(5) license renewal;

(6) temporary license;

(7) temporary permit.

* Sec. 54. The following are repealed AS 08.13.200; AS 08.20.190;

AS 08.32.050; AS 08.48.201(b), 08.48.241(i); AS 08.54.170(c); AS 08.64.290, 08.64.320; AS 08.80.090.

* Sec. 55. Sections 1 - 3 of this Act take effect immediately in accordance with AS 01.10.070(c).

* Sec. 56. Sections 4 - 54 of this Act take effect on the effective date of regulations adopted under AS 08.01.065, enacted in sec. 2 of this Act.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 78(L&C)

Title: Establishment of occupational Licensing Fees

Sponsor: House Labor & Commerce

Requestor: House Finance

Date of Request: 3/8/85

FISCAL DETAIL

Agency Affected: Commerce

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

The requested travel and contractual funds are not necessary since the teleconference network is available to perform the same function. Revenues generated by the bill will depend on how much is spent by the Division on the board each year and how many licensees there are in a given fiscal year.
See attached proposed formula.

Prepared By: Al Adams - Chair APA Phone: 465-3706

Division: House Finance Date: 3/8/85

Approved by Commissioner: Date:

Agency:

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

[redacted]

1) Actual Division cost allocated to a particular board for a fiscal year;

+

2) Cost of Board and License Examiners travel and per diem for a fiscal year;

+

3) Contractual costs for the Board for a fiscal year;

-

4) Subtract examination costs from the contractual costs;

÷

5) Divide the above total by the number of licensees;

=

6) Base application fee (i.e. comity, credentialling, endorsement);
Exam application fee = Base fee + cost of examination.

(Total Division Cost) + (Board/Examiner Tvl & Per diem) + (Contractual) - (Examination Costs)

BASE LICENSE/APPLICATION FEE

Based on the proposed fee formula, the following two examples are suggested:

1) MEDICAL LICENSURE: (High)

70.8 (Div. cost) + 14.1 (Tvl/PD) + 7.4 (Contractual) = 92.3 - .8 (Exam cost) = 91.5 (Total Bd cost

91.5 ÷ 1393 (licensees) = $ 65.69 (Base annual license fee)

$65.69 x 4 = $262.76 for current 4 year license. A reduction from the current cost of $600 for four years.

This example is the basic formula that will be used with the additional computations for each category under a particular licensing authority.

2) NURSING LICENSURE: (Low)

166.4 (Div. cost) + 14.6 (Tvl/Pd) + 10.1 (Contractual) = 191.1 (Total Bd cost)

191.1 (Total Bd cost) - 3.0 (Exam cost) = 188.1 ÷ 6261 (licensees) = $ 30.04 (Base annual fee)

Base annual license fee = $30.04
Examination application/license fee = $30.04 + 25.00 = $ 55.04

30.04 x 2 = $60.08 (Biennial license fee); an increase from the current license fee of $50 for RN's and $30 for LPN's.

BILL SHEFFIELD
GOVERNOR

HB 94

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will authorize the Department of Commerce and Economic Development to establish occupational licensing fees by regulation, and that amends accordingly the various statutory provisions in AS 08 that now set those fees. This change will result in greater flexibility and ease of fee adjustment to accommodate inflation and other fluctuations in the costs of implementing the various licensing statutes. Currently, many Alaska licensing fees are low compared to those of other states, and revisions are necessary. This bill will enable the department to make the appropriate adjustments without unduly burdening the legislature with the task. This authority was granted to the department last year by ch. 100 SLA 1984 for fees involved in licensing dental hygienists and dentists.

The second and third sections of the bill authorize the department to set the fees and penalties by regulation to reflect costs, after consulting with the appropriate licensing board. Most of the remaining sections of the bill delete the current statutory fees and make other appropriate changes to statutes in the chapters concerning the various occupations affected.

I request your support for this bill which will greatly increase the efficiency and reduce the net cost of our occupational licensing programs.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 78 (L&C)

Title: Establishment of Occupational Licensing fees by regulations

Sponsor: House Labor & Commerce

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		20.3				
300 CONTRACTUAL		13.8				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		34.1	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		34.1	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		34.1	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would amend each licensing fee structure for the various professions with the concurrence of the particular board, licensed under Title 8 of the Alaska Statutes, and allow the fee structure to be set by regulations.

To increase or decrease present licensing fees requires new legislation which previously has not been considered priority legislation. The inability to modify present fees has caused wide disparity between mandated fees and operating costs.

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144

Division: Occupational Licensing Date: 2-22-85

Approved by Commissioner: Loren P. Lounsbury Date: 2/22/85

Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

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

Suspended by 7/1/84 FY
Zero in Finance

FISCAL IMPACT: Occupational Licensing Fee Bill

200 TRAVEL:

One staff person to meet and consult with individual boards before public hearings are conducted and again after the public hearings are concluded on the proposed fee structures. It is anticipated that one-third of the board meetings be held in Anchorage, one-third in Fairbanks and the remaining one-third in Juneau. Travel expenses would be incurred for Anchorage and Fairbanks only.

12 trips to Anchorage - 2 days each (6 boards)	
Transportation: 1 person @ $400.00 each x 12 =	$ 4,800.00
Per Diem: 24 days @ $80.00 per day =	1,920.00
12 trips to Fairbanks - 2 days each (6 boards)	
Transportation: 1 person @ $610.00 each x 12 =	7,320.00
Per Diem: 24 days @ $90.00 per day =	2,160.00

1 staff to conduct regulation hearings in Anchorage and Fairbanks on license fee structure (4 trips):

2 trips to Anchorage - 6 days each	
Transportation: 1 person @ $400.00 x 2 =	800.00
Per Diem: 12 days @ $80.00 =	960.00
2 trips to Fairbanks - 6 days each	
Transportation: 1 person @ $610.00 x 2 =	1,220.00
Per Diem: 12 days @ $90.00 =	1,080.00

NOTE: It is anticipated that travel costs for FY '87 and successive years will be absorbed in the agency's budgeting process.

	$ 20,260.00

300 CONTRACTUAL:

Rental charges for meeting rooms for holding public hearings on license fee settings: 24 days of pu... hearings @ $200.00 per day =	$ 4,800.00
Printing of materials, statute and regulation booklets (estimated costs) =	8,000.00

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Advertising - required state-wide advertising of public notices of regulation hearings on proposed license fee structures (estimated costs) = 1,000.00

NOTE: It is anticipated that contractual costs for FY '87 and successive years will be absorbed in the agency's budgeting process.

	$ 13,800.00
GRAND TOTAL:	$ 34,060.00

PROJECTED REVENUE:

In an attempt to equalize the operating budget with revenue, it will be necessary to revise existing licensing fee structures to provide the additional revenue required.

The initial projection is to increase the license fees of various professions and licensure categories to off-set the deficit for FY '87 and project an annual increase of 15.0% for inflation factors.

No revenue is projected for FY '86 as it is anticipated that it would require the majority of the fiscal year to implement all the necessary license fee changes.

AS08.04.661
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 04.
Accountancy Act of 1960.
ARTICLE 6.
Miscellaneous Provisions.
CITATION Sec. 08.04.661.
CATCH LINE
PREVIOUS LICENSURE.
TEXT A person holding a valid license as a public accountant under former AS 08.04.270 or a person holding a valid permit under AS 08.04.390 on June 29, 1980, may continue to practice under the conditions imposed by statute and regulation on that date but that person is otherwise subject to this chapter. A license or permit effective under this section may be renewed under conditions imposed by statute and regulation which were in effect on June 29, 1980, except that any renewal fee required under this chapter applies.
HISTORY (Sec. 8 ch 82 SLA 1980; AS 08.04.345)

AS08.13.185
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 13.
Barbers and Hairdressers.
ARTICLE 2.
Examination and Licensing.
CITATION Sec. 08.13.185.
CATCH LINE
FEES.
TEXT The following fees are imposed under this chapter: AS

(1) schools:
initial two-year license fee $700
biennial renewal ..... 4[illegible]
(2) school owner:
initial two-year license fee ..... $ 7.
biennial renewal 60
(3) instructor:
initial two-year license fee ..... $ 70
biennial renewal 60
(4) shop owner:
initial two-year license fee ..... $ 45
biennial renewal 40
(5) practitioner of barbering:
initial two-year license fee ..... $ 55
biennial renewal 40
(6) practitioner of hairdressing:
initial two-year license fee ..... $ 55
biennial renewal 40

AS08.13.185 cont.

(7) practitioner of cosmetology:
initial two-year license fee ..... $ 45
biennial renewal 30
(8) temporary permit ..... $ 30
(9) student permit ..... $ 20
(10) examination fee ..... $ 25
(11) investigation fee ..... $ 25
(12) delinquent fee for late renewal ..... $ 20

HISTORY (Sec. 1 ch 159 SLA 1980)

AS08.18.041

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 18.
Construction Contractors.
ARTICLE 1.
Registration.

CITATION Sec. 08.18.041.

CATCH LINE
REGISTRATION AND RENEWAL FEES.

TEXT The applicant shall pay to the commissioner a biennial registration or renewal fee as follows:
(1) general contractor $200
(2) specialty contractor 100

HISTORY (Sec. 2 ch 100 SLA 1968; am sec. 2 ch 81 SLA 1984)

AS08.20.180

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 20.
Chiropractors.
ARTICLE 2.
Licensing and Regulation.

CITATION Sec. 08.20.180.

CATCH LINE
FEES.

TEXT The board shall impose and collect the following fees:
(1) upon the filing of an application for examination, $50;
(2) upon application for re-examination, $20;
(3) for issuance of temporary permit, $50;
(4) initial and renewal license, due every four years, $200.

HISTORY (Sec. 35-3-30 ACLA 1949; am sec. 1 ch 13 SLA 1968; am sec. 12 ch 162 SLA 1980)

AS08.40.150
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 40.
Electrical Administrators.
ARTICLE 2.
Licensing.
CITATION Sec. 08.40.150.
CATCH LINE
FEES.
TEXT (a) Each applicant shall pay an original license fee of $200.
(b) The fee for biennial renewal of a license is $200.
HISTORY (Sec. 3 (f) ch 158 SLA 1960; am sec. 3 ch 30 SLA 1969; am sec. 6 ch 71 SLA 1980)

AS08.54.170
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 54.
Guides.
ARTICLE 2.
Licensing.
CITATION Sec. 08.54.170.
CATCH LINE
LICENSE FEES.
TEXT (a) License fees for engaging in the profession of guiding are:
(1) master guide license, biennial $150
(2) registered guide license, biennial 150
(3) class-A assistant guide, biennial 30
(4) assistant guide license, biennial 20
(b) The license fee for a master guide, registered guide, class-A assistant guide or assistant guide license is in addition to the fee required for a hunting or fishing license.
(c) The license fee for a transporter is $10.
HISTORY (Sec. 1 ch 17 SLA 1973; am sec. 3 ch 106 SLA 1976; am sec. 4 ch 81 SLA 1984)

AS08.62.140
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 62.
Marine Pilots.
ARTICLE 2.
Licensing.
CITATION Sec. 08.62.140.
CATCH LINE
FEES.
TEXT The following fees shall be imposed under this chapter when applicable:
(1) application fee ..... $ 50
(2) biennial license fee $300
(3) biennial registration fee for agents $100
HISTORY (Sec. 2 ch 106 SLA 1970; am sec. 4 ch 143 SLA 1980)

AS08.40.150
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 40.
Electrical Administrators.
ARTICLE 2.
Licensing.
CITATION Sec. 08.40.150.
CATCH LINE
FEES.
TEXT (a) Each applicant shall pay an original license fee of $200.
(b) The fee for biennial renewal of a license is $200.
HISTORY (Sec. 3 (f) ch 158 SLA 1960; am sec. 3 ch 30 SLA 1969; am sec. 6 ch 71 SLA 1980)

AS08.54.170
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 54.
Guides.
ARTICLE 2.
Licensing.
CITATION Sec. 08.54.170.
CATCH LINE
LICENSE FEES.
TEXT (a) License fees for engaging in the profession of guiding are:
(1) master guide license, biennial $150
(2) registered guide license, biennial 150
(3) class-A assistant guide, biennial 30
(4) assistant guide license, biennial 20
(b) The license fee for a master guide, registered guide, class-A assistant guide or assistant guide license is in addition to the fee required for a hunting or fishing license.
(c) The license fee for a transporter is $10.
HISTORY (Sec. 1 ch 17 SLA 1973; am sec. 3 ch 106 SLA 1976; am sec. 4 ch 81 SLA 1984)

AS08.62.140
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 62.
Marine Pilots.
ARTICLE 2.
Licensing.
CITATION Sec. 08.62.140.
CATCH LINE
FEES.
TEXT The following fees shall be imposed under this chapter when applicable:
(1) application fee ..... $ 50
(2) biennial license fee $300
(3) biennial registration fee for agents $100
HISTORY (Sec. 2 ch 106 SLA 1970; am sec. 4 ch 143 SLA 1980)

AS08.64.315
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 64.
Medicine.
ARTICLE 2.
Licensing.
CITATION Sec. 08.64.315.
CATCH LINE
FEES.
TEXT The following fees are imposed under this chapter:
(1) application $50
(2) license by examination 200
(3) license by credentials or waiver of examination
..... 200
(4) temporary permit 50
(5) locum tenens permit 50
(6) license renewal, active 600
(7) license renewal, inactive 200
(8) license by reexamination 150
HISTORY (Sec. 21 ch 77 SLA 1969; am sec. 22 ch 148 SLA 1970; am sec. 13 ch 48 SLA 1983)

AS08.68.220
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 68.
Nursing.
ARTICLE 2.
Examination and Licensing.
CITATION Sec. 08.68.220.
CATCH LINE
FEES.
TEXT The following fees shall be imposed under this chapter when applicable:
(1) for registered nurses:
(A) application fee $30
(B) license by examination fee 20
(C) license by endorsement fee 20
(D) biennial license renewal fee 20
(2) for practical or vocational nurses:
(A) application fee $20
(B) license by examination fee 10
(C) license by endorsement fee 10
(D) biennial license renewal fee 20
HISTORY (Sec. 13 ch 90 SLA 1957; am sec. 1 ch 80 SLA 1960; am sec. 5 ch 94 SLA 1968; am sec. 2 ch 81 SLA 1969; am secs. 3, 4 ch 37 SLA 1970; am sec. 13 ch 14 SLA 1982)

AS08.70.150
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 70.
Nursing Home Administrators.
CITATION Sec. 08.70.150.
CATCH LINE
FEES.
TEXT The following fees shall be imposed under this chapter when applicable:
(1) examination fee $25
(2) investigation fee for persons applying for a license under AS 08.70.110(b) $25
(3) license renewal fee $50
HISTORY (Sec. 1 ch 123 SLA 1975; am sec. 11 ch 141 SLA 1980)

AS08.72.191
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 72.
Optometry Law.
ARTICLE 2.
Licensing and Registration.
CITATION Sec. 08.72.191.
CATCH LINE
FEES.
TEXT The following fees shall be imposed under this chapter when applicable:
(1) examination fee ..... $ 50
(2) reexamination fee for written portion ..... $ 50
(3) waiver of examination fee ..... $ 50
(4) certificate fee $100
(5) renewal fee (due every four years) $200
(6) branch office registration fee (due every four years) $100
HISTORY (Sec. 11 ch 76 SLA 1969; am sec. 16 ch 75 SLA 1980)

AS08.80.160
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 80.
Pharmacy Act.
ARTICLE 2.
Licensing and Registration.
CITATION Sec. 08.80.160.
CATCH LINE
FEES.
TEXT The following fees shall be imposed under this chapter when applicable:
(1) examination fee ..... $ 50
(2) reexamination fee ..... $ 15

AS08.80.160 cont.

(3) investigation fee for licensing by credentials ..... $ 25

(4) pharmacist license fee and renewal fee due every four years $200

(5) temporary license fee ..... $ 20

(6) wholesale drug dealer license fee and renewal fee due every four years $200

(7) retail pharmacy license fee and renewal fee due every four years $200

(8) pharmacy intern license fee ..... $ 10

(9) emergency permit fee ..... $ 10

(10) hospital pharmacy license fee and renewal fee due every four years (in and outpatient) $200

(11) hospital drug room license fee and renewal fee due every four years (inpatient) $100

(12) nursing home and related facilities license fee and renewal fee due every four years for inpatient dispensing $100

(13) Repealed by sec. 21 ch 166 SLA 1980.

(14) license amendment or replacement fee ..... $ 10.

HISTORY (Sec. 10(a) ch 194 SLA 1955; am sec. 4 ch 24 SLA 1968; am sec. 11 ch 206 SLA 1972; am secs. 16, 21 ch 166 SLA 1980)

AS08.84.030

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 84.
Physical Therapists Practice Act.
ARTICLE 2.
Registration.

CITATION Sec. 08.84.030.

CATCH LINE
QUALIFICATIONS FOR LICENSING.

TEXT To be eligible for licensure by the board as a physical therapist or physical therapy assistant, an applicant, unless a graduate of a foreign school of physical therapy located outside the United States, shall

(1) Repealed by sec. 2 ch 55 SLA 1980.

(2) have graduated from a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association, or the American Physical Therapy Association;

(3) pass to the satisfaction of the board an examination prepared by the Professional Examination Service Association or by a national testing service approved by the board to determine the applicant's fitness for practice as a physical therapist or physical therapy assistant, or be entitled to licensure without examination as provided in AS 08.84.060;

(4) meet qualifications for licensure established in regulations adopted by the board under AS 08.84.010(b)(8).

HISTORY (Sec. 3 ch 74 SLA 1957; am secs. 1, 8 ch 49 SLA 1969; am secs. 1, 2 ch 26 SLA 1970; am sec. 25 ch 245 SLA 1970; am sec. 2 ch 71 SLA 1974; am sec. 2 ch 208 SLA 1975; am sec. 2 ch 55 SLA 1980)

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AS08.84.050

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 84.
Physical Therapists Practice Act.
ARTICLE 2.
Registration.

CITATION Sec. 08.84.050.

CATCH LINE
FEES.

TEXT The following fees shall be imposed under this chapter when applicable:

(1) application ..... $ 50
(2) licensure by examination 50
(3) licensure by acceptance of credentials 50
(4) quadrennial renewal 200
(5) temporary permit 20

HISTORY (Sec. 4 ch 74 SLA 1957; am sec. 2 ch 49 SLA 1969; am sec. 3 ch 26 SLA 1970; am sec. 5 ch 55 SLA 1980)

AS08.86.140

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 86.
Psychologists and Psychological Associates.
ARTICLE 3.
Licensing of Psychologists.

CITATION Sec. 08.86.140.

CATCH LINE
FEES.

TEXT The following fees shall be imposed under this chapter as applicable:

(1) application fee ..... $ 25
(2) examination fee $125
(3) credential review fee $125
(4) initial license fee $200
(5) license renewal (due every four years) $200

HISTORY (Sec. 1 ch 136 SLA 1967; am sec. 2 ch 38 SLA 1970; am sec. 9 ch 58 SLA 1980)

AS08.88.221

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 88.
Real Estate Brokers and Salesmen.
ARTICLE 2.
Licensing.

CITATION Sec. 08.88.221.

CATCH LINE
FEES.

TEXT (a) The following fees shall be imposed under this chapter when applicable:

(1) examination ..... $ 50
(2) reciprocity 100
(3) initial license 100
(4) renewal - active license 100
(5) renewal - inactive license 50
(6) amendment or transfer of license 5

(b) Repealed by sec. 7 ch 96 SLA 1982.

(c) Repealed by sec. 7 ch 96 SLA 1982.

(d) If the commission contracts with a national testing service to prepare, administer and grade examinations, the examination fee charged under (a)(1) of this section which the applicant is required to pay to the commission shall be reduced by the amount of the fee charged the applicant by the national testing service for the examination.

HISTORY (Sec. 1 ch 95 SLA 1964; am sec. 2 ch 31 SLA 1968; am secs. 12, 13 ch 28 SLA 1974; am secs. 18, 19 ch 167 SLA 1980; am secs. 3, 4, 7 ch 96 SLA 1982)

AS08.98.190

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 98.
Veterinarians.
ARTICLE 2.
Licensing.

CITATION Sec. 08.98.190.

CATCH LINE
FEES.

TEXT The following fees are imposed as applicable:

(1) application fee ..... $ 25
(2) examination fee ..... $ 50
(3) fee for investigation of credentials ..... $ 50
(4) license fee $200
(5) renewal of license fee (due every four years) $200
(6) temporary license fee ..... $ 50
(7) temporary permit fee ..... $ 50

HISTORY (Sec. 1 ch 91 SLA 1963; am sec. 1 ch 53 SLA 1968; am sec. 12 ch 130 SLA 1980)

STATUTES AFFECTED BY REPEALING CLAUSES OF CSHB 78(L&C)am

CHAPTER = 08.13
SECTION = 08.13.200
TITLE = 08
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 13.
Barbers and Hairdressers.
ARTICLE 3.
General Provisions.
CITATION Sec. 08.13.200.
CATCH LINE
DEPOSIT OF RECEIPTS.
TEXT Money received by the board from the payment of fees shall be paid into the general fund of the state.
HISTORY (Sec. 1 ch 159 SLA 1980)

CHAPTER = 08.20
SECTION = 08.20.190
TITLE = 08
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 20.
Chiropractors.
ARTICLE 2.
Licensing and Regulation.
CITATION Sec. 08.20.190.
CATCH LINE
DISPOSITION OF FEES.
TEXT All fees collected by the board shall be paid into the general fund of the state.
HISTORY (Sec. 35-3-30 ACLA 1949)

CHAPTER = 08.32
SECTION = 08.32.050
TITLE = 08
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 32.
Dental Hygienists.
ARTICLE 1.
Examination and Licensing.
CITATION Sec. 08.32.050.
CATCH LINE
DISPOSITION OF FEES.
TEXT All fees and charges shall be deposited in the general fund of

the state.
HISTORY (Sec. 1 ch 78 SLA 1953)

CHAPTER = 08.48
SECTION = 08.48.201
TITLE = 08 ONLY SUBSECTION (b) WOULD BE REPEALED
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 48.
Architects, Engineers and Land Surveyors.
ARTICLE 2.
Registration and Practice.
CITATION Sec. 08.48.201.
CATCH LINE
APPLICATION AND FEES FOR REGISTRATION.
TEXT (a) Application for registration as a professional architect, a professional engineer or a professional lar surveyor shall (1) be on a form prescribed and furnished by the board; (2) contain statements made under oath, showing the applicant's education and a detailed summary of the applicant's technical experience; and (3) contain five references, three of whom must be architects for architectural registration, engineers for engineering registration, and land surveyors for land surveying registration, having personal knowledge of the applicant's architectural, engineering or land surveying education, training or experience.
(b) The registration fee for professional architects, professional engineers and professional land surveyors shall be established by the board in an amount not to exceed $100 and shall accompany the application for registration.
HISTORY (Sec. 3 ch 179 SLA 1972)

CHAPTER = 08.48
SECTION = 08.48.241
TITLE = 08 ONLY SUBSECTION (i) WOULD BE REPEALED
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 48.
Architects, Engineers and Land Surveyors.
ARTICLE 2.
Registration and Practice.
CITATION Sec. 08.48.241.
CATCH LINE
CORPORATIONS.
TEXT (a) This chapter does not prevent a corporation from offering architectural, engineering or land surveying services; however, the corporation shall file with the board
(1) an application for a certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified in accordance with the provisions of this chapter to offer to practice architecture, engineering or land surveying in this state;
(2) a certified copy of a resolution of the board of directors of the corporation designating persons holding certificates of registration under this chapter as responsible for the practice of architecture, engineering or land surveying by the corporation in this state and providing that full authority to make all final architectural, engineering or land surveying decisions on behalf of the corporation with respect to work performed by the corporation in this state is granted by the board of directors to the persons designated in the resolution; however, the filing of this resolution does not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;
(3) a designation in writing setting out the name of one or more persons holding certificates of registration under this chapter who are in responsible charge of each major branch of the architectural, engineering or land surveying activities in which the corporation specializes in this state; if a change is made in the person in responsible charge of a major branch of the architectural, engineering or land surveying activities, the change shall be designated in writing and filed with the board within 30 days after the effective date of the change.
(b) Upon filing with the board the application for certificate of authorization, certified copy of resolution, affidavit, and designation of persons specified in this section, the board shall, subject to
(c) of this section, issue to the corporation a certificate of authorization to practice architecture, engineering or land surveying in this state upon a determination by the board that
(1) the bylaws of the corporation contain provisions that all architectural, engineering or land surveying decisions pertaining to architectural, engineering or land surveying activities in this state will be made by the specified architect, engineer or land surveyor in responsible charge, or other registered architects, engineers or land surveyors under the direction or supervision of the architect, engineer or land surveyor in responsible charge;
(2) the application for certificate of authorization states the type of architecture, engineering or land surveying practiced or to be practiced by the corporation;
(3) the applicant corporation has the ability to provide architectural, engineering or land surveying services;
(4) the application for certificate of authorization states the professional records of the designated person who is in responsible charge of each major branch of architectural, engineering or land surveying activities in which the corporation specializes;
(5) the application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural, engineering or land surveying services during the preceding five-year period;
(6) the applicant corporation meets other requirements related to professional competence in the furnishing of

architectural, engineering or land surveying services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter.

(c) The board may, in the exercise of its discretion, refuse to issue, or may suspend or revoke a certificate of authorization to a corporation if the board finds that any of the officers, directors, incorporators or the stockholders holding a majority of the stock of the corporation has committed misconduct or malpractice, or has been found personally responsible for misconduct or malpractice under the provisions of this chapter.

(d) The certificate of authorization shall specify the major branches of architecture, engineering or land surveying of which the corporation has designated a person in responsible charge as provided in this section. The certificate of authorization shall be conspicuously displayed in the place of business of the corporation, together with the names of persons designated as being in responsible charge of the professional activities.

(e) If a corporation, organized solely by either a group of architects, a group of engineers, or a group of land surveyors, each holding a certificate of registration under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to the corporation based on a review of the professional records of the incorporators, in place of the required qualifications set out in this section. If the ownership of the corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners, if exclusively architects, engineers or land surveyors, or otherwise under the qualifications required by (b)(1) - (4) of this section.

(f) A corporation authorized to offer architectural, engineering or land surveying services under this chapter, together with its directors and officers for their own individual acts, is responsible to the same degree as the designated individual registered architect, engineer or land surveyor, and must conduct its business without misconduct or malpractice in the practice of architecture, engineering or land surveying as defined in this chapter.

(g) If the board, after a proper hearing, finds that a corporation holding a certificate of authorization has committed misconduct or malpractice, the board shall suspend or revoke the certificate of authorization. The board shall also suspend or revoke the certificate of registration of any registered individual architect, engineer or land surveyor who, after a proper hearing, is found by the board to have participated in committing the misconduct or malpractice.

(h) Plans, specifications, designs and reports, when issued in connection with work performed by a corporation under its certificate of authorization, shall be prepared by or under the responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued to a corporation under the provisions of this chapter, there shall be

paid an initial fee not to exceed $300.
HISTORY (Sec. 3 ch 179 SLA 1972)

CHAPTER = 08.54
SECTION = 08.54.170
TITLE = 08 ONLY SUBSECTION (c) WOULD BE REPEALED
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 54.
Guides.
ARTICLE 2.
Licensing.
CITATION Sec. 08.54.170.
CATCH LINE
LICENSE FEES.
TEXT (a) License fees for engaging in the profession of guiding are:
(1) master guide license, biennial $150
(2) registered guide license, biennial 150
(3) class-A assistant guide, biennial 30
(4) assistant guide license, biennial 20
(b) The license fee for a master guide, registered guide, class-A assistant guide or assistant guide license is in addition to the fee required for a hunting or fishing license.
(c) The license fee for a transporter is $10.
HISTORY (Sec. 1 ch 17 SLA 1973; am sec. 3 ch 106 SLA 1976; am sec. 4 ch 81 SLA 1984)

CHAPTER = 08.64
SECTION = 08.64.290
TITLE = 08
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 64.
Medicine.
ARTICLE 2.
Licensing.
CITATION Sec. 08.64.290.
CATCH LINE
EXAMINATION FEE.
TEXT The examination fee shall be paid at the time of applying for examination. The board may refund the examination fee only if the applicant is unavoidably prevented from making the examination.
HISTORY (Sec. 35-3-86 ACLA 1949; am sec. 18 ch 77 SLA 1969)

CHAPTER = 08.64
SECTION = 08.64.320
TITLE = 08
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 64.
Medicine.
ARTICLE 2.

Licensing.
CITATION Sec. 08.64.320.
CATCH LINE
DISPOSITION OF FEES.
TEXT Fees collected by the board shall be deposited in the general fund.
HISTORY (Sec. 35-3-86 ACLA 1949)

CHAPTER = 08.80
SECTION = 08.80.090
TITLE = 08
HEADINGS TITLE 8.
Business and Professions.
CHAPTER 80.
Pharmacy Act.
ARTICLE 1.
The Board of Pharmacy.
CITATION Sec. 08.80.090.
CATCH LINE
DISPOSITION OF FEES.
TEXT The fees collected by the secretary of the board shall be deposited in the general fund of the state.
HISTORY (Sec. 21 ch 194 SLA 1955)

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

79

CHAIRMAN'S INFORMATION: HB 79am

1) BILL TITLE: "An act relating to financial institution examinations; and providing for an effective date."

a) Introduced: Governor

b) Co-sponsors:

2) INTENT: This measure increases the maximum examinations fee for financial institutions from $7,500 to $12,000, and requires that banks regulated under this chapter be examined at least once every 24 months.

FISCAL NOTE: 0, however this bill is perceived as a revenue generator.

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HB 79am Summary:

This measure increases the maximum examination fee for financial institutions from $7,500 to $12,500, and requires that all assessments must be received by the department within 30 days after the financial institution recieves notice of the assessment. Banks regulated under this chapter must be examined at least once every 24 months.

The $12,000 maximum examination fee only applies to examinations after the effective date of this act.

BILL SUMMARY

Introduced: 1/18/85
Referred: Labor & Commerce
and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 79 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to financial institution examinations; and providing for an effective date."

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

* Section 1. AS 06.01.010(b) is amended to read:

(b) The commissioner shall assess every financial institution, and every applicant to establish a financial institution, a fee for the actual expenses incurred by the department in connection with any examination or investigation, whether regular or special. The fee shall include the proportionate part of the salaries and cost of employee benefits of the examiners while conducting examinations or investigations and while preparing reports of them, and transportation costs and per diem of each examiner while away from his duty station. However, the cost to the financial institution in connection with an examination may not exceed $12,000 [$7,500] per examination. The assessment shall be made by the commissioner as soon as feasible after the examination or investigation has been completed. All assessments shall be paid to and must be received by the department [BY EACH INSTITUTION] within 30 days after the financial institution receives [RECEIPT OF] notice of the assessment.

* Sec. 2. AS 06.05.025(c) is amended to read:

(c) Banks regulated under this chapter are subject to examination [AT LEAST ONE EXAMINATION A YEAR. ADDITIONAL EXAMINATIONS MAY BE CONDUCTED] at the discretion of the commissioner but not less than once every 24 months.

* Sec. 3. The $12,000 maximum assessment for examinations of financial institutions enacted in sec. 1 of this Act applies to examinations or investigations commenced on or after the effective date of this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 79

Title: An Act relating to financial institution examinations

Sponsor:

Requestor: Governor

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	24.6	24.6	24.6	24.6	24.6

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: ~~Attach a separate page if necessary~~

Please see attached fiscal note analysis.

Prepared By: Willis F. Kirkpatrick Phone: 465-2521

Division: Banking, Securities and Corporations Date: 12/31/84

Approved by Commissioner: Richard A. Lyon Date: 12.5.84

Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Budget

FISCAL NOTE

7/1/84

Almost all (82%) of the financial entities regulated and examined by the Division of Banking, Securities and Corporations pay for most if not all of the cost of their examinations. With the exception of credit unions and one small savings and loan association, the $7,500 maximum allowable charge rarely covers the cost of an examination of those financial entities that are classified "depository financial institutions," i.e. banks (see Exhibit A).

The increase of the limit from $7,500 to $12,000 would not only cover the increased costs of doing examinations since the $7,500 was set back in 1977, but this increase would also provide a more equitable sharing of the examination costs by the larger financial institutions.

It is urged that the assumption of increased revenues not be classified program receipts. To tie examinations of financial institutions to a program receipt requirement has the effect of assuming that all examinations can be scheduled alike and are predictable as to length of time and expense. In order to be effective in the determination in safety and soundness, the agency must have the latitude to concentrate in those areas of concern. To meet program receipt requirements would choke the very purpose for the examinations.

0971W101284a

Cost of Examination
FY '84 Cycle

Financial Institution	Asset Size (in Millions)	Type of Exam	Cost of Exam	Amount Paid by Institut.	% of Cost Recov.	Propos. Limit 12,000	% Paid Based on 12,000
Bank	582.8	Joint	12,542	7,500	60	12,000	95
Bank	425.5	Joint	13,230	7,500	56	12,000	91
Bank	342.1	Joint	7,812	7,500	96	7,812	100
Bank	236.0		20,554	7,500	36	12,000	58
Bank	178.0		25,848	7,500	29	12,000	46
Bank	102.8	Joint	12,478	7,500	60	12,000	96
Mutual Savings Bank	81.5		5,083	5,083	100	5,083	100
Bank	69.0		11,283	7,500	66	11,283	100
Bank	44.8	Joint	4,311	4,311	100	4,311	100
Savings & Loan	40.0	Visit.	525	525	100	525	100
Savings & Loan	25.2		6,132	6,132	100	6,132	100
Savings & Loan	7.7		1,601	1,601	100	1,601	100
Bank (New)		New					
Credit Union			5,721	5,721	100	5,721	100
Credit Union		Joint	1,603	1,603	100	1,603	100
BHC (1-a)			253	253	100	253	100
BHC (1-b)			182	182	100	182	100
BHC (2)			1,309	1,309	100	1,309	100
BHC (3)			612	612	100	612	100
BHC (4)		New					
BHC (5)		New					
Trust			895	895	100	895	100
Trust		New					
Finance Company			264	264	100	264	100
Finance Company			290	290	100	290	100
Finance Company			392	392	100	392	100
Finance Company		New					
Finance Company		New					
Finance Company		New					
Premium Finance Co.			384	384	100	384	100
Premium Finance Co.			684	684	100	684	100
Premium Finance Co.			407	407	100	407	100
Premium Finance Co.			407	407	100	407	100
Premium Finance Co.			676	676	100	676	100
Premium Finance Co.			392	392	100	392	100
Premium Finance Co.			712	712	100	172	100
Premium Finance Co.			229	229	100	229	100
Premium Finance Co.			241	241	100	241	100
Premium Finance Co.			615	615	100	615	100
Premium Finance Co.			679	679	100	679	100
Premium Finance Co.			598	598	100	598	100
			138,944	87,697	63%	114,292	82%

Joint = Joint examination with appropriate federal insuring agency
Visitation = Short examination for a specific area of concern
New = Fees received under Investigations - Examinations due next cycle

BILL SHEFFIELD
GOVERNOR

HB 79

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which increases the fee that the commissioner of commerce and economic development may assess a financial institution for investigation and examination costs. It raises the existing maximum of $7,500 to a maximum of $12,000 per examination. The fee increase is necessary because costs associated with these examinations have risen more than 50 percent since 1978 when the $7,500 maximum fee was first established.

The bill also eliminates the requirement in current law that state banks be examined by the department annually. Examination of a bank under the bill is left to the discretion of the commissioner. This will allow the department to focus on problem banks and will free banks that are in stable condition from unnecessary paperwork and examination costs.

An additional, technical amendment is included in sec. 1 of the bill, rewriting but not changing the substance of the last sentence of AS 06.01.010(b).

Sincerely,

Bill Sheffield
Governor

— GOVERNOR'S TRANSMITTAL LETTER —

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

80

Chairman's Information:

1) CSHB 80(L&C): "An act relating to insurance fees and licenses; and providing for an effective date."

a) Introduced: Governor

b) Co-Sponsors:

2) INTENT: This legislation provides authority for the Division of Insurance to set fees by regulation, to more adequately reflect the actual costs to the division for licensure.

FISCAL NOTE: none

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 80 (L&C): Summary

This legislation provides authority for the Division of Insurance to set fees by regulation. Most of the current fees were set by statute in 1966 and this bill will increase fees to more adequately reflect the actual cost to the division of insurance. Fees may be collected for, but are not limited to, applications, examinations, licenses, license renewals, certificates of authority, service of process, printed or photocopied material, and postage.

Summary

APR 15 1985

April 11, 1985

Senator Fred F. Zharoff
Alaska State Legislator
Pouch V (MS 3100)
Juneau, Ak. 99811

RE: HB 80 (L&C)

Dear Sir:

We would like to request your assistance with regards to a provision of HB 80, a bill relating to insurance fees and licenses that past the House.

The Insurance Agents in Fairbanks and myself object to a provision of the bill that starts on line 22, which is the repeal of Sec. 2 AS 21.06.250, FEES AND LICENSES.

We feel that most Agents in State, if they were aware, would object to it. While we have no differences with our current Director of Insurance, we have in the past and could again in the future have serious differences with a Director.

We feel it would be unwise and is unnessessary to let a Director be the sole authority for setting license fees. It is our believe that Agents would be better able to fight an unjust fee in the Legislator.

Please use your influence to delete that portion of HB 80.

Thank you.

Respectfully,

Gordon E. Depue

[redacted]

Letters: Objecting to provision allowing Dir. of Insurance to set fees

APR 1 0 1985

LIFE MEMBER MILLION DOLLAR ROUND TABLE

DALE E. YODER, C.L.U.
P.O. BOX 529, FAIRBANKS, ALASKA 99707
(907) 456-4803

April 12, 1985

Senator Fred F. Zharoff
Alaska State Legislature
Pouch V
Juneau, AK 99811

RE: HB 80 (Lic.)

Dear Senator Zharoff:

This bill leaves insurance and license fees that could be charged up to the Director of Insurance An unfriendly Director to the industry could charge several hundred dollars to renew an agents license.

We would rather leave the law as it is, where the legislature approves fees, the Director recommends if such fees are just and reasonable.

Thank you for listening to my position on this bill.

Sincerely,

Dale E. Yoder, CLU

DEY:lj

GENERAL AGENT
TRANSAMERICA OCCIDENTAL LIFE INSURANCE COMPANY

FAIRBANKS ASSOCIATION OF LIFE UNDERWRITERS
P.O. Box 2436
Fairbanks, Ak. 99707

April 15, 1985

Sen. Fred F. Zharoff
Alaska State Legislature
Pouch V (MS 3[illegible]0)
Juneau, Ak. 99811

RE: HB 80 (C & L)

Dear Sir:

I am writing to you on behalf of the Fairbanks Association of Life Underwriters and respectfully request your assistance regarding a provision of HB 80, a bill relating to insurance fees and licenses,

Our members, including myself, object to the provision of the bill which deals with FEES and LICENSES, repeal of Sec. 2 AS 21.06.250.

Even though we have no differences with our present Director of Insurance, we very well could have serious problems with a future Director, as we have had in the past.

We feel it would be unwise and is unnessessary to let a Director be the sole authority for setting license fees.

It is our believe that Agents would be better able to fight an unjust fee in the Legislature.

On behalf of our Association I urge you to use your influence to delete that portion of HB 80, starting on line 22.

Thank you.

Respectfully,

Elfriede F. Eldridge

Elfriede F. Eldridge
President

CSHB 80 (L&C)

THIS LEGISLATION RPOVIDES AUTHORITY FOR THE DIVISION OF INSURANCE TO SET FEES BY REGULATION. MOST OF THE CURRENT FEES WERE SET BY STATUTE IN 1966, AND THIS BILL WILL GIVE THE DIVISION THE ABILITY TO SET FEES WHICH REFLECT THE ACTUAL COST.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 80(L&C)

Title: Insurance Fees

Sponsor: Governor

Requestor: House Finance Committee

Date of Request: 3/21/85

FISCAL DETAIL

Agency Affected: Commerce

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Costs of hearings can be absorbed in existing budget. Fees will not be set until hearing process is complete, but Division estimates that approximately $260,000 in new revenues will be brought in.

Prepared By: Al Adams - Chairman APA Phone: 465-3706

Division: House Finance Committee Date: 3/21/85

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

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

BILL SHEFFIELD
GOVERNOR

HB 80

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill raising current fees collected by the division of insurance, Department of Commerce and Economic Development, under AS 21.

The statutes currently setting fees for the division of insurance do not provide adequate revenue to the state to cover the division's present budget. Most of the fees were set by statute in 1966 and have not been increased since. This bill would raise fees to more closely approximate the actual cost of services and would provide for periodic reports by the division to the legislature in order to encourage future adjustments, as they become necessary. This bill is virtually identical to the committee substitute of a bill introduced last session, CSHB 633 (L&C).

I urge your support of and prompt action on this measure.

Sincerely,

Bill Sheffield
Governor

Governor's Letter of Transmittal

AS21.06.250

CHAPTER = 21.06
SECTION = 21.06.250
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.
CITATION Sec. 21.06.250.
CATCH LINE
FEES AND LICENSES.
TEXT (a) The director shall collect required fees in advance. The fees are as follows:

(1) certificate of authority

(A) for filing an application for certificate of authority, articles of incorporation and other charter documents, bylaws, financial statement, examination report, power of attorney to the director, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued

domestic insurers $100
foreign insurers $100

(B) annual continuation of certificate of authority ..... $ 65

(C) reinstatement of certificates of authority ..... $ 65

(D) amending certificate of authority .... $ 10

(2) filing amendment of articles of incorporation, domestic and foreign insurers ..... $ 10

(3) filing bylaws or amendments thereto, where required ..... $ 10

(4) filing annual statement of insurer, other than as part of application for original certificate of authority ..... $ 10

(5) general agent or agent license, property, casualty, surety, title insurance agents, and including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the general agent or agent

(A) application for original license, and including issuance of license, if issued,

(i) individual ..... $

(ii) firm or corporation .....

75
(B) annual renewal or continuation of license
(i) individual ..... $
35
(ii) firm or corporation .....
75
(C) appointment of agent or general agent, each insurer .... $ 5
(D) annual renewal of appointment of general agent or agent, each insurer ..... $ 5
(E) temporary license ..... $ 35
(6) nonresident general agent or agent's license
(A) individual ..... $ 75
(B) firm or corporation $150
(C) annual renewal or continuation of license ..... $ 75
(7) broker license
(A) application for original license and including issuance of license if issued - resident
(i) all line broker .....
$100
(ii) property-casualty broker .....
75
(iii) life-disability broker .....
75
(B) annual renewal or continuation of license - resident
(i) all line broker .....
$100
(ii) property-casualty broker .....
75
(iii) life-disability broker .....
75
(C) application for original license and including issuance of license, if issued - nonresident
(i) all line broker .....
$250
(ii) property-casualty broker .....
150
(iii) life-disability broker .....
150
(D) annual renewal or continuation of license - nonresident
(i) all line broker .....
$250
(ii) property-casualty broker .....
150
(iii) life-disability broker .....
150
(8) solicitor license
(A) application for original license, including issuance of license if issued ..... $ 15
(B) annual continuation of license ..... $ 15
(9) general agent or agent license, life, disability

insurance and annuities

(A) application for original license, including issuance of license, if issued,

(i) individual ..... $ 35

(ii) firm or corporation ..... 7.

(B) annual renewal or continuation of license,

(i) individual ..... $ 35

(ii) firm or corporation 75

(C) appointment of general agent or agent, each insurer ..... $ 5

(D) annual renewal of appointment of general agent or agent, each insurer ..... $ 5

(10) examination for license as general agent, agent, broker, solicitor or adjuster, each examination ..... $ 10

(11) surplus line broker license

(A) application for original license and for issuance of license, if issued - resident $100

(B) application for original license and for issuance of license if issued - nonresident $300

(C) annual renewal or continuation of license - resident $100

(D) annual renewal or continuation of license - nonresident $300

(12) adjuster license

(A) application for original license and for issuance of license if issued - resident ..... $ 35

(B) annual renewal or continuation of license - resident ..... $ 35

(C) application for original license and for issuance of license, if issued - nonresident ..... $ 75

(D) annual renewal or continuation of license - nonresi- dent ..... $ 75

(13) insurance vending machine license, each machine, each year ..... $ 35

(14) for issuing any other certificate required or permissible under law ..... $ 5

(15) for accepting service of process .... $ 5

(16) for copy of insurance code, actual printing cost plus postage;

(17) for copy of insurance report, actual printing cost plus postage;

(18) for any printed material furnished by the director not mentioned above, the director may charge the actual cost of printing plus handling and postage;

(19) for limited license (travel insurance agent)

..... $ 25
(20) -Repealed, sec. 6 ch 113 SLA 1974.-
(21) rating bureaus (for a three-year license)
..... $100

(b) The director shall promptly deposit with the commissioner of revenue to the credit of the general fund of this state all fees received under this section.

HISTORY (Sec. 1 ch 120 SLA 1966; am secs. 1 - 6 ch 113 SLA 1974; am sec. 1 ch 206 SLA 1976)

AS21.87.320

CHAPTER = 21.87
SECTION = 21.87.320
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 87.
Hospital and Medical Service Corporations.
CITATION Sec. 21.87.320.
CATCH LINE
FEE AND LICENSES.
TEXT (a) Each service corporation shall pay to the director fees in advance as follows:
(1) for filing application for initial certificate of authority by newly formed corporation, or after expiration or revocation of previous certificate of authority $100
(2) for issuance of initial certificate of authority, or each annual continuation or renewal 65
(3) for filing and certifying articles of incorporation 10
(4) for filing and certifying amendments to articles of incor- poration 10
(5) for filing bylaws and amendments to bylaws 10
(6) for filing annual statement of financial condition 10
(7) for affixing seal and certifying documents other than the certificate hereinabove provided for 5

(b) The director shall promptly deposit with the commissioner of revenue to the credit of the general fund of this state all fees received under this section.

HISTORY (Sec. 1 ch 120 SLA 1966)

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB
102

Chairman's Information:

1) SCS CSHB102(L&C): "An act relating to the Alaska Resources Corporation and providing for an effective date"

a) Introduced: Sen Josephson, Ziegler, and Ferguson

b) Co-Sponsors:

2) INTENT: This legislation provides for disposal of assets held by ARC, and requires that such disposal serve the best interest of the state, may not be by lease, and may include amortization of payments over a period of 25 years or less.

The bill also provides that the board may convert equity investments into debt and that the debt created by this conversion may be amortized over a period of 25 years or less.

L&C CS also added language which pertains to disposal of "real property" to municipalities under certain circumstances.

FISCAL NOTE: 0

NOTE: Need to adopt the House letter of intent;

3) ADDITIONAL REFERRALS: Finance

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

Original sponsor: Rules/Governor

L&C CS CHANGES)

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 102 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Resources Corporation; and providing for an effective date."

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

* Section 1. AS 37.12.071 is amended to read:

Sec. 37.12.071. ADDITIONAL POWERS. Notwithstanding other provisions of law governing disposal of state property, the board may, at either public or private sale, dispose of the assets of the corporation as required in AS 37.12.075. Disposal shall be made in a manner that serves the best interests of the state, and may include amortization of payments over a period of 25 years or less, but may not be by lease. In addition, the corporation may spend money to protect the assets of the corporation.

* Sec. 2. AS 37.12.075 is amended by adding new subsections to read:

(b) In divesting the corporation of equity investments, the board may convert the equity investment of the corporation in a particular enterprise to debt, if the governing board of the enterprise approves the conversion. The debt created by the conversion may include amortization of payments over a period of 25 years or less, and becomes part of the outstanding loan portfolio of the corporation.

(c) If the board proposes to dispose of an interest in real property to a private party at less than ~~80~~ 50 percent of its appraised or assessed value, the board shall notify the municipalities in which the real property of the proposed disposal is located. A municipality may acquire the interest in the real property for the same value as the

proposed disposal to the private party if, within 30 days of receiving the notice, the municipality elects to acquire the interest in the real property.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Original sponsor: Rules/Governor

IN THE HOUSE (Old version) BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 102 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Resources Corporation; and providing for an effective date."

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

* Section 1. AS 37.12.071 is amended to read:

Sec. 37.12.071. ADDITIONAL POWERS. Notwithstanding other provisions of law governing disposal of state property, the board may, at a [EITHER] public [OR PRIVATE] sale, dispose of the assets of the corporation as required in AS 37.12.075. Disposal shall be made in a manner that serves the best interests of the state, and may include amortization of payments over a period of 25 years or less, but may not be by lease. In addition, the corporation may spend money to protect the assets of the corporation.

* Sec. 2. AS 37.12.075 is amended by adding new subsections to read:

(b) In divesting the corporation of equity investments, the board may convert the equity investment of the corporation in a particular enterprise to debt, if the governing board of the enterprise approves the conversion. The debt created by the conversion may include amortization of payments over a period of 25 years or less, and becomes part of the outstanding loan portfolio of the corporation.

(c) If the board proposes to dispose of an interest in land to a private party at less than 80 percent of its appraised value, the board shall notify the municipality in which the land of the proposed disposal is located. The municipality may acquire the interest in land on the same terms as the terms of the proposed disposal to the

private party if, within 30 days of receiving the notice, the municipality elects to acquire the interest in the land. The board shall determine the value of the public benefits that may accrue as a result of the municipal acquisition, and shall reduce the cost of the acquisition of the interest in land by the municipality by that amount.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SCS CSHB 102(L&C) Version 2: Sectional Analysis

Section 1) Requires that disposal of assets held by ARC shall be by either public or private sale, and that the disposal must serve the best interest of the state, may include amortization of payments over 25 years or less, but may not be by lease.

Section 2) Provides that the board may convert equity investments of ARC into debt, if the governing board of the enterprise approves the conversion. The conversion of equity to debt may include amortization of payments over a period of 25 years or less, and becomes part of the outstanding loan portfolio of ARC.

If the board plans to dispose of an interest in real property at less than 80% of the appraised value, the board shall notify the municipalities in which the land is located. A municipality may acquire the interest in the real property for the same value as the proposed disposal to a private party, if the municipality elects to acquire that interest within 30 days of receipt of the notice.

Section 3) Immediate effective date.

Sectional analysis

Offered: 2/25/85
Referred: Rules

Original sponsor: Rules/Governor

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 102 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Ala. a Resources Corporation; and providing for an effective date."

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

* Section 1. AS 37.12.071 is amended to read:

Sec. 37.12.071. ADDITIONAL POWERS. Notwithstanding other provisions of law governing disposal of state property, the board may, at either public or private sale, dispose of the assets of the corporation as required in AS 37.12.075. Disposal shall be made in a manner that serves the best interests of the state, and may include amortization of payments over a period of 25 years or less, but may not be by lease. In addition, the corporation may spend money to protect the assets of the corporation.

* Sec. 2. AS 37.12.075 is amended by adding a new subsection to read:

(b) In divesting the corporation of equity investments, the board may convert the equity investment of the corporation in a particular enterprise to debt, if the governing board of the enterprise approves the conversion. The debt created by the conversion may include amortization of payments over a period of 25 years or less, and becomes part of the outstanding loan portfolio of the corporation.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SCS CSHB 102(L&C): Sectional Analysis

Section 1) Requires that disposal of assets held by ARC shall be by public sale, and that the disposal must serve the best interest of the state, may include amortization of payments over 25 years or less, but may not be by lease.

Section 2) Provides that the board may convert equity investments of ARC into debt, if the governing board of the enterprise approves the conversion. The conversion of equity to debt may include amortization of payments over a period of 25 years or less, and becomes part of the outstanding loan portfolio of ARC.

If the board plans to dispose of an interest in land at less than 80% of the appraised value, the board shall notify the municipality in which the land is located. The municipality may acquire the interest in land at the same terms as the proposed disposal to a private party, if the municipality elects to acquire the interest in the land within 30 days of receipt of the notice. The board shall determine the value of the public benefits which may result from the municipal acquisition, and shall reduce the cost of the acquisition by that amount.

Section 3) Immediate effective date.

HB102

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

TREASURY DIVISION

ELEVENTH FLOOR
STATE OFFICE BUILDING
POUCH SB
JUNEAU, ALASKA 99811
PHONE:

January 29, 1985

The Honorable John Sund
Chairman
House Special Committee on Loans
Pouch V
Juneau, AK 99811

Dear Mr. Sund:

Ch. 161, SLA 1984 directs the Alaska Resources Corporation (ARC) to divest all its assets, except its loan portfolio, by July 1, 1989. ARC's assets to be divested include equity in various corporations and assets acquired in foreclosure of ARC loans. Several of the enterprises in which ARC has invested are in bankruptcy proceedings. Several of the foreclosed properties are not currently operating as businesses and their prospect of doing so is uncertain.

Under these circumstances, bank or other outside financing for a potential buyer to purchase ARC equity or foreclosed properties may not be available or available on reasonable terms. The only means of financing the purchase may be for ARC to take a promissory note for all or part of the purchase price. In some cases, the only interested buyer of ARC equity may be the corporation in which ARC has invested. In this case, conversion of equity to debt is tantamount to taking a note on sale.

HB 102 would authorize ARC to take a note on sale or enter into an installment sale contract as well as to convert equity to debt. This is a necessary tool which will be used only when a cash buyout for ARC cannot be negotiated.

The ARC board of directors has endorsed this legislation.

[redacted]

Backup: Dept. of Revenue

04-D12LH

Enclosed is a summary of ARC's various investments. Detailed information on credit status of investments is not provided because of confidentiality requirements.

Sincerely yours,

Milt Barker

Milt Barker
Deputy Commmissioner of Treasury

BM/gb

Enclosure

cc: The Honorable Mary A. Nordale

TABLE

Alaska Resources Corporation
Business Investments as of 6-30-84

	Original Debt	Current ARC Equity	Percent ARC Ownership	Total ARC Debt & Equity
ACT 1 (Alaska Fish)	$ 125,000	$ 125,000	13%	$ 250,000
Alaska Timber Corp.	1,500,000			1,500,000
Alyeska Candy Kitchen	37,600			37,600
American Eagle Seafoods	200,000			200,000
Anchor Renewable Farms	120,404			120,404
Anchorage Tank & Welding	370,000			370,000
Arctic Frost Seafoods	19,200			19,200
Ball Brothers	4,169,095	500,000	40	4,669,095
Clark, Inc.	395,000	25,000	1	420,000
Icicle Seafods, Inc.	2,300,000	2,222,622	39	4,522,622
Kachemak Seafoods	256,092			256,092
Kokechik, Inc.	300,000	490	49	300,490
Pacific Forest Products	6,765,065			6,765,065
Rice Fur Farm	115,000			115,000
Salamatof Seafoods	3,065,350	976,264	35	4,041,614
Sayles Marine	156,126			156,126
Seaward Shipyard	590,000	150,000	22	740,000
Smaragd Partners	490,000			490,000
Steik Enterprises	55,000			55,000
Sterling Seafoods	125,000	100,000	49	225,000
Trinity Resources		206,100	32	206,100
Wyman	1,000,000			1,000,000
TOTAL INVESTMENTS	$21,380,444 1/	$4,305,476		$25,685,919
Assets acquired through foreclosure less valuation allowance of $7,653,647				4,362,364
Less allowance for doubtful collections	(13,298,256)			(13,298,256)
Less valuation allowance		(2,032,754)		(2,032,754)
TOTAL BUSINESS INVESTMENT ASSETS	$ 8,082,188	$2,272,722		$14,717,273

Investment Status: 12 loans delinquent - $3,174,422; 6 companies bankrupt - $17,520,774.

1/ Total is debt outstanding and does not equal total Original Debt.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the divestiture of assets and equity investments of the Alaska Resources Corporation (ARC).

Section 1 of the bill permits the board to dispose of assets, including those acquired through default or foreclosure, in any manner that serves the best interests of the state, including extended payments over time.

Section 2 of the bill permits the board to convert its equity investments into debt, which will then be treated in the same manner as the corporation's current outstanding loan portfolio.

This bill is necessary to permit the ARC board the flexibility necessary to wind up the corporation's affairs by 1989, in accordance with ch. 161, SLA 1984.

Sincerely,

Bill Sheffield
Governor

Governor's Transmittal Letter

House Finance Committee
Letter of Intent
for
Committee Substitute for House Bill 102 (Finance)

In adopting CS House Bill 102 (Finance), "An Act relating to the Alaska Resources Corporation; and providing for an effective date," it is the intent of the legislature that the assets of the Alaska Resources Corporation (ARC) be fully liquidated by July 1, 1989.

While the authority granted in CS HB 102 (Finance), allows credit terms of sale for ARC assets to extend beyond 1989, it is the intent of the legislature that this authority be used only when there is a compelling economic reason to allow terms of sale other than cash payment, and then only to the extent that any credit granted is collateralized. No terms of sale should require state management effort beyond that needed for any other high-quality note receivable.

Al Adams 2-25-85

Al Adams, Chair
House Finance Committee

Adopted by House 3/1/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: CS HB 102 (Fin)
Title: Relating to Alaska Resources Corporation
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected:

BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB
Phone: 465-2350
Division: Treasury
Date: January 7, 1985

Approved by Commissioner:
Date: 1/7/85
Agency: Department of Revenue

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

[redacted]

Fiscal Note

Chapter 11. Renewable Resources Funds.

[Repealed, § 16 ch 161 SLA 1984.]

Chapter 12. Alaska Resources Corporation.

Section	Section
10. Alaska Resources Corporation created	55. Compensation of board members
15. Purpose	60. [Repealed]
22. Development capital fund	70. Powers
23. Deposit of money	71. Additional powers
30. Composition of the board of directors	75. Duties
35. [Repealed]	80. [Repealed]
45. [Repealed]	85. [Repealed]
50. Quorum and transaction of business	125. Definitions

Revisor's notes. — Sections 17 and 18, ch. 161, SLA 1984, provides for the repeal of this chapter on July 1, 1989 and the attendant transfer of the administration of the then outstanding loan portfolio to the Department of Revenue.

Cross references. — For legislative findings and purpose in connection with the 1984 amendment and the July 1, 1989 repeal of this chapter, see § 1, ch. 161, SLA 1984 in the Temporary and Special Acts.

Sec. 37.12.010. Alaska Resources Corporation created [Repealed effective July 1, 1989]. There is created the Alaska Resources Corporation to carry out the purposes of this chapter. The corporation is a public corporation of the state and an instrumentality of the state within the Department of Revenue, but has a legal existence independent of and separate from the state. The exercise by the corporation of the powers conferred by this chapter is considered an essential function of the state. (§ 3 ch 179 SLA 1978; am § 1 ch 142 SLA 1982; am § 2 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, substituted "Department of Revenue" for "Department of Commerce and Economic Development" in the second sentence.

Sec. 37.12.015. Purpose [Repealed effective July 1, 1989]. The purpose of the corporation is to effect an orderly wind-up of its affairs. (§ 3 ch 179 SLA 1978; am § 2 ch 142 SLA 1982; am § 3 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, rewrote this section.

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§ 3 ch 161 SLA

Sec. 37.12.022. Development capital fund [Repealed effective July 1, 1989]. The development capital fund is established in the corporation, consisting of money appropriated to the corporation. The development capital fund shall be used to pay for liabilities of the corporation that might arise during the wind-up of its affairs. (§ 3 ch 142 SLA 1982; am § 4 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, deleted "or assets" following "money," "or transferred" following "appropriated," and "and payments of principal and interest on loans and equity investments made by the corporation" from the end, all in the first sentence; rewrote the second sentence; and deleted the former third sentence.

Sec. 37.12.023. Deposit of money [Repealed effective July 1, 1989]. Repayments of principal and payments of interest and other income from loans of the corporation, dividends received from capital stock investments, and money received from the sale of equity investments or other assets of the corporation must be deposited in the general fund. (§ 5 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effective dates. — Section 19, ch. 161, SLA 1984, makes this section effective July 7, 1984, in accordance with AS 01.10.070(c).

Sec. 37.12.030. Composition and term of board of directors [Repealed effective July 1, 1989]. The board consists of the commissioner of revenue, who shall serve as chairman, and the commissioners of two other principal executive departments designated by the governor. The term of office of these board members continues until the corporation is dissolved. (§ 3 ch 179 SLA 1978; am § 5 ch 142 SLA 1982; am § 6 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, rewrote this section.

Sec. 37.12.035. Term of office. [Repealed, § 16 ch 161 SLA 1984.]

Sec. 37.12.045. Qualifications of board members. [Repealed, § 16 ch 161 SLA 1984.]

Sec. 37.12.050. Quorum and transaction of business [Repealed effective July 1, 1989]. (a) Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

(b) The board may meet and transact business by electronic media if (1) public notice of the time and locations where the meeting will be held by electronic media has been given in the same manner as if the meeting were held in a single location; (2) participants and members of the public in attendance can hear and have the same right to partici-

pate in the meeting as if the meeting were conducted in person; and (3) copies of pertinent reference materials, statutes, regulations, and audio-visual materials are reasonably available to participants and to the public. A meeting by electronic media as provided in this subsection has the same legal effect as a meeting in person. (§ 3 ch 179 SLA 1978; am § 7 ch 142 SLA 1982; am § 7 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, substituted "Three members" for "Two members" at the beginning of subsection (a).

Sec. 37.12.055. Compensation of board members [Repealed effective July 1, 1989]. Members of the board are entitled to per diem and travel expenses authorized by law for state boards and commissions under AS 39.20.180. (§ 3 ch 179 SLA 1978; am § 8 ch 142 SLA 1982; am § 8 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, deleted "receive $200 for each day spent on official business of the corporation, and" following "Members of the board."

Sec. 37.12.060. Executive director; staff. [Repealed, § 16 ch 161 SLA 1984.]

Sec. 37.12.070. Powers [Repealed effective July 1, 1989]. In carrying out the corporate powers of the corporation, the board may

(1) adopt, alter, and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in the name of the corporation;

(4) enter into any agreements necessary to the exercise of its powers and functions;

(5), (6) *[Repealed, § 16 ch 161 SLA 1984.]*

(7) appear in behalf of the corporation before boards, commissions, departments, or other agencies of municipal, state, or federal government;

(8) acquire, hold, use, lease, sell, or otherwise dispose of property of any kind, real, personal, or mixed, or any interest in it;

(9) hold, as a means of securing the providing of financial assistance, patents, copyrights, trademarks, royalties, or any other evidences of protection or exclusivity issued under the laws of the United States or any state or nation;

(10) prepare, publish, and distribute technical studies, reports, bulletins and other materials it considers appropriate;

(11) *[Repealed, § 16 ch 161 SLA 1984.]*

(12) *[Repealed, § 33 ch 142 SLA 1982.]*

(13) adopt regulations governing the exercise of its corporate powers;

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(14) *[Repealed, § 33 ch 142 SLA 1982.]*

(15) do all acts and things necessary or desirable to carry out the purposes of the corporation;

(16) *[Repealed, § 8 ch 56 SLA 1979.]* (§ 3 ch 179 SLA 1978; am §§ 2, 8 ch 56 SLA 1979; am E.O. No. 48, § 2 (1981); am §§ 11, 33 ch 142 SLA 1982; am § 16 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, repealed paragraphs (5), (6), and (11).

Sec. 37.12.071. Additional powers [Repealed effective July 1, 1989]. Notwithstanding other provisions of law governing disposal of state property, the board may, at either public or private sale, dispose of the assets of the corporation as required in AS 37.12.075. In addition, the corporation may spend money to protect the assets of the corporation. (§ 9 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effective dates. — Section 19, ch. 161, SLA 1984, makes this section effective July 7, 1984, in accordance with AS 01.10.070(c).

Sec. 37.12.075. Duties [Repealed effective July 1, 1989]. In carrying out the purposes of this chapter the board shall

(1) contract with the Department of Revenue to manage the assets of the corporation;

(2) divest the corporation of all equity investments by July 1, 1989; and

(3) divest the corporation of all other remaining assets, with the exception of the outstanding loan portfolio, by July 1, 1989. (§ 3 ch 179 SLA 1978; am § 12 ch 142 SLA 1982; am § 10 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, rewrote this section.

Sec. 37.12.080. Financial assistance. [Repealed, § 16 ch 161 SLA 1984.]

Sec. 37.12.085. Eligibility for financial assistance. [Repealed, § 16 ch 161 SLA 1984.]

Sec. 37.12.125. Definitions [Repealed effective July 1, 1989]. In this chapter, unless the context otherwise requires,

(1) *[Repealed, § 16 ch 161 SLA 1984.]*

(2) "board" means the Board of Directors of the Alaska Resources Corporation;

(3) "corporation" means the Alaska Resources Corporation;

(4)—(7) *[Repealed, § 16 ch 161 SLA 1984.]* (§ 3 ch 179 SLA 1978; am §§ 23 — 28 ch 142 SLA 1982; am § 16 ch 161 SLA 1984; r § 18 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 7, 1984, repealed paragraphs (1), (4)—(7).

Chapter 15. State Bonding Act.

Article
1. General Obligation Bonds (§ 37.15.012)
3. International Airports Revenue Bonds (§ 37.15.415)
4. Toll Facilities Revenue Bonds (§§ 37.15.610 — 37.15.760)

Article 1. General Obligation Bonds.

Section
12. Continuing debt service appropriation

Sec. 37.15.012. Continuing debt service appropriation. The amounts required annually to pay the principal, interest, and redemption premium on all issued and outstanding general obligation bonds of the state are appropriated each fiscal year from the general fund to the state bond committee to make all required payments of principal, interest, and redemption premium. (§ 1 ch 100 SLA 1981; am § 1 ch 156 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, substituted "each fiscal" for "on July 1 of each."

Article 3. International Airports Revenue Bonds.

Section
415. Continuing revenue bond debt service appropriation

Sec. 37.15.415. Continuing revenue bond debt service appropriation. The amounts required annually to pay the principal, interest, and redemption premium on all issued and outstanding international airports revenue bonds of the state are appropriated each fiscal year from the international airports revenue fund to the state bond committee to make all required payments of principal, interest, and redemption premium. (§ 2 ch 156 SLA 1984)

Effective dates. — Section 5, ch. 156, SLA 1984 makes this section effective July 6, 1984, in accordance with AS 01.10.070(c).

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4209 SLAB HB 126 - HB 148

1689

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

126

Offered: 3/20/85
Referred: Finance

Original sponsor: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 126 (Judiciary) /SJR 432 1st. Yr

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act amending the Alaska Securities Act."

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

* Section 1. AS 45.55.260(c) is amended to read:

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer

(1) originates from this state; [OR]

(2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer;

(3) is for an interest or participation in an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made;

(4) is for an interest or participation in payments out of production under an oil, gas, or mining right, title or lease on land in the state, including submerged land, regardless of where the offer is made; or

(5) is for an interest or participation in real property located in the state, a domestic corporation, or a domestic limited partnership; jurisdiction under this paragraph may be exercised only when the exercise is not inconsistent with the constitution of this state or of the United States.

Chairman's Information:

1) CSHB 126(Jud): "An act amending the Alaska Securities Act"

a) Introduced: by Governor

) Co-Sponsors:

2) INTENT ,is bill is designed to expand the jurisdiction of the Division of Banking and Securities, DCED, to regulate transactions in securities which are not covered under the present Alaska Securities Act.

FISCAL NOTE: From House Finance; consolidates funding in DCED, with legal expenses to be RSA's to the Department of Law.

NOTE:

3) ADDITIONAL REFERRALS: Judiciary, and Finance

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

CORRECTED Revision Date: 4/4/85

REQUEST page 1 of 5

Bill/Resolution No.: CSHB 126(Jud

Title: An Act Amending the Alaska Securities Act

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce and Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Banking Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		34.0	35.4	36.8	38.2	40.0
200 TRAVEL		10.0	11.7	12.4	13.1	14.1
300 CONTRACTUAL		42.2	44.8	47.4	50.2	53.4
400 SUPPLIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT		5.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		92.2	93.0	97.8	102.8	108.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		92.2	93.0	97.8	102.8	108.9
FEDERAL FUNDS						
OTHER						
TOTAL		92.2	93.0	97.8	102.8	108.9

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

House Finance substitute fiscal note consolidates funding into Dept. of Commerce and Economic Development. Legal expenses will be RSA's to Dept. of Law as needed. Backup from Dept. of Law and Dept. of Commerce is attached.

Prepared By: Al Adams Phone:

Division: House Finance Date: 4/4/85

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

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

Supersedes 12/1/84 F.N.

Fiscal note

FISCAL NOTE ANALYSIS

This bill, if enacted, will require that the Securities Section of the division undertake securities registration for the sale of oil and gas leases located in Alaska and will undoubtedly result in increased filings as well as substantial efforts in compliance and enforcement activities including hearings. A Business Registration Examiner position will be necessary to support these registrations. The current substantially increased workload has stretched the examining/enforcement staff to the limit. The additional clerical support will free up the professional staff time to cope with the expanded registration and enforcement duties imposed by the proposed legislation.

Travel of 3.0 will be required for investigation of wrongdoers in the field. Contractual funds of 3.0 is needed for hearing officer purposes in administrative proceedings. Additionally, a one time expense of 5.0 is included to cover costs of typewriter and computer terminal for the new position.

Amounts shown in FY '85 assume bill passage with an effective date that will permit one month personal services and purchase of equipment within this fiscal year. Form C5 reflects 5.0 in FY '86 for equipment assuming we do not have authority in FY '85.

0932W10884a

Fiscal Note
Analysis

December 12, 1984

This bill amends the state's existing securities laws to strengthen the state's law enforcement jurisdiction over securities offerings made in other states, where the underlying "value" of the security is a (non-competitive) oil, gas, or mineral lease on Alaska land. Sales of speculative investments in such leases are already regulated "security" transactions, but Alaska's current law does not allow the state to require registration, or to take enforcement action against sellers who set up offices outside Alaska but who market Alaskan leases as securities, usually only to non-Alaskans.

These sales are often fraught with misrepresentations about the value of the Alaskan oil or gas lease, or the true cost of exploring and developing production on the lease land. Investors in other states pay up to $1,000 an acre for state and federal lease lands available over-the-counter in Alaska for $1.00 an acre, in hopes of striking it rich, in line with the promoters' glowing promises.

These sales, and the subsequent losses of $6,000, $10,000, even $20,000 to each of thousands of out-of-state investors, are very damaging to Alaska's commercial and investment image. Moreover, the subdividing into smaller parcels of these 640 acre leases may well defeat the underlying purpose of the state and federal exploratory (non-competitive) leasing program.

Enactment of this bill will require the attorney general to provide additional legal support for research, advice and enforcement action in the courts, as requested by the Division of Banking and Securities. As most of the offending companies are located outside Alaska, lawsuits to obtain injunctions against them will require substantial out-of-state travel funds to take depositions and interview witnesses, as well as funds to conduct those depositions and interviews.

It is expected that, at a minimum, five trips outside Alaska will be necessary to enforce registration of sales Alaskan oil, gas, or mineral leases outside Alaska. It will also be necessary to hire court reporters in order to take depositions and to hire outside counsel to file actions in jurisdictions outside the state.

Out-of-state Travel

5 trips X $800 fare =	$4,000
5 X 10 days X $80 per day =	$4,000
Total travel & per diem =	$8,000

Contractual

Court reporter services 6 hrs. X $80 X 40 days =	$19,200
Outside counsel 4 occurrences X $5,000 =	$20,000
Total	$39,200
TOTAL COSTS	$47,200

Costs beyond FY 86 include a 6% annual inflation factor.

1.	POSITION TITLE BUSINESS REGISTRATION EXAMINER			RANGE/STEP 12B	ORG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION Fulltime	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.		
3.	CONFIRMATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE	1 / 2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	25.6	
6.	Benefits	6.8	
7.	Supplemental Benefits	1.6	
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	34.0
10.	Travel	02	2.0
11.	Contractual	03	3.0
12.	Commodities	04	1.0
13.	Equipment	05	5.0
14.	Other		
15.	TOTAL COST		45.0

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

FOR BSR USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

A new position will be required when the Alaska Securities Act is amended to protect the public against the shams in oil and gas land leases involving Alaska lands. The Securities Section will undertake the registration of these leases and will experience a substantial increase in the requirements for compliance, enforcement including hearings.

The responsibility for this position will be to set up investigative files, maintain data entry, file investigative reports, coordinate material necessary for preparation of Cease and Desist Orders or possible court actions, screen initial registration documents, do follow-up for inquiry with other securities jurisdictions, BLM, DNR, as well as local State and federal law enforcement agencies.

Manage files and documents relative to registration, record funds. In-field registration inspection as required. Generally assist securities examiner as directed.

REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM Consumer Protection

BRU Banking, Securities & Corporations

COMPONENT Financial Institutions

H-B 226, No. 1

Page 3 of 3

Revised Date

FY 86

1-113647/831-13

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB126 T.2

Title: "An Act amending the Alaska Securities Act."

Sponsor: House Rules/by req. of Gov.

Requestor: Governor's Office - OMB

Date of Request: 12/11/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: General Government

BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		8.0	8.5	9.0	9.5	10.1
300 CONTRACTUAL		39.2	41.6	44.0	46.6	49.4
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	47.2	50.1	53.0	56.1	59.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	47.2	50.1	53.0	56.1	59.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Not specified by sponsor.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administration Division Date: 12/12/84

Approved by Commissioner: Richard I. Pegues / FOR Norman C. Gorsuch Date: 12/12/84

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 126(Jud)

This bill amends the state's existing securities laws to strengthen the state's law enforcement jurisdiction over "fraudulent" securities offerings made in other states.

Alaska's current law does not allow the state to require registration or to take enforcement action against sellers who set up offices outside of Alaska, but who market Alaskan leases as securities to non Alaskans.

This legislation will broaden the Alaska Securities Act to cover these business firms even if the "investment" sales are not made in Alaska or to Alaskan residents.

This bill will not affect legitimate companies engaged in oil, gas, or mineral exploration or production, as they are already exempted from the Alaska Securities Act by AS 45.55.140(b) (17).

Bill summary

MEMORANDUM State of Alaska

TO: Louann Cutler, Staff Assistant
House Finance Committee

DATE: April 2, 1985

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: CSHB 126 (Jud)
Sectional analysis

By: Jeffrey W. Bush
Assistant Attorney General

As requested, I have prepared a sectional analysis of CSHB 126 (Jud). This bill is designed to expand the jurisdiction of the Alaska Securities Act to enable the Administrator of Securities (Director, Division of Banking and Securities, Department of Commerce and Economic Development) to regulate certain transactions in securities which are not covered under the present Act.

1. Proposed AS 45.55.260(c)(3). This paragraph expands jurisdiction under the Securities Act to cover any transaction involving the sale of an interest in an oil, gas, or mining lease where the lease is on land located in Alaska, even if both parties to the transaction are outside of the state.

2. Proposed AS 45.55.260(c)(4). This paragraph, which also involves interests in oil, gas, or mining leases located on Alaska lands, extends jurisdiction under the act to transactions involving payments, such as royalties, from production under these leases, even if the parties to the transaction are outside of Alaska.

3. Proposed AS 45.55.260(c)(5). This paragraph, which was added by the Judiciary Committee, expands jurisdiction under the Act to include all transactions between nonresidents who sell security interests in real property located in Alaska, corporations incorporated in Alaska, or limited partnerships registered in Alaska. Recognizing that this paragraph would otherwise be subject to challenge as a violation of the Commerce Clause or the Due Process Clause of the United States Constitution, jurisdiction under this paragraph is expressly limited to those cases where its exercise is constitutionally acceptable.

You have also asked whether the amendment adopted by the Judiciary Committee will result in any change in the fiscal note submitted by the Department of Commerce and Economic Development. I have checked with the department, and they have

02-001A(Rev. 10/79)

informed me that the fiscal note originally sub ed is still correct and should be considered in conjunct ch CSHB 126 (Jud).

JWB/mf

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 126

January 25, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends the Alaska Securities Act (AS 45.55) by extending its scope to include offers to buy or sell interests in oil, gas, or mining rights on land in the state, regardless of where the offer or sale occurs.

The bill was jointly prepared by the division of banking, securities and corporations of the Department of Commerce and Economic Development and the consumer protection section of the Department of Law in response to numerous complaints of fraudulent oil and gas lease schemes. These schemes typically involve solicitations by firms located outside Alaska who acquire an interest in oil or gas leases through bid offerings of the Department of Natural Resources or the federal Bureau of Land Management.

The lease tracts these firms acquire are often the least likely to contain valuable oil, gas, or mineral resources. However, these firms conduct massive high pressure telephone sales and media advertising aimed at would-be investors in the lower 48 states, promising them high returns if they "invest" in a portion of one of these Alaskan oil or gas leases. The offering firms often falsely represent that they have expertise in oil, gas or mineral exploration or development. What is especially offensive to our state is that these slick operators often use names such as "Alaska Oil and Gas Exploration" or "Alaska Petroleum Investments," and set up empty "shell" corporations with Alaska addresses.

This bill would broaden the Alaska Securities Act to cover these business firms even if the "investment" sales are not made in our state or to Alaska residents. Essentially, the bill would do this by extending the jurisdiction of our state securities regulators and of our courts over these

[redacted]

Governor's letter of transmittal

fraudulent schemes. The state would be able to take legal action against these out-of-state sellers of Alaska mineral rights. By amending the Securities Act, Alaska can require these firms to file securities registrations regarding their sales, and to give prospective purchasers truthful information about the likelihood of realizing a gain on such investments.

This legislation will not affect legitimate companies engaged in oil, gas, or mineral exploration or production, as they are already exempted from the Alaska Securities Act by AS 45.55.140(b)(17).

This bill should be supported by consumer groups as well as by the legitimate members of the oil and gas industry. Therefore, I urge your prompt action on this bill to prevent further damage to the commercial image, nationwide, of Alaska.

Sincerely,

Bill Sheffield
Governor

(specializing) lawfirms out of Denver and Texas - but you probably couldn't afford even an hours worth of their time! Also remember, there are NO state or federal laws that protect or help we little guys! The first point you'll have to prove is that the accounting they give you is probably more crooked than a witch's hairpin! And without some knowledge of how and where to prove that (even for a geologist with a foundation in mineral/security law) will have to spend thousands and probably come up with nothing! The only ones who will win will be the lawyers, and that will be through their terribly high hourly legal fees!

Letter 3

PHONE PEDLARS SELLING OIL FRAUDS THINK EVERYONE THEY CALL IS AN A.. H...

Dear Sirs

"Please find inclosed, an oil & gas leaseing rip off I received in the mail today. I have during the past several months received numerous telephone calls, from any numbers of file for you agents. I always give them a bad time. The windup telling them off in terms which would be inprintable. Then Ha[illegible] Up. In one case I got a call back, the fellow representing himself as THE DISTRICT ATTORNEY!

So I started giving him a BAD TIME, but before I got around to really telling him off. He beat me to it by telling me. (QUOTE: "I knew you were A BIG A-- H--- BEFORE I CALLED YOU, BUT YOU ARE A BIGER A-- H--- THAN I THOUGHT YOU WERE"). THEN HE SLAMS UP THE PHONE! HE BEAT ME TO THE PUNCH, AND TOLD ME OFF. BUT I GOT A BIG LAUGH OUT OF IT ANYWAY."

Yours truly [ ]

ANS: Dear subscriber - you learned a silly but happily good lesson from the "teleracketeer" who called you! [You are too intelligent to be taken - the poor slob who called you is the "class rated" JACK-ASS!] Your letter really "tells it like it is!" That psychopath showed you just how low such telemarketers (as they call themselves) can get to ..(the gutter)!

He proved exactly what Thyra Thompson, Secretary of State for Wyoming wrote in one of her excellent legal opinions (on the subject) in late 1983! He proved what the Denver Post described in a funny article in 1984 - giving the same descriptive (slang terms and names) such boiler room con-artist use to describe their potential VICTIMS! The low-life that call their sucker lists across the U.S. consider the public dribbling morons. They have less respect for ... public they call than killing a rat.

When, in fact, the boiler room bosses (allegedly most of the time) are right out of the arrested in Florida recently were described by "federal authorities," "Underworld characters!"

I recently read about a $250,000 study and report commissioned by the Justice Department. And it clearly states that such "underworld" swindlers have gotten SO RICH (the Godfathers behind the scenes) that run all types of "SECURITY swindles"--are RICHER than the federal government and the state governments. And its now too expensive to fight these criminals!

We have found in recent years that when it comes down to the various federal agencies who do good to excellent investigations - then have to hand it all over to young, inexperienced federal attornies (low in the pecking order) that all the "task force's investigations eventually go for nothing!" Now, you make up your own mind - come to your own conclusions WHY THAT IS A FACT?! I know what I believe! And it goes right back to the statement made in the report - "the people who head such "franchised" security scams HAVE BIG MONEY!" And what is the old saying? -- Money Talks?!

Its no wonder that the public is so gullible. For "ignorance is bliss!" Even with the swindlers, their ignorance is only exceeded by their stupidity, lead by arrogance and cunning!

You got a good dose (happily so, from what you report), of just exactly what LOW esteem these salesmen think of the people they swindle! They are the lowest form of human - as you now know, they aren't fit to lick your boots! And they darned well know exactly what they are doing! The "room" bosses - their secret "godfathers"-and YES - including the salespeople (they also USE) are lower than grave-robbers and from what that early 1984 Airline Magazine reported, these salesmen even "stink like a major-leagues' locker room!" - Its reported (alleged) the real "Underworld" bosses (the king-pins at the top in the real high chain of command) have always been pushing prostitution, drugs, gambling, you name it ... -- And many a "low-level soldier" has been watched getting on and off planes to and from Las Vegas "every week-end." This was reported by a well-known (respected) investigative reporter from Phoenix several years ago! [And he recently came out with still another article about the same "mob figure!"]

I'm glad that many readers are finding this all out on their own! YES! we've heard tapes of threatening (egotistical) salesmen's high-pressure calls. When a client tells them off! (Calling back and threatening potential victims .. nothing new)! Your letter is one of many received (only more expressive and clear)! "They" are obviously using OLD sucker-lists - worked over and over again! As we stated in earlier issue, "The people being called are weary of such time consuming bunk." And some are "getting mad!"

In a way you were lucky, He did you a big forget! Such "Underworld" characters, as you now know, are low-life that can't earn a living in any other way (outside of "armed robbery" as one recent Classified ad so stated in late 1984 - seeking more salesmen)! At least you really got the last laugh and the biggest laugh! -- Such temper-tantrums are classic and reveal more than a psychiatric evaluation! He exposed himself completely, proving his mouth and mind are nothing more than a sewer! -- And that joker is trying to make his suckers believe he's an "investment advisor?! ?! ?!" The FBI's warnings last summer, namin[illegible] men's names, was most significant! It proves these people are capable of any kind of violence and are the worst of human types! Yet they love to portray themselves as such up-right citizens in their slick promotional brochures! And they guarantee everything! But then why should they care! So far such long past histories reveal a series of C&Ds, civil lawsuits, and often criminal histories-and they are still out there calling people using ever new names and shell corporations! And invariably "lawyers" names show up prominently in their expensive literature!

We have got too little state and federal law enforcement, along with 'know nothing' staff (about security fraud). Most are green-behind-the-ears (about how legitimate O&G deals work). They couldn't recognize O&G security frauds if they fell in them. All too many bureaucrats don't really care, as long as their paychecks arrive. The general public be damned! Victims must realize they are responsible for their own involvement in sending thousands to a fraudulant investment! There are laws on books to be enforced. Legislatures fund such state agencies. And even the Justice Dept. gives only 'lip service.' (such as last March when top of criminal division promised "grand jury indictments soon")! [When D.C. official made TV-news of Postal Inspectors raids on "22 boiler rooms" nationwide!] It's past due for "buyer beware!" But I must say, not to get in trouble with ALL security agencies, that there are a few states (such as Alaska, Iowa, Texas, etc.), that have done good jobs of attempting to clean up and stop white-collar/career criminals. Texas is doing best job with court sentences of as much as 25-years to such criminals.

Don't move without letting us know! - Include your old address (address sticker if possible).

Name_____

Address_____

City_____ State_____ Zip_____

1-27-85

Southwest Oil & Gas News
P.O. Drawer 25847
Albuquerque NM 87125

F.C.W.

Stratford Company, Inc. 11601 Biscayne Blvd. Miami, Florida 33181	Florida Cease and Desist 10/25/83; Michigan Cease and Desist 10/24/83. Same address as Eagle Oil & Gas Company.
TXA Investments, Inc. P.O. Box 4034 28990 Pacific Coast Highway Malibu, California 90265	Offers "Partnerships," Cliff Burglin, Fairbanks, Alaska, "Managing General Partner." Associated with Alaska Land Leasing, Inc. or Alaska Capitol Corporation? Montana Cease and Desist for Texas oil program, 3/20/84.
Trans Alaska Energy Corporation Miami Beach, Florida Van Nyes, California Chicago, Illinois	On 12/19/83, Mylo Tague, 1937 Denslow Drive, South Bend, Indiana advised that he had been solicited by this firm. David Swain was identified to Tague as chairman (see Federal Property Record Company, Inc. and Barrington Aims Whitney, Ltd., above). FTC TRO 3/84.
Trans-Alaska Investment, Inc. 1001 Ives Dairy Road - 3204 North Miami Beach, Florida 33179	Inquiry 2/27/84 by Alabama Securities Division. Again 4/12/84.
Trans-Alaska Leasing Corporation (Company) 5445 Balboa Boulevard, Suite 111 Encino, California 91316	Sale in 5/84 of Partnership interest in an Ohio well to a California resident along with a related 240 acre "Alaskan exploratory right." (Denali Block) Associated with International Western Oil, International Western Mud, International Western Drilling, International Western Resources Corporation, Trans-Petro, "Petro-Mark."
Trans-Alaska Oil Development	Associated with Federal Property Record, Inc. - Alabama inquiry 4/20/84.
Trans World Resources Corporation Hollywood, Florida 33024	Final order to deny or revoke exemptions and Cease and Desist issued by Michigan Corporation and Securities Bureau 2/27/84.
Tundra Oil, Inc. 28990 Pacific Coast Hwy., Ste 214 Malibu, California 90265	The State of Alaska is presently in litigation with this firm. (See Alaska Land Leasing above.)
USA Resources, Ltd. 1331 - 17th Street Suite 400 P.O. Box 5200 Denver, Colorado 80217	Inquiry concerning this firm received 1/31/84 from David Reintf, 1508 S. Merlon, Aberdeen, South Dakota 57401. Inquiry by Texas Securities Division, 3/6/84. Associated with Northwest Asset Corporations.
Trans-Petro Encino, CA. 818/906-1445	Apparently has mailing list of ALLI people from which solicitations are being made.

U.S. Oil and Gas Corporation	Florida corporation. Desist and Refrain Order issued by California Department of Real Estate 6/21/84.
United American Mineral Corporation	On 12/21/83, Norah Malkian, Commercial Leins Underwriter, Ultima Insurance Services, Inc., 3280 E. Foothill Blvd., Suite 440, Pasadena, California 91107, made an inquiry to Lawyers Title Insurance Agency, Inc., Anchorage, Alaska concerning United American Mineral Corporation. The description of its planned activity would indicate that it intended to sell secondary leases in federal oil and gas properties in Alaska. No further information is available.
United Arctic Oil, Inc. 1100 Glendon Avenue, Suite 2101 Los Angeles, California 90024	This firm has made solicitations in the State of Alaska. See Knight-Anderson Cease and Desist Order issued by the Iowa Superintendent of Securities 11/23/84.
United Petrosearch, Ltd. 2979 N. Mayfair Road P.O. Box 25820 Milwaukee, Wisconsin 53225 414/453-3500	Sent mail solicitation to an Alaska state representative. Alaska Cease and Desist issued 4/3/84, finalized 5/7/84.
Westchase Petroleum Exploration, Inc. 401 W. Texas Street Midland, Texas 79701	Order to Cease and Desist issued by the Alaska Division of Securities 12/15/83. Company was active in Wisconsin and Colorado.
YESCO	See the Denali Group.
Yare Energy Sciences Corporation 3723 Birch Street, Suite 24 Newport Beach, California 92660	See The Denali Group.
Worldwide Exploration, Inc. 11050 Santa Monica Blvd. Santa Monica, CA. 90025	Ak. Order 84-19. Involves Scc Chapin. Dee Delta Oil Co. and Chapin & Associates, Inc.
Wyoming Exploration, Inc. 2922 Santa Monica Blvd. Santa Monica, CA. 90404 James Francisco - President Jason W. Smith - Vice President	Inquiry by Idaho resident 2/19/85. Firm contacting earlier lease purchasers.

k

Bass Oil Co.
2213 Van Owen Street
Canoga Park, CA. 91307
818/716-5211
~~Axxxx~~ Green, Alfred
Bass, Donald-PRESIDENT
Daehon, Adam
Linder, Tricia-employee

3/85 gave St. of Ak. $195,000 ch
to maintain lease payments for 1.
sold to ALLI investors. Payment
stopped on check.

Bank DuPont
23441 South Pointe Dr.
Laguna Hills, CA.
~~619/235-0383~~
Gardner, H.L.-Exec.V.P.
Kirby, Jonathon-Salesman
Michael, Robert C.-Geologist
SINGER, RICHARD-ACCT. EXEC.
E. CHARLES-EXEC. V.P.

Inquiry from Ca. 3/11/85. Offering
for $2,000 an undivided interest
in 560 acre federal lease held by
Bank DuPont using ~~xxxxx~~ name
IRA 1984 ~~xx~~ Partnership.

Micallef Energy & Development Corporation
2049 Century Park East, Suite 110
Los Angeles, CA. 90067
213/556-3003
Micallef, Gregory E. - President
Skinner, Michael C. - Vice President
Vilardi, John

Dealing in Alaska federal oil gas leases.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES & CORPORATIONS

POUCH D
JUNEAU, ALASKA 99811

Banking & Securities (907) 465-25
Corporations Section (907) 465-25

ANCHORAGE

Corporation Information (907) 563-21

February 5, 1985

Honorable Mike Navarre, Chairman
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Attention Roger Poppi
Administrative Assistant

Dear Representative Navarre:

Re: House Bill 126 - An Act Amending the Alaska Securities Act

You have requested of this division whether or not the enclosed HB 126, amending the Alaska Securities Act, is in conflict with any federal law.

Last year when this particular legislation was drafted and compiled by the Department of Law, that same question was treated by the Attorney General. In seeking their counsel on this matter, we were advised that the proposed legislation does not conflict with the Interstate Commerce provisions of federal law, and, because this deals with an important state's rights interest, i.e., the lease held lands are located in Alaska, the State was well within its jurisdiction to require disclosure and registration on offerings concerning Alaska land. I believe the position of the Department of Law is unchanged with respect to this matter but suggest that, should confirmation of this position be desired, a request be made of the Department of Law, specifically either Mr. Jeffrey Bush, who represents the division on matters of this nature, or to the Attorney General, himself, who testified on this matter at last year's Senate and House hearings.

We see no apparent conflicts with federal law or, at least, none that are insurmountable and defer to the department of law with respect to any formalized opinions.

I remain at your disposal should you require any further information or assistance.

Yours very truly,

Lawrence P. Carroll
Senior Securities Examiner

LPC/val108lc
2/5/85A
Enclosure

Backup

08-H14LH

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

March 23, 1984

The Honorable Fritz Pettyjohn
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 432, "an Act amending the Alaska Security's Act"

Dear Senator Pettyjohn:

At the Senate Labor and Commerce Committee hearing on February 15, 1984, you requested our opinion with respect to the effect on the jurisdictional scope of SB 432. This legislation would clarify the existing Alaska Security's Act to better reach fraudulent or high pressure out-of-state sales of oil and gas lease hold interests on state or federal lands in Alaska.

The Administration believes that Alaska is well served by having an ability to regulate sales of land or lease hold interests located in Alaska, even where the transactions take place outside the state between non-residents of the state. The state may protect the legitimate concerns of its citizens by exercising the right to sue according to the doctrine of parens patriae. This doctrine is recognized in Alaska. State v. First National Bank of Anchorage, 660 P.2d 406, 420-21 (Alaska 1982); Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975).

Because we believe there is a substantial state interest in preventing fraudulent sales of oil and gas leases located within the state's border, we believe a constitutional challenge against Alaska's assertion of jurisdiction provided by the proposed legislation would fail. A claim that the jurisdiction afforded by the proposed legislation violates an out-of-state citizen's rights under the Due Process Clause, Full Faith and Credit Clause or Commerce clause of the U.S. Constitution would, in all likelihood, be dismissed. See generally, Aldens, Inc., v. Packel. 524 F.2d 38 (3rd Cir. 1975). The Aldens case is instructive because it involved a challenge to Pennsylvania's right to enforce state credit sales laws as applied to an

Illinois corporation operating a mail order business in all fifty states and where all orders were accepted in Chicago. In that case, the court performed a thorough and comprehensive analysis of a variety of constitutional issues and concluded that none of the constitutional provisions were violated by enforcement of Pennsylvania's laws.

The currently accepted approach to Due Process Clause limitation challenges is one of interest analysis where the court focuses on whether a state has sufficient interest "to justify any exercise of it's sovereignty in connection with the transaction and dispute." Id. at 42-43, (citing McGee v. International Company, 355 U.S. 220 (1957)) emphasis in original. The court further noted in Alden that a relatively low threshold of state interest is needed to justify jurisdiction. Id. at 43.

In conclusion, because Alaska has a substantial interest in transactions involving land or interest of land within its borders, we believe a court would find that the exercise of jurisdiction through the proposed legislation does not interfere with an out-of-state defendant's due process or other constitutional rights.

Please feel free to call if we can be of additional assistance.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:eer

cc: Senator Richard I. Elaison
Chairman, Senate Labor and
Commerce Committee

Senator Bob Mulcahy
Vice-Chairman, Senate Labor
and Commerce Committee

Senator Patrick Rodey
Senate Labor and Commerce
Committee

Senator John C. Sackett
Senate Labor and Commerce
Committee

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

March 14, 1984

The Honorable Richard I. Eliason
Chairman
Senate Labor and Commerce Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Chairman Eliason:

The Federal Trade Commission's Bureaus of Competition, Consumer Protection, and Economics,[1] at the request of Governor Sheffield, submit comments on Senate Bill No. 432. We wish to thank you and Governor Sheffield for the opportunity to share our views on S. 432. We think that expanding the jurisdiction of the Alaska Securities Act of 1959 to cover all oil and gas leases to land located in Alaska would complement our efforts and those of other federal and state agencies to control what appear to be serious abuses in the rapidly growing, nation-wide marketing of Alaska oil and gas leases. The Commission staff favors passage of S. 432.

The Commission, in fulfilling its Congressionally-mandated mission to protect consumers from unfair and deceptive practices in the nation's commerce, has been investigating suspected fraud by sellers of oil and gas leases and related services. In the course of these investigation the Commission staff has identified from the public records of the federal Bureau of Land Management ("BLM") and the Alaska Department of Natural Resources a number of companies that have acquired oil and gas leases to millions of acres of land in Alaska. These companies acquired most of their leases for $1 per acre under the BLM noncompetitive oil and gas leasing program.[2] Most of these acquisition have occurred in the Minchumina, Denali, and Tiekel block areas of Alaska.[3]

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[1] This statement reflects the views of the Bureaus of Competition, Consumer Protection and Economics of the Federal Trade Commission, but does not necessarily reflect the views of the Commission or of any individual Commissioner. The Federal Trade Commission has voted, however, to authorize the Bureaus to submit these comments.

[2] 43 C.F.R. § 3110 et seq.

[3] Public Land Orders Nos. 6098, 46 Fed. Reg. 61472 (December 17, 1981), and 6329, 47 Fed. Reg. 39495 (September 8, 1982).

for lands located in Alaska. This revision would empower the Alaska Division of Securities to require these companies to register their leases as securities and to provide prospective purchasers with meaningful disclosures of the speculative nature of these investments.

Senate Bill No. 432 should not materially hinder the development of Alaska's resources. The Alaska Securities Act already includes an exemption for sales of leases to bona fide oil and gas exploration companies. Thus, the expansion of the securities law's jurisdiction should not materially change the effect of the statute on those firms actually exploring and developing Alaska's resources.

The Commission staff strongly supports passage of S. 43.. With the new authority granted by this bill, state officials could effectively join the Commission and other federal law enforcement agencies in our efforts to protect consumers and to stop the possible misuse of Alaska's name and its resources.

Very truly yours,

Michael C. McCarey

Michael C. McCarey
Associate Director

3123 B. Broadmoor Vly. Rd.
Colorado Springs, CO 80906
January 23, 1985

RECEIVED
'85 JAN 31 A 11:28

Subject: Alaska Land Leasing Inc.
(A California based Alaska Corperation)

To: Alaska Banking, Securities and Corperation Division
of Commerse and Economics.
Pouch D
Juneau, Alaska 99811

In June 1983 I purchased a 160 acre BLM Oil Lease, serrial # AA048253 through the Alaska Land Leasing Inc., a State of Alaska Corperation with offices in and around Las Angeles, California. legally described as the SE¼ Section 27, Twp.32 N, Rng.10E in the Seward Meridian. The ALLI principals in this transaction were:

Frank Smith, Sales Representative ALLI
Terry J. Risenhoover, Chairman of the Board ALLI
Vic Gainer, Executive Vice-President ALLI
David Castle, Documents Control Manager ALLI
Marjorie Diehl Foote, Tundra Oil, INC

Shortly thereafter, I became concerned when there were NEWS releases about Fraud in the Oil Leasing Industry and I wrote to the Bettor Business Bureau, Los Angeles Counties, 639 South New Hampshire Ave, L.A., CA 90005; I received a "form letter" which indicated no fraudulent Business dealing being conducted by ALLI.

In December 1983 I purchased a one-thirtyfifth (1/35) interest in the Prudhoe Uplands 34-231 Associates, a subsidiary of Alaska Land Leasing Inc. The principals in the Prudhoe Uplands Associates were:

Frank Smith, Sales Representative ALLI
Terry J. Risenhoover, Chairman of the Board ALLI
Vic Gainer, President, ALLI
Ms. Marlana Huter, ALLI ("one of the General Partners P.U. 34-231)
David Castle
Marjorie D. Foote

I received a letter, dated May 14, 1984from Terry Risenhoover, ALLI informing me of a reorganization with a change in address and new telephone numbers (see attached copy). On May 15, 1984 I received a telephone call from a Richard Brown, Master Securities Management, sayig that he was taking over my account. When he was unable to answer my questions I ask him to have Vic Gainer call me. Finally, on June 20, 1984 I received a call from Vic Gainer who promised to send me a list of the shareholders in the Prudhoe Uplands 34-231 Associates. To date I have not received that list nor have I been successful in my attempts to contact anyone associated with ALLI.

I understand that the State of Alaska has filed a civil suit in the Superior Court,against both Alaska Land Leasing Inc and Tundra Oil, Inc. I would appreciate any information you may be able to give me including addresses and telephone numbers of the corperation(s) and the remaining principals in the organizations.

Thanking you in advance, I am

Sincerely Yours,

J. R. Thornton

Julian R. Thornton, Jr.

Alaska Land Leasing Inc.
[illegible]
Suite 408 - P.O. Box 101326
Los Angeles, CA 90049
(213) 826-2[illegible]3

May 14, 1984

Dear Alaskan Lease Holder:

After many months of serious consideration, we at Alaska Land Leasing Inc. have decided to cease all retail marketing.

We are continuing to function as a wholesaler of large blocks of oil and gas leases for publicly registered offerings.

As a result of this decision we have found it necessary to close both our Brentwood and Thousand Oaks, California offices.

We have opened a new service office at:

Alaska Land Leasing Inc.
5655 Lindero Canyon Road
Suite #408
Westlake Village, CA 91362

This office will be staffed by Mr. Vic Gainer and myself. Either one of us may be reached by calling:

(818) 889-9061

We have hired Masters Management Company, an affiliate of Masters Securities, to complete all lease processing and to handle all inquiries regarding your leases.

Masters Management Company has hired a few former Alaska Land Leasing Inc. administrative staff members to provide you with the best possible service.

If you have any questions regarding your lease, please call either David Castle or Marjorie Foote at:

(818) 991-5805

Thank you for your consideration. I remain . . .

Cordially yours,

ALASKA LAND LEASING INC.

Terry J. Risenhoover

Terry J. Risenhoover,
Chairman

TJR:dwk

investment contract. — Sufficient evidence was presented to support a jury finding that vending machine sales program was an investment contract where the company, through advertisements, verbal representations to potential investors, and various investment documents prepared and signed by defendant acting as a corporate officer and by the sales agent, sold a package of contractual benefits which included, in addition to vending machines themselves, the precise experience, expertise and resources necessary to assure profits from the machines. Wheeler v. State, Ct. App. Op. No. 227 (File No. 5428), 659 P.2d 1241 (1983).

Territorial distributorships must be registered. — Territorial distributorships constitute an investment contract and are securities subject to registration. American Gold & Diamond Corp. v. Kirkpatrick, Sup. Ct. Op. No. 2799 (File No. 7608), P.2d (1984).

Sec. 45.55.140. Exemptions.

See 45.55.140 (b)(17)

NOTES TO DECISIONS

Quoted in Greater Area, Inc. v. Bookman, Sup. Ct. Op. No. 2589 (File No. 5557), 657 P.2d 828 (1982).

Sec. 45.55.200. Orders and injunctions. (a) Whenever it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of any provision of this chapter or rule or order under this chapter, the administrator may

(1) in the public interest or for the protection of investors, issue an order (A) directing the person to cease and desist from continuing the act or practice, (B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders, and (C) voiding any proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or rule or order under this chapter, and upon a proper showing, the appropriate remedy shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

(b) Before issuing an order under (a)(1) of this section the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order pending the hearing which order shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice. (§ 308 ch 198 SLA 1959; am § 1 ch 126 SLA 1968; am § 1 ch 65 SLA 1981; am § 107 ch 16 SLA 1982)

Alaska law pursuant to the federal Act. To the extent of an inconsistency between a provision of this Act and a provision of AS 10.05 or 10.20, this Act prevails with regard to a corporation organized under Alaska law pursuant to the federal Act."

Sec. 45.55.139. Reports of corporations. A copy of all annual reports, proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available by any person to at least 30 Alaska resident shareholders of a corporation which has total assets exceeding $1,000,000 and a class of equity security held of record by 500 or more persons and which is exempted from the registration requirements of AS 45.55.070 by AS 45.55.138, shall be filed with the administrator concurrently with its distribution to shareholders. (§ 1 ch 58 SLA 1977)

For case construing common law prohibition of materially false and misleading statements in proxy solicitations, see Brown v. Ward, Sup. Ct. Op. No. 1825 (File No. 3579), 593 P.2d 247 (1979).

Sec. 45.55.140. Exemptions. (a) The following securities are exempted from AS 45.55.070:

(1) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing; or a certificate of deposit for any of the foregoing;

(2) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or a foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) a security issued by and representing an interest in or a debt of, or guaranteed by, a bank organized under the laws of the United States, or a bank, savings institution, savings and loan association, building and loan association, or trust company organized and supervised under the laws of a state or of the United States;

(4) a commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or a guarantee of the paper or of the renewal, if the commercial paper is of the type eligible for discount by a federal reserve bank;

(5) an investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the administrator is notified in writing 30 days before the inception of the plan or, with respect to plans which are in effect on May 9, 1959, within 60 days thereafter, or within 30 days before they are reopened if they are closed on May 9, 1959;

(6) a security issued by and representing an interest in or a debt of, or guaranteed by, a federal savings and loan association, or a building and loan or similar association organized under the laws of a state and authorized to do business in this state;

(7) a security issued by and representing an interest in or a debt of, or guaranteed by, an insurance company organized under the laws of a state and authorized to do business in this state; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities; except that policies or annuity contracts of insurance companies admitted to do business in the state are not subject to this chapter;

(8) a security issued or guaranteed by a federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(9) a security issued or guaranteed by a railroad, other common carrier, public utility, or holding company which is

(A) subject to the jurisdiction of the Interstate Commerce Commission;

(B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of the company within the meaning of that Act;

(C) regulated in respect of its rates and charges by a governmental authority of the United States or a state; or

(D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada, or a Canadian province;

(10) a security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or the Pacific Coast Stock Exchange, or any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants so listed or approved; or a warrant or right to purchase or subscribe to any of the foregoing;

(11) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association.

(b) The following transactions are exempted from AS 45.55.070:

(1) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(2) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidence of indebtedness, secured thereby, is offered and sold as a unit;

(3) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(4) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) sales by an issuer

(A) to no more than 10 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state;

(ii) the total dollar amount invested during a period of 12 consecutive months does not exceed $100,000;

(iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(iv) offers are made without public solicitation or advertisement; and

(v) the issuer files with the administrator a notice specifying the issuer, the security to be sold and the terms of the offer at least two days before any sales are made;

(B) to no more than 25 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) the sales are made solely in this state;

(ii) before any sale, each prospective buyer is furnished access to the information that would be provided to a prospective buyer in a registration under AS 45.55.100 (which information shall be furnished to the administrator upon his request);

(iii) the total dollar amount invested during a period of 12 consecutive months does not exceed $500,000;

(iv) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under AS 45.55.040;

(v) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(vi) the issuer obtains a signed agreement from the buyer acknowledging that he is buying for investment purposes and that the securities will not be resold without registration under this chapter;

(vii) offers are made without public solicitation or advertisement; and

(viii) the issuer files with the administrator a notice specifying the issuer, the security to be sold, and the terms of the offer at least two days before any sales are made;

(6) an offer or sale of a preorganization certificate or subscription if

(A) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective subscriber,

(B) the number of subscribers does not exceed 10, and

(C) no payment is made by any subscriber;

(7) a transaction under an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if

(A) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting a security holder in this state, or

(B) the issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next five full business days;

(8) an offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either Act;

(9) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

(10) a nonissuer distribution of an outstanding security if

(A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

(B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(11) a nonissuer transaction effected by or through a registered broker-dealer under an unsolicited order or offer to buy; however, the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(12) a transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(13) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets, if

(A) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and

(B) the issuer files a notice in the form specified by the administrator not less than 30 days before making the offer;

(14) a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(15) an act incident to a class vote by stockholders, under the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of securities of another corporation;

(16) the offer or sale by a registered broker-dealer, acting either as principal or agent, of securities previously sold and distributed to the public if

(A) the securities are sold at prices reasonably related to the current market price at the time of sale, and, if broker-dealer is acting as agent, the commission collected by the broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(B) the securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by the broker-dealer as an underwriter of the securities or as a participant in the distribution of the securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(C) the securities have been lawfully sold and distributed in this state under this chapter;

(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if the purchasers

(A) are or have been during the preceding two years engaged primarily in the business of exploring for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for, mining, producing, or refining oil, gas, or minerals so as not to require the protection provided by AS 45.55.070.

(c) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(d) The administrator may by order deny or revoke an exemption specified in (a)(5), (7) or (11) of this section or in (b) of this section with respect to a specific security or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(e) No order under (d) of this section may operate retroactively. No person may be considered to have violated AS 45.55.070 or 45.55.150 by reason of an offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

(f) The administrator shall by regulation prescribe a schedule of fees for examination or investigation of claimed exemption. (§ 302 ch 198 SLA 1959; am §§ 3 — 11 ch 105 SLA 1961; am § 1 ch 8 SLA 1966; am § 1 ch 25 SLA 1968; am §§ 11 — 13 ch 86 SLA 1972; am § 15 ch 218 SLA 1976; am §§ 1 — 3 ch 132 SLA 1977; am § 1 ch 56 SLA 1978; am § 50 ch 94 SLA 1980)

Effect of amendments. — The 1976 amendment inserted "not" preceding "by order disallow" in paragraph (7)(B) of subsection (b).

The 1977 amendment rewrote paragraph (5) of subsection (b), substituted "under this chapter" for "or any other state of the United States under this or any act regulating the sale of the securities" in paragraph (16)(C) of subsection (b), and substituted "(a)(5), (7) or (11)" for "(a)(5) or (7)" in the first sentence of subsection (d).

The 1978 amendment added paragraph (17) of subsection (b).

The 1980 amendment, in subparagraph (b)(5)(B)(viii), substituted "sold" for "offered" near the middle of the subparagraph, and substituted "any sales are" for "the offer is" near the end of the subparagraph.

Legislative history reports. — For report on ch. 8, SLA 1966, see House Journal (1966), p. 169. For report on ch. 132, SLA 1977 (SB 48), see 1977 Senate Journal, p. 190.

ALR references.—What securities are exempt from registration under § 402(a) of the Uniform Securities Act, 84 ALR3d 575.

uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) All financial statements shall be prepared in accordance with generally accepted accounting practices. The administrator may by rule or order prescribe (1) the form and content of financial statements required under this chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants.

(d) No provision of this chapter imposing liability applies to an act done or omitted in good faith in conformity with a rule, form, or order of the administrator, notwithstanding that the rule, form, or order may be later amended or rescinded or be determined by judicial or other authority to be invalid.

(e) Every hearing in an administrative proceeding shall be public unless the administrator in his discretion grants a request joined in by all the respondents that the hearing be conducted privately. (§ 312 ch 198 SLA 1959)

Sec. 45.55.250. Administrative files and opinions. (a) A document is filed when it is received by the administrator.

(b) The administrator shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with a registration statement, application, or report may be made available to the public under the rules which the administrator prescribes.

(d) Upon request and at the reasonable charges which he prescribes, the administrator shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In a proceeding or prosecution under this chapter, a copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The administrator in his discretion may honor requests from interested persons for interpretative opinions. (§ 313 ch 198 SLA 1959; am §§ 16, 17 ch 105 SLA 1961)

Sec. 45.55.260. Scope of the chapter and service of process. (a) AS 45.55.010, 45.55.030(a), 45.55.070, 45.55.170, and 45.55.220 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) AS 45.55.010, 45.55.030(a), and 45.55.170 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at a post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months, or (2) a radio or television program originating outside this state is received in this state.

(f) AS 45.55.020, 45.55.030(c), and 45.55.170, so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through a person acting on an agency basis in the common-law sense shall file with the administrator, in the form which he prescribes by rule, an irrevocable consent appointing the administrator or his successor in office to be his attorney to receive service of lawful process in a civil suit, action, or proceeding against him or his successor executor or administrator which arises under this chapter or a rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who files the consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (1) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by him, immediately sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the administrator, and (2) the plaintiff's affidavit of mailing is filed in the case on or before the return day of the process, if any, or within the further time which the court allows.

(h) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or a rule or order

under this chapter, and he has not filed a consent to service of process under (g) of this section and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct is considered equivalent to his appointment of the administrator or his successor in office to be his attorney to receive service of process in a civil suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or a rule or order under this chapter, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the administrator, but service is not effective unless (1) the plaintiff, who may be the adminstrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the administrator in a proceeding before him, shall order the continuance which is necessary to afford the defendant or respondent reasonable opportunity to defend. (§ 314 ch 198 SLA 1959; am § 18 ch 105 SLA 1961)

Sec. 45.55.270. Short title. This chapter may be cited as the Alaska Securities Act of 1959. (§ 315 ch 198 SLA 1959)

Chapter 57. Takeover Bid Disclosure Act.

Section	Section
10. Provisions of takeover bids	70. Criminal penalties
20. Disclosure	80. Civil liabilities
30. Recommendations to accept or reject	90. Consent to service of process
40. Deceptive practices	100. Regulations
50. Investigations and subpoenas	110. Definitions
60. Injunctions	120. Short title

Sec. 45.57.010. Provisions of takeover bids. The following provisions apply to every takeover bid:

(1) The period of time within which securities may be tendered by an offeree under a takeover bid shall not be less than 21 days nor more than 35 days from the date copies of the takeover bid are first published or sent or given to offerees.

(2) Securities deposited under a takeover bid may be withdrawn by an offeree or his attorney-in-fact by demand in writing on the offeror or the depository at any time within 21 days from the date copies of the takeover bid are first published or sent or given to offerees.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

148

A SPECIAL REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT DIVISION OF MEASUREMENT STANDARDS

April 6, 1983

Audit Control Number

08-4156-83-S

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

April 6, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF MEASUREMENT STANDARDS

April 6, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, an examination of the Department of Commerce and Economic Development, Division of Measurement Standards (DMS), was conducted to determine if:

1. The Division has complied with applicable State statutes and regulations governing its fiscal and budgeting activities.

2. The allegations submitted to the Legislative Budget and Audit Committee are true. (See Appendix A of this report).

3. The performance of the Division is acceptable in terms of economy, efficiency, and effectiveness.

DMS was organized in July, 1982, with the transfer of the permit and weigh station functions of the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. We recognize the problems created by the transition from a section of 18 employees who were located in three areas of the State to a division of 58 employees stationed in eight different locations. Therefore, in general, we focused our evaluation of program performance on those program areas which were in existence within the Weights and Measures Section prior to July, 1982.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Review can best be described as "audit by exception".

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design finite audit resources are used to identify where and how improvements can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

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ORGANIZATION AND FUNCTION

The Division of Measurement Standards (DMS) was established in July 1982 with the transfer of the permit and weigh station functions from the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. The Division has four distinct statutory requirements:

1. Public and consumer protection through maintenance of uniform standards which ensure the accuracy of commercial weighing and measuring devices within the State (AS 45.75).

2. Consumer protection for buyers of mobile homes through the enforcement of mobile home warranties (AS 45.30).

3. Operation of weigh stations to identify and remove overweight commercial vehicles from the State highway system (AS 44.33.020(25)).

4. Issuing of special permits authorizing the operation of overweight and oversize vehicles, and the collection of fees for these special permits (AS 44.33.020(25)).

The "Weights and Measures Act", AS 45.75, requires a system of weights and measures that conforms to the standards customarily in use in the United States. The weights and measures obtained by the State are to be verified by the National Bureau of Standards (NBS) and are to be properly maintained to ensure their reliability and traceability to NBS.

To accomplish this mandate, DMS is the custodian of the State's weights and measures and conducts the periodic verification with NBS. The State's standards of weights and measures are used to verify all office standards. The office standards then are used to verify all field standards used by DMS. In addition, these standards become the basis for verification of all instruments and devices used for determining weight or measure in commercial transactions within the State.

DMS fulfills its responsibilities through physical inspection of devices, examination of packaging, and the investigation of complaints. DMS may issue "stop-use" or "removal orders" of measuring devices and commodities offered for sale, when it is necessary to enforce the Weights and Measures Act.

Alaska Statute 45.30 mandates the responsibility to resolve warranty defects of mobile homes. Manufacturers selling mobile homes in the State are required to post a bond guaranteeing the warranty of that mobile home for one year. If the warranty is violated and a complaint is submitted through the Division, the Mobile Home Inspector has the authority to resolve the warranty defect through negotiations with the manufacturer, local dealer, and home owner.

If the problem cannot be resolved, the Division may revoke the bond and use the proceeds to repair the warranty defect.

Under AS 44.33.020(25) the Division is responsible for the operation of 12 weigh stations located on the State highway system. The primary function of these weigh stations is to remove vehicles from the highway system that are in violation of the axle and gross weight limitations adopted by the Department of Transportation under AS 19.10.060.

In addition, DMS administrates the oversize and overweight permit program within AS 44.33.020(25). Commercial vehicles that exceed the maximum allowable size, weight, and load limitations are able to legally travel over the highway system by obtaining special permits which are issued for a fee. DMS also regulates pilot cars under this statute.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

As a result of interviews with 15 employees which is 28% of the current staff and the review of written communications (see Appendix A), it is obvious that a serious morale problem exists within DMS. The cause of the low employee morale does not appear to be centered around any single issue but is due to a build up of problems within the Weights and Measures Section over the past several years. Additional morale problems occurred with the transfer of the permit and weigh station functions to DMS.

During our review the Director of DMS and the Commissioner of the Department of Commerce and Economic Development recognized the severity of the morale problem and its potentially negative effect on program performance. Procedures, including employee interviews conducted by the Department's personnel officer, have been initiated to determine the causes of the low employee morale and to provide for possible solutions.

We encourage the Commissioner to continue these efforts to ensure improved employee morale and to avoid deterioration in program operations.

Recommendation No. 2

DMS should avoid situations that give the appearance of a conflict of interest.

We noted several situations during our review which at a minimum give the appearance of a conflict of interest to employees (see Appendix A, Question Nos. 1 and 2) and other persons outside the Division. The situations noted are as follows:

1. Complaints may be filed with DMS by consumers against mobile home dealers and/or manufacturers when a mobile home has warranty defects. The DMS Mobile Home Inspector acts as a mediator between the consumer and the mobile home dealer and/or manufacturer to resolve the complaint.

   During the period from July 1, 1981 to January 31, 1983, the Mobile Home Inspector received and mediated at least four complaints involving the mobile home dealership owned by his father. We understand the father has voluntarily dissolved his business as part of an out-of-court settlement with the State's Consumer Protection Section. However, other relatives own mobile home dealerships in the State.

2. During our review of contract procedures, we found that three contracts were awarded to a mobile home service and repair company. The DMS Mobile Home Inspector is a former employee of this business and his brother currently is employed there. The contracts were for remodeling of the current DMS offices, repair of a damaged weigh station, and construction of stairs at another weigh station. These contracts totalled $3,689 and required two informal competitive bid proposals, and awarded the contracts.

   In order to avoid the appearance of a conflict of interest, DMS should provide written procedures which would require an additional review of the bids by the Section Chief in these situations prior to awarding the contract. In addition, DMS should ensure that the person delegated the responsibility of awarding contracts is familiar with AS 37.05, Section 4, Uniform Purchasing and the State's contract procedures in Chapter 8 of the Purchasing Regulations.

3. A person convicted of price fixing in a retail gasoline business was hired by the Director in March, 1981, as a Weights and Measures Inspector I. The inspector's duties include inspection and testing of retail gasoline pumps.

   The Division of Personnel requires a written description of a misdemeanor or felony conviction with the State employment applications. The description is evaluated to determine if the applicant is suitable for the responsibilities of a particular position. The evaluation may include discussions with the probation officer, if any, and the hiring authority.

   In this case the hiring authority was the Director of DMS who had full knowledge of the employee's past, however, no written description of the conviction was in his personnel file.

   The employee was asked to resign and his termination was effective April 17, 1981. However, as an agency entrusted with the responsibility of regulating industry for the public's protection, DMS should exercise a greater degree of care in its hiring practices.

Recommendation No. 3

DMS should improve its budgeting and financial management.

Our review of the last three fiscal year budget requests and DMS financial records resulted in the following recommendations (see also Appendix A, Question Nos. 4 through 7).

A. DMS should ensure performance indicators in their budget requests are accurate.

The State budget request includes a form for each agency to report its performance activities of a past fiscal year based on predetermined measurements. In addition, the agency is to project its planned performance activities for the budget year. These performance indicators are one of the guidelines used to determine whether or not the amount of funds requested by the agency is reasonable.

In a review of the Fiscal Year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate. The exceptions noted were as follows:

Performance Activity	Number per Budget Request	L/A Findings
Fiscal Year 1981		
Commodity items audited	699,485	This number represents the estimated population of commodity items from which a sample of items was audited. In comparison, the number reported for Fiscal Year 1982 was 12,577, which was the number of items audited that year rather than the estimated population of commodities.
Fiscal Year 1982		
Value of prepackaged goods found in violation	648,900	This number represents the estimated population of commodity items (see Fiscal Year 1981 above) which does not relate to dollar value. In contrast, DMS reported an estimated $66,500,000 for this performance activity for Fiscal Year 1981. However, the methods used to derive this dollar amount are questionable.

Performance Activity	Number per Budget Request	L/A Findings
Devices tested	16,500	The activity reports submitted to management showed a total of 11,276 devices. See Recommendation No. 7(C) concerning the accuracy and completeness of activity reports.
Mobile home inquiries/complaints received	100/150	The number of inquiries is unknown as no log or record is kept by DMS. The number of complaints based on a review of DMS records was actually 26 instead of 150. See Recommendation No. 5 relating to the mobile home program.

The budget instructions state that the agency should select only measures of activities for which data is already being collected or reasonably can be collected in the budget year. In addition, they state that once a useful measure has been identified it is useful to look at the same measure from year-to-year. DMS presented 17 performance activity measures in the last three fiscal year budgets of which only two have been reported all three years.

DMS should ensure information that is used, in part, to determine their level of funding is accurately and consistently presented in the budget requests.

B. DMS should prepare their fiscal year budgets in accordance with their anticipated spending plans.

The DMS Fiscal Year 1982 budget requested $96,900 for rental of State vehicles through DOTPF. Actual costs during 1982 totalled approximately $62,000, 36% less than budgeted. DMS staff explained that this budget line item was intentionally overbudgeted and the excess funds were used to cover expenditures in other underbudgeted line items within the contractual services category for which funding was harder to secure.

State budget requests should reflect anticipated spending to provide the Legislature with an accurate estimate of program needs.

C. DMS should ensure State funds are expended only for authorized purchases in accordance with the State Administrative Manual.

DMS purchased seafood in August, 1981, and September, 1982, totalling $100 and $548 respectively. The seafood was presented to the members of the Western Weights and Measures Conferences. The State Administrative Manual, Section 6820, prohibits expenditure of State funds for nonessential foodstuffs.

D. DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totalling $33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures, we found $8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totalling $39,100 through Chapter 120, SLA 1980, to implement the Mobile Home Warranty Program enacted by Chapter 104, SLA 1980. We determined that $2,875 of these funds were expended on travel unrelated to the Mobile Home Warranty Program.

Recommendation No. 4

DMS should improve its personnel management.

During our review we noted personnel matters which may have contributed to the low employee morale (see Appendix A, Question Nos. 16 and 17). Our findings and recommendations are as follows:

A. DMS should update job descriptions and classifications as required by the State Personnel Rules.

We determined through a review of job descriptions and employee interviews that material changes have occurred in the duties and responsibilities of two classified positions since the formation of the Division.

A Weights and Measures Inspector IV position no longer has the supervisory authority over the inspectors. The employee's current responsibilities include only administrative and budgeting duties. The Mobile Home Inspector's duties now include supervision of the weigh stations in addition to mediating mobile home warranty complaints.

The State Personnel Rules, 2.04.2, require each appointing authority to report to the Division of Personnel, material changes in the duties and responsibilities of existing positions. Memorandums in the employees' personnel files indicate that these changes in duties and responsibilities are temporary, however, based on our review and discussions with employees, the changes appear to be more permanent in nature. We recognize the difficulties encountered by management in the transition of becoming a full division. However, the job descriptions and duties should now be changed to reflect the actual duties and responsibilities of these positions to decrease the confusion and misunderstandings within the Division.

B. DMS should utilize promotional eligibility lists to the extent possible.

In July, 1982, DMS assumed the responsibility of the weigh stations from the Department of Public Safety. Twenty-eight commercial vehicle inspectors were transferred from the Department of Public Safety to DMS, however, DMS did not receive a transfer of any supervisory personnel. In order to provide sufficient supervision of the weigh stations, DMS upgraded three of the commercial vehicle inspector positions from a range 12 to a range 15. The incumbents in two of the upgraded positions became supervisors while the other inspectors were not afforded the opportunity to interview for the positions.

The State Personnel Rules, 3.01.3, state where adequate competition exists among permanent employees qualified for promotion an examination may be announced on a promotional basis.

DMS should utilize the promotional eligibility list in future situations where sufficient competition warrants to ensure the selection of the most qualified person for the position and to afford equity in their hiring practices.

Recommendation No. 5

The Department should seek legislation to transfer the Mobile Home Warranty Program to the Consumer Protection Section of the Department of Law.

We reviewed the function of the Mobile Home Warranty Program and the activity from July, 1981, through March, 1983. Based on our review we noted the following:

1. The Mobile Home Inspector acts as a mediator between the consumer and the dealer and/or manufacturer in order to resolve complaints.

2. During Fiscal Year 1982, DMS received 26 mobile home warranty complaints.

3. As of March, 1983, DMS had received nine complaints in Fiscal Year 1983.

4. The Consumer Protection Section receives and investigates mobile home complaints from consumers. According to a memorandum dated March 17, 1983, from an assistant attorney general, the Consumer Protection Section had five complaints currently under investigation.

Since the Consumer Protection Section is the agency which the public looks to for resolution of consumer problems and the Mobile Home Warranty Program deals with consumer protection warranty laws, it appears that the program could be more efficiently and effectively administered by the Consumer Protection Section.

We understand the Department has signed a reimbursable services agreement with the Department of Law to transfer the Program. The Department of Law plans to draft and initiate the necessary legislative change.

Recommendation No. 6

The Department should seek removal of DMS staff as delegates to the National Conference of States on Building Codes and Standards.

The Director and the Mobile Home Inspector are delegates to the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS). The assessment fee of the NCSBCS is $2,000 which DMS remits annually. During the period from May, 1981, through January, 1983, the Director attended five meetings related to NCSBCS which were held in Seattle, WA; Denver, CO; Boston, MA; Atlanta, GA; and New Orleans, LA. The Mobile Home Inspector also attended the meetings at Seattle and New Orleans. According to correspondence from NCSBCS, delegates must be active in and have responsibilities for building regulations.

DMS duties and responsibilities relating to building codes and standards were greatly diminished with the repeal of the State mobile home standards in September, 1980, and the enactment of the Mobile Home Warranty Program. Furthermore, current activity in the Mobile Home Warranty Program does not warrant involvement of DMS in NCSBCS.

Recommendation No. 7

DMS should improve its procedures to ensure compliance with statutory requirements.

We noted two areas of statutory compliance in which DMS should improve their procedures. Our recommendations are as follows:

A. DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

We could not find sufficient documentation to determine if DMS is in compliance with AS 45.75.060 which requires verification of office and field standards on an annual basis.

In addition, we determined that it is a DMS policy not to verify field standards in remote locations on an annual basis due to the high transportation costs and infrequent use of the standards.

In order to provide sufficient documentation, DMS should develop a complete inventory of all office and field standards with identifying numbers (where possible); the location of the standard; and the last date of verification. DMS should obtain a current State property list and utilize their word processing equipment to aid in the development of the inventory. In addition, the test lab's recording sheets should include sufficient identifying information to determine exactly which standard was tested.

B. DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS does not have sufficient documentation to determine that they are in compliance with AS 45.75.080 which requires all weights and measures in commercial use to be inspected and tested at least semiannually or more often as the Director considers necessary. We were able to review inspection dates for 110 businesses located in Southeastern Alaska. Of those 110 businesses, 43 received annual inspections, 23 received semiannual inspections, and the remaining 44 did not have sufficient information to determine the frequency of inspections.

Alaska Statute 45.75.050 states the Director may promulgate regulations which exempt classes of devices from the semiannual inspection and testing required by AS 45.75.080. These regulations should include schedules fixing the frequency required for retests of the exempted class of devices.

DMS staff indicated that the high cost of transportation hinders their ability to comply with the required semiannual inspections. We recognize this problem. However, DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible within budgetary constraints. We recommend the use of DMS word processing equipment, where practicable, to facilitate the compilation and maintenance of the inventory list. In addition, DMS should promulgate regulations to reflect any exemptions of classes of devices from the requirements of AS 45.75.080.

C. DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device, performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

When the Chief of the Weights and Measures Section was asked to explain the correct method of accounting for these activities, the method described did not agree with the instructions he gave the staff in a memorandum dated August 17, 1982. The Chief stated that the memorandum was incorrect. We also noted that the method described in the memorandum would inflate the actual number of devices verified by the inspectors.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes. The Fiscal Year 1982 activity data was entered into the DMS word processing system. According to DMS staff, this data was used to calculate the total number of devices tested in Fiscal Year 1982 reported in the Fiscal Year 1984 budget request. However, we could not reconcile the recorded amount of devices totalling 11,276 to the reported number of 16,500 (see Recommendation No. 3A). The Fiscal Year 1983 activity data has not been entered into the word processing system.

DMS should develop procedures to ensure activity data is accounted for in a consistent manner and that data is complete and organized in a manner which facilitates use by management.

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APPENDIX

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APPENDIX A

DISPOSITION OF ALLEGATIONS ON DMS MANAGEMENT

Presented below are the allegations concerning the management of DMS along with our findings. We have not included questions for which there was no documentation to prove or disprove the allegation.

CONFLICT OF INTEREST

Question No. 1

Has DMS hired a mobile home inspector who is related to proprietors of mobile home dealerships in Anchorage?

Finding

We determined the Mobile Home Inspector is related to owners of mobile home dealerships in Anchorage (see Recommendation No. 2(1).

Question No. 2

Did the Director hire a person as a Weights and Measures Inspector who had been convicted for price fixing of gasoline prices in Anchorage?

Finding

A person convicted of a misdemeanor was hired by the Weights and Measures Section in March, 1981 (see Recommendation No. 2(3).

Question No. 3

Was the 1978 directive from DMS, to all fish processors and buyers, disallowing the use of hydraulic type scales in the best interests of the State?

Finding

In May, 1978, a legislative bill (House Bill No. 964) was introduced which would have required fish processors to use electronic hanging scales to determine the weight of fish sold. However, a directive was issued by the Weights and Measures Section (now DMS) before any action was taken on the legislation. The directive stated it had been determined that the hydraulic type scales would not hold the tolerances set by Title 3, Chapter 32 of the Alaska Administrative Code. According to the directive, hydraulic type scales were not to be utilized after January, 1980.

We discussed the issue with the Alaska manager of the Pacific Seafood Processors Association. He stated there had been a problem with the accuracy of hydraulic type scales. The processing companies in the organization were not happy about the idea of having to expend monies to replace their hydraulic scales. However, he believes it was in the best interests of the industry. In addition, we sent questionnaires to 78 seafood processors operating in Alaska. Of the 29 questionnaires returned, 9 did not believe the replacement of hydraulic type scales was necessary; 4 believed it was necessary; and 16 had no opinion.

FINANCIAL MANAGEMENT

Question No. 4

Has DMS reported accurate information for performance indicators in their budget requests?

Finding

In a review of the Fiscal Year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate (see Recommendation No. 3A).

Question No. 5

Has DMS inflated the amount budgeted for State vehicle expense?

Finding

DMS budgeted and received funds in excess of 36% of actual State vehicle costs (see Recommendation No. 3B).

Question No. 6

Were State funds used to purchase seafood for members of the Western Weights and Measures Conference?

Finding

DMS purchased seafood in August, 1981, and September, 1982, totalling $100 and $548, respectively (see Recommendation No. 3C).

Question No. 7

Did DMS expend a 1979 appropriation for field test weights and a 1978 appropriation for commercial fishing scale inspections on the Alaska Peninsula and the Aleutian Chain in accordance with legislative intent?

Finding

We determined that DMS received an appropriation totalling $33,200 in Chapter 50, SLA 1980, to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures we found that $8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska (see Recommendation No. 3D).

Question No. 8

Did DMS expend $10,000 to purchase food for the 1980 Western Weights and Measures Conference held in Juneau?

Finding

DMS budgeted and received $4,000 in Fiscal Year 1981 for the State's contribution to the costs of the 1980 Western Weights and Measures Conference held in Juneau. In August, 1980, DMS issued a warrant for the $4,000 to the Western Weights and Measures Conference. Additional costs of the Conference, according to DMS staff, were paid for by sources of funding other than the State.

Question No. 9

Did DMS rent facilities in Seattle for fishing scale inspections in Fiscal Years 1982 and 1983?

Finding

DMS budgeted $900 for Fiscal Year 1982 and $1,000 for Fiscal Year 1983 to rent facilities in Seattle to conduct fishing scale inspections and conduct a seminar. However, DMS did not rent any such facilities in either fiscal year. According to DMS staff, they could not find rental space in Seattle for either budgeted amounts, however, space was provided free of charge to the State by a scale company and seafood processor. DMS is not requesting funds in their Fiscal Year 1984 budget for rental facilities in Seattle.

Question No. 10

Have personal long-distance telephone calls been charged to the State?

Finding

We reviewed a sample of telephone charges occurring between July 1, 1982, and January 31, 1983. It was determined that internal control over long-distance telephone calls was nonexistent prior to January, 1983.

Effective August, 1979, the Department policy and procedures manual requires a record be kept of all long-distance telephone calls indicating date, number, person contacted, and purpose of the call. The recorded telephone calls are to be reconciled to the monthly billing. This procedure was implemented by DMS in January, 1983.

Question No. 11

Was DMS appropriated $40,000 to purchase electric meter test equipment which actually cost $5,000?

Finding

DMS received a capital appropriation totalling $49,500 through Chapter 25, SLA 1982, which was effective August 1, 1982. Through a review of the capital budget request submitted by DMS and discussions with the staff, we determined that approximately $36,000 of the $49,500 was for the purchase of new electric meter test equipment and the remaining funds were to be used for the purchase of a mass comparator with a 500 pound capacity.

As of December 31, 1982, DMS had expended $14,962 of the appropriation. Instead of purchasing new electric meter test equipment, DMS purchased used equipment costing $5,000. DMS staff stated they knew about the used equipment when they requested the $36,000 but were not sure it would still be available when DMS received the appropriation. Therefore, DMS budgeted and requested the $36,000 rather than the $5,000. In addition, DMS has purchased field weight standards costing $9,692 to be stored mainly in the Aleutian Islands and Bristol Bay areas to facilitate the testing of fishing scales in those areas. Also, DMS has encumbered $9,535 for the purchase of a mass comparator with a capacity of 5 to 60 pounds for the Juneau laboratory.

Question No. 12

What was the cost of the truck mounted liquid petroleum prover purchased by DMS and why were funds budgeted for its purchase in both Fiscal Years 1982 and 1983?

Finding

DMS requested $37,500 in their Fiscal Year 1982 budget for the purchase of a new prover. However, the Legislature did not fund the full request of $41,000 for equipment purchases but instead only funded $3,400 making it impossible for DMS to purchase the prover in Fiscal Year 1982. Again in Fiscal Year 1983, DMS requested funds to purchase a prover. The amount requested decreased to $28,700 due to instructions from the Department to pare down the request. As a result, DMS could not purchase a new prover but instead purchased a used prover for the $18,750.

Question No. 13

Did DMS properly expend funds for the purchase of office equipment and furniture in Fiscal Year 1983?

Finding

As of December 31, 1982, DMS had expended $13,944 on various types of office equipment and furniture, including desks, chairs, bookcases, transcribers, tape recorders, etc. These expenditures have been charged against the $28,700 operating appropriation allocation for equipment, which was requested for the purchase of the truck mounted prover discussed in Question No. 12 and an additional $7,800 transferred from the Department of Public Safety with the permit and weigh station functions.

We conclude that DMS has properly expended funds to purchase office equipment and furniture.

Question No. 14

Has DMS equipped a weights and measures testing laboratory in Juneau in addition to the one maintained in Anchorage?

Finding

DMS has either purchased or transferred from the Anchorage metrology laboratory equipment totalling $19,220 for the Juneau laboratory. This equipment will be used to verify the DMS field standards and the standards (test weights) of the fishing and construction industries used in Southeastern Alaska. We conclude that the use of this equipment will result in a cost savings to the State and the industries due to the elimination of costly transportation expenses to transport the standards to Anchorage for verification.

Question No. 15

Has DMS properly budgeted for program revenues?

Finding

DMS budgeted program revenue for Fiscal Years 1981 and 1982 totalling $10,100 and $11,300, respectively. The revenue was to be collected from processors and contractors who requested scale inspections which had not been scheduled by DMS. Actual revenue collected for reimbursement of per diem, transportation, and/or mileage totalled $10,223 in Fiscal Year 1981 and $2,805 in Fiscal Year 1982 leaving an unrealized balance of $8,495. DMS budgeted $12,300 in program revenue for Fiscal Year 1983 none of which has been collected.

DMS staff stated they had discontinued the policy to request reimbursement for unscheduled scale inspections and would not be collecting the program revenue budgeted for Fiscal Year 1983. The Fiscal Year 1984 budget request reflects a decrease resulting from the change in policy.

PERSONNEL MANAGEMENT

Question No. 16

Has a Weights and Measures Inspector IV and the Mobile Home Inspector been performing duties and responsibilities different from those described on their job descriptions and class specifications?

Finding

We determined that material changes have occurred in the duties and responsibilities of these two positions since the formation of the Division (see Recommendation No. 4A).

Question No. 17

Did DMS select supervisors of the weigh stations in accordance with the State Personnel Rules?

Finding

The selection of the weigh station supervisors was in compliance with the State Personnel Rules. However, we recommend DMS utilize the promotional eligibility list in future situations where sufficient competition warrants to ensure the selection of the most qualified person for the position and to afford equity in hiring practices (see Recommendation No. 4B).

Question No. 18

Did DMS comply with the State hiring procedures in the selection of the Chiefs of the Weights and Measures Section and the Permits and Weigh Stations Section?

Finding

We reviewed the personnel records and determined that these positions were filled in accordance with the State Personnel Rules. In addition, the Office of the Ombudsman reviewed the selection of the Chief of the Permits and Weigh Stations Section. In a letter dated January 23, 1983, the Ombudsman concluded that the person hired was within the top five available eligibles, as required by Personnel Rule 5.02.2. None of the other persons in the top five were considered.

The Ombudsman stated that even though the Personnel Rules do not require consideration of all persons within the top five, the Department would benefit by adopting a policy which requires the appointing officers to consider those persons. Such a practice would improve the quality of appointments by bringing the best qualified applicant to the attention of the appointing officer.

Question No. 19

Was a Weights and Measures Inspector IV position held open approximately one year while the Division attempted to qualify a staff member for the position?

Finding

A Weights and Measures Inspector IV position was vacant from May to December, 1980. On December 8, 1980, a Weights and Measures Inspector trainee was promoted to the Weights and Measures Inspector IV position. The employee's application had been rewritten to include work experience not previously included on his application submitted for the trainee position.

Question No. 20

Has DMS complied with the State Personnel Rules and the State Administrative Manual concerning employee moving expenses?

Finding

In November, 1981, a Weights and Measures Inspector I was promoted and transferred from Anchorage to Kenai to operate the field office. He accepted the promotion with the understanding that his moving costs could not be reimbursed by the State due to the agency's fiscal constraints. Then in July, 1982, DMS promoted a Weights and Measures Inspector III to Chief of Weights and Measures Section. DMS transferred him and his family from Juneau to Anchorage reimbursing all moving expenses.

According to the Deputy Director of the Division of Personnel, an agency may offer a promotional transfer without reimbursement of moving expenses if the agency has fiscal constraints and/or the position could be filled by advertising in the area where the position is vacant.

We conclude that DMS has complied with State Personnel Rules and procedures concerning reimbursement of employee moving expenses.

Question No. 21

Is overtime pay properly approved, supported, and recorded in the State accounting records?

Finding

We reviewed expenditures for overtime pay for Fiscal Years 1981, 1982, and 1983 (through January 31, 1983). Based on the results of our test, we determined that overtime pay is properly approved, supported, and recorded in the accounting records.

PROGRAM MANAGEMENT

Question No. 22

Is the Division's participation in the Western Weights and Measures Conference (WWMC) and the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS) justifiable in terms of economy, efficiency, and effectiveness?

Finding

The participation by the Director and staff in the WWMC is directly related to their duties and responsibilities under AS 45.75, Weights and Measures Act. However, the duties and responsibilities of DMS relating to building codes and standards were greatly diminished in 1980 with the enactment of the Mobile Home Warranty Program. Furthermore, implementation of Recommendation No. 5 which recommends the transfer of the Program to the Consumer Protection Section, would remove all responsibilities relating to the building codes and standards. Therefore, we recommend the Department seek removal of DMS staff as delegates to the NCSBCS (see Recommendation No. 6).

Question No. 23

Have actions taken by the Mobile Home Inspector, relating to an investigation in 1982, resulted in a class action suit being filed against the State, the Director of DMS, and the Mobile Home Inspector?

Finding

Through inquiries of the Alaska Court System and the Office of the Attorney General, we determined that no suit has been filed naming the State, the Director of DMS, or the Mobile Home Inspector as defendants.

Question No. 24

Is DMS discontinuing safety inspections of commercial vehicles in March, 1983?

Finding

On July 15, 1982, the permit and weigh station functions of the Bureau of Vehicle Maintenance, Department of Public Safety, were transferred to DMS.

(Intentionally left blank)

The Legislature did not include the transfer of authority for safety enforcement. In order to fulfill the requirements of a federal contract for a safety demonstration project, DMS received a delegation of authority for safety enforcement from the Alaska Transportation Commission which was effective July 1, 1982. This allowed DMS to continue the safety inspections through the completion date of the federal contract, March 11, 1983.

This issue was reviewed by the Office of the Ombudsman and a letter report was issued January 28, 1983. The Ombudsman concluded that the statement which alleges the Department of Commerce is not fulfilling its statutory responsibility for enforcing commercial safety standards is "unsupported". Further, the Department does not have statutory responsibility for commercial safety enforcement. We concur with this conclusion of the Office of the Ombudsman.

Presently, the Director of DMS is working with the Commissioner of the Department of Commerce and Economic Development to provide alternative plans for a commercial vehicle safety program.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

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OFFICE OF THE COMMISSIONER

June 10, 1983

Gerald L. Wilkerson, Legislative Auditor
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Recommendation Number 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

RESPONSE:

The Division of Measurement Standards acknowledges that some morale problems existed during the period of the audit and since the formation of the Division. Positive steps have been taken by both the Department and the Division to respond to the problems, to expand the lines of communications, and to ensure addressing individual concerns. The response to these increased efforts have been very positive and progress will be closely monitored to ensure achieving desired results.

The Division does not agree that the cause was a build up of problems that existed within the Weights and Measures Section over the past several years, with the exception of isolated personnel problems, the specific items identified by the Division's employees are of recent origin and the approach has been to provide solutions to these.

It may also be noted that only two employee grievances were filed in Weights and Measures in the five years preceding the transition to Division status.

Recommendation Number 2

DMS should avoid situations that give the appearance of a conflict of interest.

1. During the period from July 1, 1981 to January 21, 1983, the mobile home inspector received and mediated at least four

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complaints involving the mobile home dealership owned by his father. We understand the father has voluntarily dissolved his business as part of an out-of-court settlement with the State's Consumer Protection Section. However, other relatives own mobile home dealerships in the State.

RESPONSE:

1. The mobile home warranty program has been transferred to the Department of Law, office of Consumer Protection.

2. During our review of contract procedures, we found that three contracts were awarded to a mobile home service and repair company. The DMS Mobile Home Inspector is a former employee of this business and his brother currently is employed there.

RESPONSE:

2. During the period when the contracts were awarded, neither the Mobile Home Inspector nor his brother were employed by the company providing the service.

Recommendation Number 3

DMS should improve its budgeting and financial management.

A. DMS should ensure performance indicators in their budget requests are accurate.

In a review of the fiscal year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in fiscal years 1981 and 1982 was not accurate. The exceptions noted were as follows:

Commodity items audited
Value of prepackaged goods found in violation
Devices tested

The budget instructions state that the agency should select only measures of activities for which data is already being collected or reasonably can be collected in the budget year. In addition, they state that once a useful measure has been identified it is useful to look at the same measure from year-to-year.

RESPONSE:

A. Some of the confusion associated with the figures are based on lack of understanding of the methods used to document activity and the value of certain information. The following is offered to clarify the information:

In conducting audits of commodities offered for sale, a representative sample of the total population is selected. The selected items are tested to ensure conformance to specified standards. The size of the sample is determined by the size of the estimated total population and the requirement to test sufficient items to achieve statistical accuracy for the inferences made.

Three units of measurement are generally used for documenting activity impact:

Inspections - The number of individual commodity items actually tested for compliance with standards.
Audits - The number of items in the total population.
Value - The cost of the individual items.

The inspection is a measure of the weights and measures officials productive activity. The audit defines the population available for consumption and the value denotes the dollar impact of the commodities. By considering all of these factors, we may analyze a range of management factors from the employee's productivity to their impact on the marketplace.

The misunderstanding stems from typographical errors in the FY 84 budget request. Correct performance indicator titles should be:

1. Commodity items tested
1. Commodity items audited

Devices tested:

Actual count of devices tested was 16,519. See response to recommendation 7(c).

As defined in the budget instructions, the purpose of a performance indicator is to "identify the extent of major BRU activities and functions." As program requirements and emphasis have changed and we have increased the availability of quantifiable management information, we have attempted to select indicators that would represent measures of both activity and economic impact. The intent was to provide a more comprehensive indication of the Division's involvement in the regulatory process. It has been the Division's goal to develop quantifiable measurement indicators that permit analysis of all activities.

B. DMS should prepare their fiscal year budgets in accordance with the instructions provided by the Office of the Governor.

The State budget instructions require agencies to report transfers between line items with an expenditure category on a specific form provided. This allows the agency to develop a budget which reflects actual anticipated spending.

RESPONSE:

B. The Division of Measurement Standards will prepare all future budget requests in accordance with the instructions provided by the Office of the Governor.

DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totaling $33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska." Through a review of the related expenditures, we found $8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totaling $39,100 through Chapter 120, SLA 1980, to implement the mobile home warranty program enacted by Chapter 104, SLA 1980. We determined that $2,875 of these funds were expended on travel unrelated to the mobile home warranty program.

RESPONSE:

D. The audit team did not identify the specific trips that they considered inappropriate, therefore, a general explanation is offered in an attempt to clear up some possible misunderstandings.

Fish buying scales are a highly mobile device that are moved from the factory to the scale repair facility, to various locations throughout the state, depending on specific requirements and appropriate seasons. Every effort is made by the Division to test the maximum number of devices at the most economical cost. An example of device mobility is a particular scale may be used in Seward during the herring season and shipped to the Aleutian Chain for the salmon season. If we can test the device in Seward before it is shipped to the Aleutian Chain, the cost for the inspector's travel will be significantly lower. Another example of a very successful method is the Seattle inspection program. The fishing industry in the Aleutian Chain and Western Alaska normally ship all their scales to Seattle for rebuilding every two years. The Division sends an inspector to Seattle whenever the number of available devices warrant the expenditure, to test and certify fish buying scales at company headquarters and scale repair facilities. By utilizing this procedure, the devices are tested prior to being

shipped to Alaska and being placed into service. This program has permitted the Division to not only increase the number of devices tested prior to their being used in commercial transactions throughout the state and has reduced the cost to the industries involved, but has allowed us to increase the number of devices tested and certified that are used in the remote areas of the Aleutian Chain and Western Alaska.

Some of the trips to Seattle were charged to this supplemental account because it was more economical to test the devices there rather than wait until they had been shipped to the Aleutian Chain. We felt that the intent of the appropriation was to ensure that accurate devices were being used and our effort was directed toward testing the devices where ever they could be located. Some administrative trips were charged to both appropriations to coordinate program requirements.

Recommendation Number 4

DMS should improve its personnel management.

During our review we noted personnel matters which may have contributed to the low employee morale.

A. DMS should update job descriptions and classifications as required by the State personnel rules.

RESPONSE:

A. All the Division employees P-402's were updated prior to the period the audit was conducted. As noted, two personnel were assigned to special projects during the transition period when the Division was in the process of establishing the structure necessary to respond to its basic management requirements. It must be kept in mind that when the permits and weigh station program was transferred from the Department of Public Safety to the Department of Commerce and Economic Development, the management and administrative support staff was not included. With the establishment of the Division of Measurement Standards to consolidate the weights and measures and permits and weigh station functions, both the management and the support staff had to be recruited and trained while continuing the daily activities required by statute. This necessitated the utilization of existing personnel to perform diverse duties to ensure program continuity. This transition period is largely complete and the organizational structure has been redefined to be responsive to program needs. P-402's will be updated to reflect actual duties being performed when the Division structure has been clearly defined and those recently hired into supervisory positions are fully trained.

It should be noted that the opening statement referred to two instances in the five year period considered. It was also noted that these are not violations of the personnel rules. We find the negative implication of the statement to be unjustified.

Recommendation Number 7

DMS should improve its procedures to ensure compliance with statutory requirements.

We noted two areas of statutory compliance in which DMS should improve their procedures.

A. DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

RESPONSE:

A. The Division does have the documentation necessary to identify its inventory of office and field standards and to determine date of verification. To ensure more convenient access to the information, the word processing equipment will be used.

B. DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS staff indicated that the high cost of transportation hinders their ability to comply with the required semiannual inspections. We recognize this problem. However, DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible within budgetary constraints. We recommend the use of DMS word processing equipment, where practicable, to facilitate the compilation and maintenance of the inventory list.

RESPONSE:

B. This is already being accomplished using manual records. The word processing equipment will be utilized to the maximum extent possible with current administrative staff.

C. DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes. The fiscal year 1982 activity data was entered into the DMS word processing system. According to DMS staff, this data was used to calculate the total number of devices tested in fiscal year 1982 reported in the fiscal year 1984 budget request. However, we could not reconcile the recorded amount of devices totaling 11,276 to the reported number of 16,500.

DMS should develop procedures to ensure activity data is accounted for in a consistent manner and that data is complete and organized in a manner which facilitates use by management.

RESPONSE:

C. A management information system is in place. The annual reports are used for management planning. These reports are developed by counting the individual field test reports.

The monthly reports are utilized by the individual supervisors to compare actual to scheduled activities. A format is being developed that will permit entering the data from each field test report into the word processing system. Device and activity data will be maintained on this system, limited only by availability of administrative staff time.

There is not a point of confusion in where to count various types of field activity. As indicated by our verification of field test reports, the inspection activity and the testing activity are accounted for separately. An actual count of the reports provided the following activity for FY 82:

Device inspections - 14,200
Device tests - 16,519

As indicated previously, management decisions and budget requests are prepared based on activity data documented on field test reports. Additionally, every reasonable effort is made to verify data prior to drawing conclusions. We afforded the audit team this same opportunity by offering the field test reports to them to verify the data contained in the budget request. This offer was repeated during the audit team's exit briefing and the records are available if verification of accuracy is a concern. We do not feel that drawing conclusions from unverified data is justified. To reemphasize the activity indicator as reported in the FY 84 budget request of 16,500 devices tested, was reverified by the Division by individually counting the field test reports on May 17, 18, and 19, 1983.

APPENDIX A
DISPOSITION OF ALLEGATIONS ON DMS MANAGEMENT

Question Number 1

Has DMS hired a Mobile Home Inspector who is related to proprietors of mobile home dealerships in Anchorage:

Finding:

We determined the Mobile Home Inspector is related to owners of mobile home dealerships in Anchorage.

RESPONSE:
Relationship is acknowledged (see response to recommendation number 2).

Question Number 3

Was the 1978 directive from DMS. to all fish processors and buyers, disallowing the use of hydraulic type scales in the best interests of the State?

Finding:

In May, 1978, a legislative bill (House Bill 964) was introduced which would have required fish processors to use electronic hanging scales to determine the weight of fish sold. However, a directive was issued by the Weights and Measures Section (now DMS) before any action was taken on the legislation. The directive stated it had been determined that the hydraulic type scales would not hold the tolerances set by Title 3, Chapter 32 of the Alaska Administrative Code. According to the directive, hydraulic type scales were not to be utilized after January, 1980.

We discussed the issue with the Alaska manager of the Pacific Seafood Processors Association. He stated there had been a problem with the accuracy of hydraulic type scales. The processing companies in the organization were not happy about the idea of having to expend monies to replace their hydraulic scales. However, he believes it was in the best interests of the industry. In addition, we sent questionnaires to 78 seafood processors operating in Alaska. Of the 29 questionnaires returned, 9 did not believe the replacement of hydraulic type scales was necessary; 4 believed it was necessary; and 16 had no opinion.

RESPONSE:

The issue that was not addressed by the audit team was whether the device was legal. This device is not legal for use for purchasing fish.

Question Number 4

Has DMS reported accurate information for performance indicators in their budget requests?

Finding:

In a review of the fiscal year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in fiscal years 1981 and 1982 was not accurate.

RESPONSE:

We do not agree that the information was not accurate (see response to recommendation number 3).

Question Number 10

Have personal long distance telephone calls been charged to the State?

Finding:

We reviewed a sample of telephone charges occurring between July 1, 1982 and January 31, 1983. It was determined that internal control over long distance telephone calls was nonexistent prior to January, 1983.

RESPONSE:

Long distance telephone logs are now being maintained.

Question Number 18

Did DMS comply with the State hiring procedures in the selection of the Chief of the Weights and Measures Section and the Permits and Weigh Stations Section?

Finding:

We reviewed the personnel records and determined that these positions were filled in accordance with the State personnel rules. In addition, the Office of the Ombudsman reviewed the selection of the Chief of the Permits and Weigh Stations Section. In a letter dated January 28, 1983, the Ombudsman concluded that the person hired was within the top five available eligibles, as required by personnel rule 5.02.2. None of the other persons in the top five were considered.

The Ombudsman stated that even though the personnel rules do not require consideration of all persons within the top five, the Department would benefit by adopting a policy which requires the

appointing officers to consider those persons. Such a practice would improve the quality of appointments by bringing the best qualified applicant to the attention of the appointing officer.

RESPONSE:

The finding that none of the other people in the top five were considered is incorrect. All available eligibles were interviewed and considered for both positions.

CONCLUSION:

Due to the public nature of the final audit report and the possibility that the statement would be construed to lend some validity to unspecified allegations, the Department feels that the opening statement to Appendix A should be limited to: "Presented below are the allegations concerning the management of DMS along with our findings."

Sincerely,

Richard A. Lyon
Commissioner

RAL:JS:cw

THE MOBILE HOME WARRANTY ACT AND CONSUMER PROBLEMS WITH MOBILE HOMES

A Report by the Consumer Protection Section,
Department of Law,
February 4, 1984

Introduction

Mobile homes have become a major housing alternative for Alaskans, one which often involves considerable expense. Ranging in price from $10,000 to well over $100,000 (not including land), mobile homes in the state sold for an average of $40,263 in mid-1984, as reported by the Alaska Housing Finance Corporation. Often mobile homes are purchased by consumers who lack the income needed for conventional housing and who are less able to protect themselves from defective products and unfair sales techniques. Yet unlike conventional housing, mobile home construction is not subject to regulation or inspection by local or state authorities, nor is the sale of mobile homes subject to professional licensing requirements.

Apart from the Department of Law's general enforcement powers against unfair or deceptive trade practices, state efforts to prevent and remedy the widespread problems confronted by mobile home purchasers rest solely on the mobile home warranty act, AS 45.30. The Consumer Protection Section's recent experience in administering this act shows that defects in mobile homes and consumers' problems in obtaining corrective action continue to be frequent occurrences and continue to demand significant efforts on the part of the section.

Background of the Mobile Home Warranty Law

In 1980, the Legislature acted to ensure that consumers receive adequate warranty protection when they purchase mobile homes. (Ch. 104, SLA 1980, amending AS 45.30.) This statute requires new mobile homes to be covered by a one-year written warranty against substantial defects in materials and workmanship. One important provision of the mandated warranty is that the dealer and manufacturer are each fully responsible for correcting defects, so that the consumer is not shuttled back and forth with no one taking responsibility. Another important provision is that the warranty must cover not only the structure of the mobile home but also all mechanical systems, equipment, and appliances included when it is sold.

The statute also establishes a method to enforce compliance. Written notices of violations may be issued by a

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state inspector, and the enforcement agency may hold administrative hearings on alleged violations. When it is determined, following such a hearing, that a dealer or manufacturer has violated a provision of the law, the violator may be ordered to take corrective action. Moreover, in appropriate cases the manufacturer's $35,000 performance bond may be forfeited and the proceeds distributed to the injured parties.

The 1980 mobile home legislation did more than establish state warranty requirements; it also repealed existing portions of AS 45.30 which regulated mobile home construction standards. The reason for this repeal was not, it must be emphasized, a belief that such regulation was unnecessary. Rather, it was simply a matter of federal preemption. In 1976 the U.S. Department of Housing and Urban Development (HUD) had taken over the regulation of mobile home construction throughout the country. This meant the preemption of Alaska's construction standards program.

The HUD program, however, did not come close to eliminating many kinds of serious problems that frequently afflict purchasers of mobile homes. As pointed out in a 1980 Federal Trade Commission study of mobile home warranty problems, the scope of the HUD standards is limited and the agency's remedial powers when defects occur are "severely circumscribed." The construction standards, which cover only basic components and focus on safety concerns, do not protect consumers from defects in appliances, cabinetry, carpeting, ceiling tile or wall paneling, floor coverings, and so on; nor do they address damage occurring during transportation or set up. Equally important, inspection is required of a mobile home only once -- at any point -- during the manufacturing process, so that defects may readily occur which are not detected. Indeed, HUD has acknowledged that "no mobile home is completely without failures to conform to the Federal standards." Finally, once a mobile home has been purchased by a consumer, the only defects which HUD can require the manufacturer to correct are those which present an unreasonable risk of injury or death.

Thus, when the Alaska Legislature passed its mobile home warranty act, joining seventeen other states at that time with similar legislation, it did so in recognition of the need to fill a major gap in the legal protection provided to consumers. The House committee which recommended passage of the act had before it a report from the Attorney General's Consumer Protection Section analyzing complaints within the past two years from some 68 consumers having problems with mobile homes. In addition to multitudinous defects reported in interior construction, exterior construction. plumbing, appliances, electrical systems, and plumbing systems, a common thread running through the consumers'

experience was a lack of response from dealers and manufacturers to their complaints. Long delays in merely getting someone to look at the problem were common, and in many cases the defects remained uncorrected even after repeated attempts at repair. Experience since that time amply demonstrates the continuing importance of the warranty law.

Recent Consumer Protection Section Experience with Mobile Home Problems

Since the enforcement of the mobile home warranty act was administratively transferred to the Consumer Protection Section in May of 1983, the section has handled 65 complaints and has responded to over 96 inquiries and requests for assistance. Although most consumer mobile home complaints involve several individual problems that the consumer has experienced, the major focus of complaints received during the past year and a half may be summarized as follows:

1.	Defects in materials and workmanship	27%
2.	Misrepresentative sales techniques	46%
3.	Shoddy repair services	16%
4.	Mobile home park and other problems	11%

Specific mobile home related complaints include but are not limited to the following:

1. Doors and windows that will not open or close properly.
2. Cracked sinks and bathtubs.
3. Overly expensive to operate or inadequate heating sytems.
4. Excessively high interior humidity
5. Buckling walls and separating components.
6. Misrepresentations about the ability to qualify for a loan, or about the outcome or penalty resulting from not qualifying for or not obtaining a loan to purchase a mobile home.
7. Settling of mobile homes resulting from inadequate or improper setup procedures.
8. Numerous failed attempts to repair mobile home defects by unqualified service persons.
9. Misrepresentations of the authority of a salesperson.
10. Failure to deliver title.

Although a report regarding consumer problems with their mobile homes must be brief, because as one consumer wrote to Consumer Protection just last week "there isn't enough paper in Alaska to state the dissatisfaction we've experienced," a few specific examples will help provide a clear understanding of the seriousness of consumer mobile home problems.

During the past year, three purchasers of a particular brand of mobile home complained to the Consumer Protection Section that the roofs on the mobile homes were leaking severely and that they had been unable to obtain a remedy from either the manufacturer or dealer. The consumer found that the dealer had "disappeared" and the manufacturer's response was that the consumers needed to shovel their roofs more adequately in the winter time (despite the dealer's original claim that their roofs were specially designed for "Alaska conditions"). Yet only a minor amount of snow had accumulated on them, and moreover the manufacturer's own "homeowners manual" stated that the roofs should not be climbed or walked on. Although the manufacturer's warranty had expired on two of the mobile homes, through mediation and negotiation the Consumer Protection Section obtained for the consumers new roofs and a one year warranty from the manufacturer that the structure of the roof would remain free from defects.

After resolution of the complaints one of the consumers confided that had the problem not been resolved he would have had to leave his home. It should be pointed out that since February of 1984, 56 mobile homes purchased between 1980 and 1984 were repossessed. According to AHFC personnel many of these homes were abandoned by their owners. With a 17% increase in the cost of a new mobile home between 1983 and 1985 and a slight decrease in the average monthly income of a new mobile home purchaser during the same period, it has become increasingly difficult for mobile home consumers to bear the burden of major defects such as these.

Many consumer complaints have involved the formation of large amounts of condensation on interior surfaces of their mobile homes. In many instances this leads to wet and ruined walls and carpets; in one case a consumer reported mushrooms growing on the floor. Homes inspected by this section have been found to possess warped ceilings, floors and walls. In some cases permanent fixtures such as bathtubs and toilet bowls have begun to sink through the floors. Often manufacturers respond to these problems with allegations that the consumer is improperly ventilating or utilizing the mobile home.

In other recent complaints consumers stated that they ordered mobile homes with particular features and amenities to be included by the manufacturer. They found, however, that when the mobile homes arrived many of these features were not included with the homes. Although the purchase agreements clearly stated that these items would be included, the dealer claimed that the consumer had agreed to accept the home without them. One consumer stated that the dealer kept telling him that he would "take care of it"; the outcome is pending. Consumer Protection records show

that many consumers are promised features or amenities with their mobile homes and then find those features missing upon delivery. They also find that the homes are many times improperly installed and in fact the homes themselves have been damaged in transit or were not properly constructed in the first place.

During the past two and one half years the Consumer Protection Section has recovered over $132,000 for consumers who experienced defects in their mobile homes or mobile home transactions.

BUSINESS RESPONSE INFORMATION

Consumer Protection Section

The Consumer Protection Section of the Attorney General's Office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

Consumer Complaints

Any consumer who believes that he/she has been subjected to an unfair or deceptive trade practice may file a complaint with this state office. A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We do not attempt to prejudge the merits of complaints by either refusing to handle some complaints or by assuming that one or the other side is "right." It would be impossible, as well as unfair, to make any assumptions on so little information. We do screen complaints to verify that we have jurisdiction to handle the subject matter of the complaint.

The Complaint Resolution Process

Our complaint handling process is informal and relies upon cooperation from all parties. Whenever a consumer files a complaint against you, we will send the complaint to you as a respondent. By doing so, we are requesting your cooperation in clarifying the situation and resolving the problem. We cannot force you as a respondent to offer a settlement, nor can we force a settlement on either party.

We recognize that there are two sides to every story, and we listen to both sides. We know that sometimes consumer complaints are inaccurate or unreasonable. The fact that both sides may be angry does not make either one of them "right."

By our mediation efforts, we hope to give both sides to a consumer complaint a chance to better understand each other and, once understood, resolve their problem. Much of the time, this process yields satisfactory results for both sides.

How to Respond to a Complaint

We request that you respond, in writing, to the complaint. Written responses help you give us all the details we need, avoid misunderstandings, and help us work faster. (We can handle several matters in the time it takes to do an interview, and somebody still has to write all the details.)

To enable both this office and the consumer to better understand your position, we ask that you investigate the complaint; for instance, talk to the employees involved and check your business records. We request that you respond with a discussion of the facts of this complaint and any figures that might be necessary to better understand the situation. Often, it is important to include a statement of your standard business procedure so that there is a context in which to view this particular complaint. Finally, please include a statement of your position on this consumer complaint, as well as any suggestions or plans you may have for resolving this matter.

What Happens When Mediation Fails

If mediation fails (or if you fail to respond), we will review the information we obtained to determine whether or not there is a pattern or serious indication of deceptive practices which justifies formal action by the state. Formal actions include conducting a formal investigation or, in the face of serious violations of the law, filing a lawsuit seeking an injunction to stop the disputed practice and to seek restitution for consumers and civil penalties.

If we determine that formal state action is not appropriate, we will usually advise consumers that they have the right to proceed privately through small claims court or a private attorney if they so choose. The fact that the state does not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential. We do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

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CONSUMER INFO

CONSUMER PROTECTION SECTION

The Consumer Protection Section of the Attorney General's office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to hand' consumer complaints.

WHY WE NEED YOUR COMPLAINT IN WRITING

Consumer Protection is here to serve you. We can do a better job and process your complaint faster if you help us. We need to have your complaint in writing because written complaints help you give us all the details we need and help us work faster than with initial interviews. (We can handle several complaints in the time it takes to do an interview, and somebody still has to write out all the details.) If we need more details after reading your complaint, we will contact you.

If you aren't sure whether you have a complaint, go ahead and fill out one of our complaint forms anyway. If you don't have a complaint, we will contact you promptly. Usually you do have a complaint or you wouldn't be here.

WHAT WE DO WITH YOUR COMPLAINT

A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We send the business a letter and a copy of your complaint, asking them to tell their side of the story. When we get their reply, we will contact you for your comments or to tell you about any proposed settlement offer from the business. Much of the time, this process yields satisfactory results.

If there is no voluntary offer of settlement or the proposed settlement is not acceptable to you, you must then proceed privately through the Small Claims Court or a private attorney. The state can only take formal action when there is a serious indication of deceptive practices in violation of law. The fact that we do not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential; we do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

YOU SHOULD REALIZE THAT:

1. THE CONSUMER PROTECTION OFFICE CANNOT ACT AS YOUR ATTORNEY. WHEN THE ATTORNEY GENERAL SUES A BUSINESS, HE SUES FOR THE STATE--TO STOP THE PRACTICE AND COLLECT FINES.

2. THE COMPLAINT HANDLING PROCESS USUALLY TAKES AT LEAST SIXTY (60) DAYS.

3. IT IS NOT POSSIBLE FOR THE STATE TO SUE EVERY TIME A CONSUMER IS TREATED UNFAIRLY OR EVEN DEFRAUDED. THE STATE CAN ONLY ACT IN THE GENERAL PUBLIC INTEREST.

4. EVEN THOUGH YOU FILE A CONSUMER COMPLAINT WITH OUR OFFICE YOU ALSO WANT TO CONSULT A PRIVATE ATTORNEY, OR THE LEGAL SERVICES ATTORNEY, OR FILE A CLAIM IN SMALL CLAIMS COURT AT THE SAME TIME.

Anchorage Fairbank Juneau Valdez

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 148 (Jud) Sectional

Section 1) Increases the performance bond required of a mobile home manufacturer from $35,000 to $100,000.

Section 2) Adds a new section which would permit a buyer to pursue a "private cause of action" against a manufacturers bond;

Section 3) Adds a new section which outlines the sureties responsibilities, liabilities, and duties with respect to the cancellation of a surety bond.

Section 4) Transfers the enforcement authority from DCED to the Department of Law.

Section 5) Adds a new paragraph to the unfair trade practices/consumer protection statutes relating to mobile home warranties.

NOTE: The bill which passed over from the House shows two section 2's; This will be corrected prior to the meeting.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

BILL SHEFFIELD, GOVERNOR

XX REPLY TO

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April 11, 1985

Honorable Fred Zharoff, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Re: HB 148

Dear Senator Zharoff:

This letter is written to encourage the Senate Labor and Commerce Committee to quickly consider and pass HB 148. This bill passed the House Labor and Commerce Committee unanimously and also passed the House Judiciary Committee unanimously, although the present version is a committee substitute that was developed in the House Judiciary Committee. House Bill 148 passed the House on a vote of 39 to 0 with one excused. As you can see there was tremendous support for this legislation. I believe the reason for this support and the popularity of the bill is the important relief granted to a purchaser of a mobile home in Alaska. Essentially the bill accomplishes three changes in the present law:

1. It raises the performance bond required of a manufacturer of mobile homes from $35,000 to $100,000.
2. It creates a private cause of action for a mobile home buyer against the manufacturer's bond for warranty violations.
3. It transfers warranty enforcement authority from the Department of Commerce and Economic Development to the Department of Law.

Increase in bond amount from $35,000 to $100,000.

This bill would amend AS 45.30.015(a) to increase the bond amount that a manufacturer of mobile homes would have to post with the State from $35,000 to $100,000. The purpose of this bond is to assure compliance with the provisions of AS 45.30.011, which set forth the warranty obligation by a manufacturer of a mobile home. The increase in the cost of mobile homes since the statue was first enacted suggests the need for the increase in the bond. You are probably aware that there are many persons in the state who live in mobile homes or choose to purchase mobile homes for

their primary residence. There are no manufacturers of mobile homes in the State of Alaska, and the posting of this bond aids in making certain the mobile homes sold in the state are warranted for one year and that the manufacturer corrects any substantial defects that occur. Attached is a report that we prepared which sets forth some of the problems mobile home consumers have had with their mobile homes.

We, in this section, conducted a survey to determine the cost to a manufacturer if the bond amount were increased from $35,000 to $100,000. Our research showed that there would not be significant increase to the cost of a manufacturer whose mobile homes were sold in Alaska if the bond were increased. The cost of a bond pursuant to AS 45.30.015 would be between 1% and 2% of the face value annually, but in most cases only about 1% of the face amount. Thus, a $100,000 bond would cost a manufacturer approximately $1000, with an upper limit of $2000 a year.

The financial stability and net worth of a manufacturer might well determine the cost of a bond or even if the manufacturer can obtain a bond. Any company's inability to obtain a bond would probably be a good indication of its level of reliability in fulfilling its bonded obligations, according to one local insurance broker. If the manufacturer is currently able to obtain a $35,000 bond that same manufacturer would likely be able to obtain a $100,000 bond. Thus the manufacturer would be looking at an increase from approximately $350 to approximately $1000 if this bill is enacted increasing the bond required from $35,000 to $100,000

Private cause of action against the bond

The current mobile home warranty statute, at AS 45.30.040, only allows a private buyer injured by the manufacturer of a defective home to request the state to take administrative action against the bond. In order to obtain the proceeds of the bond for any consumers, the state would have to show in an administrative action that the mobile home manufacturer's violations of the warranty act were "regular and recurring." Thus, an individual mobile home buyer may have a serious defect in the purchased mobile home but not be able to obtain the bond proceeds absent state action. The state is not likely to take action unless there are several mobile home buyers who experienced defects in a particular manufacturer's mobile homes.

Also, a buyer may believe she or he has a valid claim against the bond in a case in which the state enforcing authority

does not agree that administrative action is warranted. Providing a clear private cause of action against the bond may relieve a burden on government by reducing the number of administrative hearings and yet ensure that a individual can choose to enforce his own rights, whether or not a state agency agrees with the individual. Of course the mobile home buyer under the proposed revision to the statute would still have to file an action in court and prove that the mobile home manufacturer had violated the warranty provisions of the Mobile Home Warranty Act. The benefit to the mobile home buyer to be able to bring his or her private action against the mobile home manufacturer's bond becomes readily apparent in that case where the mobile home manufacturer has gone out of business, gone bankrupt or has no assets that can be used to satisfy a judgment that a mobile buyer might receive in court. Since all the mobile home manufacturers are located outside the state, collection efforts against an outside mobile home manufacturer may be very difficult for an individual mobile home buyer in the state. It is hoped that creating this private cause of action will make it possible for many claims to be settled without any formal action. The mobile home buyer would notify the manufacturer and the surety on the bond and hopefully some settlement or agreement could be arrived at to provide repairs or correct the defect without the necessity of litigation in many cases.

Transfer of enforcement from the Department of Commerce and Economic Development to the Department of Law

The bill proposes a change in the definition of "department" to mean the Department of Law in AS 45.30.100(2).

The Department of Commerce and Economic Development and the Department of Law agree that this is the most appropriate place to locate the enforcement of the Mobile Home Warranty Act. The Division of Legislative Audit prepared a special report on the Department of Commerce and Economic Development, Division of Measurement Standards, on April 6, 1983. In that report Legislative Audit recommended the transfer of the responsibility to resolve warranty defects of mobile homes found at AS 45.30 from the Department of Commerce and Economic Development to the Department of Law. The audit reflected three reasons for the need for the transfer:

1. Alleged possible conflicts of interest involving the Department of Commerce and Economic Development mobile home inspector;

2. Alleged possible failure of the Department of Commerce and Economic Development to carry out the duties of the mobile home warranty act / and alleged use of money appropriated for that purpose in other ways.

3. The public perception that the Consumer Protection Section of the Department of Law is the agency to contact concerning consumer complaints with problems relating to mobile homes.

A follow up report was issued by the Division of Legislative Audit on June 4, 1984. That audit report provided:

> "The 1983 audit of the Division recommended that the Mobile Home Warranty Program would be better served under the Consumer Protection Section of the Department of Law. The recommendation was made on the basis that the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and would therefore be best suited to administer the program. The Department of Commerce and Economic Development has entered into a Reimbursable Service Agreement with the Department of Law to transfer the program. Legislation to make the transfer permanent was introduced into the 1984 session of the legislature."

For your convenience I have attached a copy of the 1983 report and the 1984 follow up report by the Division of the Legislative Audit.

We respectfully request that the Senate Labor & Commerce Committee carefully consider enacting the suggestions of the Division of Legislative Audit and transferring the responsibility for enforcement of AS 45.30 to the Department of Law. From a consumer viewpoint it would seem beneficial to alert the public to the fact that the actual enforcement of the Mobile Home Warranty Act now lies with the Department of Law. For instance, if a private attorney were advising mobile home owners, the attorney would no doubt look to the current statute and attempt to make contact with the Department of Commerce for additional information. It is difficult to justify the referral from one agency to another that is necessitated simply because the definition contained in AS 45.30.100 of "department" has not been changed by the legislature to the Department of Law.

Thank you for consideration of this legislation. We stand ready to assist the committee in any way that we can. I would be happy to testify via teleconference or in person. I have

a very moving and interesting video tape of the defects in one particular mobile home. The House Labor and Commerce Committee viewed a portion of that video tape. I would be happy to play a portion of that for your committee. Again, we encourage you to consider this legislation as quickly as possible and pass the bill out of your committee. Thank you for considering our position.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Linda M. O'Bannon
Linda M. O'Bannon
Assistant Attorney General
Consumer Protection Section

/pc

Enclosures

A FOLLOW-UP REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT DIVISION OF MEASUREMENT STANDARDS

(Originally Released April 6, 1983)

June 4, 1984

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development:	Vincent O'Reilly Terry Elder

— See pages 3, 4, 9, 10 of "Follow-up Report"

— Legislative Audit reports on Div. of Measurement Standards

STATE OF ALASKA

~ 'DIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

June 4, 1984

Members of the
Legislative Budget nd Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A FOLLOW-UP REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF MEASUREMENT STANDARDS
(Originally Released April 6, 1983)

June 4, 1984

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with the provisions of Title 24 of the Alaska Statutes and a special request of the Legislative Budget and Audit Committee, a follow-up review of the Department of Commerce and Economic Development's Division of Measurement Standards was conducted to determine the extent of implementation of recommendations presented in our report titled A Special Report on the Department of Commerce and Economic Development, Division of Measurement Standards, April 5, 1983.

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ORGANIZATION AND FUNCTION

The Division of Measurement Standards (DMS) was established in July 1982 with the transfer of the permit and weigh station functions from the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. The Division has four distinct statutory requirements:

1. Public and consumer protection through maintenance of uniform standards which ensure the accuracy of commercial weighing and measuring devices within the State (AS 45.75).

2. Consumer protection for buyers of mobile homes through the enforcement of mobile home warranties (AS 45.30).

3. Operation of weigh stations to identify and remove overweight commercial vehicles from the State highway system (AS 44.33.020(25).

4. Issuance of special permits authorizing the operation of overweight and oversize vehicles, and the collection of fees for these special permits (AS 44.33.020(25).

The "Weights and Measures Act", AS 45.75, requires a system of weights and measures that conforms to the standards customarily in use in the United States. The weights and measures obtained by the State are to be verified by the National Bureau of Standards (NBS) and are to be properly maintained to ensure their reliability and traceability to NBS.

To accomplish this mandate, DMS is the custodian of the State's weights and measures and conducts the periodic verification with NBS. The State's standards of weights and measures are used to verify all office standards. The office standards then are used to verify all field standards used by DMS. In addition, these standards become the basis for verification of all instruments and devices used for determining weight or measure in commercial transactions within the State.

DMS fulfills its responsibilities through physical inspection of devices, examination of packaging and the investigation of complaints. DMS may issue "stop-use" or "removal orders" of measuring devices and commodities offered for sale, when it is necessary to enforce the Weights and Measures Act.

Alaska Statute 45.30 mandates the responsibility for resolving warranty defects of mobile homes to the Department of Commerce and Economic Development. The Department assigned the responsibility for carrying out the provisions of the

statute to the Division of Weights and Measures upon its creation in July of 1982.

The 1983 audit of the Division recommended that the Mobile Home Warranty Program would be better served under the Consumer Protection Section of the Department of Law. The recommendation was made on the basis that the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and would therefore be best suited to administer the program. The Department of Commerce and Economic Development has entered into a Reimbursable Service Agreement with the Department of Law to transfer the program. Legislation to make the transfer permanent was introduced into the 1984 session of the Legislature.

The Division, under the provisions of AS 44.33.020(25) has the responsibility for the operation of the weigh stations located on the State highway system. The primary function of the weigh station program is the enforcement of the size, weight and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060.

Additionally, DMS administers the oversize and overweight permit program as provided under AS 44.33.020(25). Permits are issued, for a fee, which allows commercial vehicles that exceed the maximum allowable size, weight or load limitations the right to legally travel over the State highway system. DMS also regulates pilot cars under this statute.

PRIOR AUDIT RECOMMENDATIONS

In a previous audit report dated April 6, 1983, we presented the Commissioner of Commerce and Economic Development with seven recommendations relating to the operation of the Division of Measurement Standards. Three of those recommendations had a total of nine sub-recommendations. The following is the current status of each:

Prior Audit Recommendation No. 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

As a result of interviews with fifteen employees and a review of written communications during our prior audit, it was obvious that a serious morale problem existed within DMS. The cause of the low morale did not appear to be centered around any single issue but was due to a build up of problems within the Weights and Measures Section over the past several years.

Legislative Audit's Current Position

Prior to the final release of our previous report, the Department initiated procedures to determine the causes of the low morale and to provide for possible solutions. These efforts have continued and included:

1. Employee interviews conducted by the Department's personnel officer.

2. The Director meeting collectively and individually with employees of the Division.

3. The development of a new employee evaluation manual and procedures that define management's expectations of employees and provides for ongoing communication between the staff and management.

4. The Director's standing offer to meet with any employee to discuss problems and, if possible, provide reasonable solutions.

During our present review, we found that there continues to be a certain amount of employee dissatisfaction, however, in our opinion, the Department and Division management are making a reasonable and good-faith effort at resolving remaining problems.

Prior Audit Recommendation No. 2

DMS should avoid situations that give the appearance of a conflict of interest.

During our prior audit, we noted three situations which, at a minimum, gave the appearance of a conflict of interest to employees and other persons outside the Division.

Two of the situations involved the DMS Mobile Home Inspector and the third related to the 1981 hiring of a person convicted of price fixing in a retail gasoline business as a weights and measures inspector. This employee was asked to resign and his termination was effective April 17, 1981.

Legislative Audit's Current Position

The Division no longer administers the Mobile Home Warranty Program. On June 15, 1983, the Division entered into a Reimbursable Service Agreement (RSA) with the Department of Law wherein the Department of Law would, through its Consumer Protection Division, administer the program.

The issue of hiring a person convicted of price fixing, in the retail gasoline business as Weights and Measures Inspector I was addressed and resolved prior to the initiation of the original audit. During the current audit nothing came to our attention which would lead us to believe that DMS is not exercising care in the selection of employees.

In our opinion, these situations were isolated instances and the Division is cognizant of the need to avoid conflict of interest situations.

Prior Audit Recommendation No. 3A

DMS should ensure performance indicators in their budget requests are accurate.

The State budget documents for Fiscal Years 1983 and 1984 included forms for each agency to report its performance activities of the prior year based on predetermined measurements.

In our review of the Fiscal Year 1983 and 1984 budget documents, we found that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate.

Legislative Audit's Current Position

Beginning with Fiscal Year 1985, the budget request format has been revised. The section devoted to agency performance

in meeting its objectives no longer identifies prior years' actual performance. Information is limited to those measurements planned for the prior year and those estimated for the budget year at various levels of funding.

DMS has continued to maintain actual performance statistics as a measure against planned performance objectives. Prior to Fiscal Year 1984, the Division's methods of compiling and reporting performance data were cumbersome.

During Fiscal Year 1984, DMS began developing methods, including data processing, for improving the system of data collection, retention, analysis and reporting. A review of Fiscal Year 1984 performance activity summaries and supporting documentation showed no significant errors.

Prior Audit Recommendation No. 3B

DMS should prepare their fiscal year budgets in accordance with their anticipated spending plans.

The DMS Fiscal Year 1982 budget requested $96,900 for rental of State vehicles through the Department of Transportation and Public Facilities (DOTPF). Actual costs during 1982 totalled approximately $62,000, 36% less than budgeted. DMS staff explained that this budget line item was intentionally overbudgeted and the excess funds were used to cover expenditures in other underbudgeted line items within the contractual services category for which funding was harder to secure.

Legislative Audit's Current Position

For Fiscal Year 1984, DMS budgeted $77,900 for State vehicle rental costs which represents a $19,000 reduction from the inflated Fiscal Year 1982 budget amount.

For Fiscal Year 1985, the DMS budget reflects a change from the "wet lease" approach, in which both a fixed rental cost and a repair and maintenance rate are paid to DOTPF, to a "dry lease" approach whereby a fixed rental cost is paid to DOTPF and DMS assumes responsibility for repair and maintenance. According to DMS, this change will result in a significant reduction in vehicle costs.

Prior Audit Recommendation No. 3C

DMS should ensure State funds are expended only for authorized purchases in accordance with the State Administrative Manual.

DMS purchased seafood in August, 1981, and September, 1982, totalling $100 and $548 respectively. The seafood was presented to the members of the Western Weights and Measures

Conferences. The State Administrative Manual, section 6820, prohibits expenditure of State funds for nonessential food-stuffs.

Legislative Audit's Current Position

A review of the Division's Fiscal Year 1984 expenditures showed no unauthorized purchases of seafood. The seafood presented at the most recent Western Weights and Measures Conference was purchased at the Director's personal expense.

Prior Audit Recommendation No. 3D

DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totalling $33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures, we found $8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totalling $39,100 through Chapter 120, SLA 1980, to implement the Mobile Home Warranty Program enacted by Chapter 104, SLA 1980. We determined that $2,875 of these funds were expended on travel unrelated to the Mobile Home Warranty Program.

Legislative Audit's Current Position

A review of Fiscal Year 1984 expenditures and correspondence showed the Division is cognizant of the legal limitations of expending appropriations. During the year, DMS has requested approval and/or advice on certain expenditures from the Department's Division of Administrative Services, the Office of Management and Budget, and the Division of Legislative Audit.

Prior Audit Recommendation No. 4A

DMS should update job descriptions and classifications as required by the State Personnel Rules.

We determined through a review of job descriptions and employee interviews that material changes had occurred in the duties and responsibilities of two classified positions since the formation of the Division.

A Weights and Measures Inspector IV position no longer had the supervisory authority over the inspectors. The employee's responsibilities included only administrative and budgeting duties. The Mobile Home Inspector's duties

included supervision of the weigh stations in addition to mediating mobile home warranty complaints.

We recommended that job descriptions and duties should be changed to reflect the actual duties and responsibilities of these positions to decrease the confusion and misunderstandings within the Division.

Legislative Audit's Current Position

The Weights and Measures Inspector IV position was reclassified to a Management Analyst III on November 23, 1983.

With the transfer of the Mobile Home Warranty Program to Consumer Protection in the Department of Law, DMS reclassified the Mobile Home Inspector position to a Weigh Station Operator II.

Prior Audit Recommendation No. 4B

DMS should utilize promotional eligibility lists to the extent possible.

In July, 1982, DMS assumed the responsibility of the weigh stations from the Department of Public Safety. Twenty-eight commercial vehicle inspectors were transferred from the Department of Public Safety to DMS, however, DMS did not receive a transfer of any supervisory personnel. In order to provide sufficient supervision of the weigh stations, DMS upgraded three of the commercial vehicle inspector positions from a range 12 to a range 15. The incumbents in two of the upgraded positions became supervisors while the other inspectors were not afforded the opportunity to interview for the positions.

Legislative Audit's Current Position

DMS has used the Division of Personnel's departmental eligibility lists in making promotions since our previous audit.

Prior Audit Recommendation No. 5

The Department should seek legislation to transfer the Mobile Home Warranty Program to the Consumer Protection Section of the Department of Law.

We reviewed the function of the Mobile Home Warranty Program and the activity from July, 1981 through March, 1983. Based on our review, we noted the following:

1. The Mobile Home Inspector acts as a mediator between the consumer and the dealer and/or manufacturer in order to resolve complaints.

2. During Fiscal Year 1982, DMS received 26 mobile home warranty complaints. As of March, 1983, DMS had received nine complaints in Fiscal Year 1983.

3. The Consumer Protection Section receives and investigates mobile home complaints from consumers. According to a memorandum dated March 17, 1983, from an assistant attorney general, the Consumer Protection Section had five complaints currently under investigation.

Since the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and the Mobile Home Warranty Program deals with consumer protection warranty laws, it appears that the program could be more efficiently and effectively administered by the Consumer Protection Section.

Legislative Audit's Current Position

The Mobile Home Warranty Program is presently being administered by Consumer Protection through a Reimbursable Service Agreement with DMS. For Fiscal Year 1985, the program is budgeted within Consumer Protection.

During the 1984 legislative session, Senate Bill No. 497 was introduced to amend AS 45.30 by placing the responsibility for the program in the Department of Law. The bill was not passed by the 1984 Legislature.

We recommend that the Department resubmit the proposed legislation change to the 1985 Legislature.

Prior Audit Recommendation No. 6

The Department should seek removal of DMS staff as delegates to the National Conference of States on Building Codes and Standards.

The Director and the Mobile Home Inspector are delegates to the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS). During the period from May, 1981, through January, 1983, the Director attended five meetings related to NCSBCS which were held in Seattle, Denver, Boston, Atlanta, and New Orleans. The Mobile Home Inspector also attended the meetings at Seattle and New Orleans.

DMS duties and responsibilities relating to building codes and standards were greatly diminished with the repeal of the State mobile home standards in September, 1980, and the enactment of the Mobile Home Warranty Program. Furthermore, activity in the Mobile Home Warranty Program does not warrant involvement of DMS in NCSBCS.

Legislative Audit's Current Position

The Director of the Division of Measurement Standards is still the delegate of record to NCSBCS however, he has initiated action to have his name removed as a delegate. A review of the Director's Fiscal Year 1983 and 1984 travel showed that no travel involving NCSBCS business has occurred since September of 1982.

Prior Audit Recommendation No. 7A

DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

We could not find sufficient documentation to determine if DMS was in compliance with AS 45.75.060 which requires verification of office and field standards on an annual basis.

In order to provide sufficient documentation, DMS should develop a complete inventory of all office and field standards with identifying numbers (where possible), the location of the standards, and the last date of verification.

Legislative Audit's Current Position

The Division has developed a complete inventory of field standards and laboratory standards. The field standards status report lists the standards by type, serial number, location, inventory date, last certification date and certification due date. According to Division personnel, the lists will be maintained on a current basis.

Prior Audit Recommendation No. 7B

DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS did not have sufficient documentation to determine that they were in compliance with AS 45.75.080 which requires all weights and measures in commercial use to be inspected and tested at least semiannually or more often as the Director considers necessary. We were able to review inspection dates for 110 businesses located in Southeastern Alaska. Of those 110 businesses, 43 received annual inspections, 23 received semiannual inspections, and the remaining 44 did not have sufficient information to determine the frequency of inspections.

DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible

within budgetary constraints.

Legislative Audit's Current Position

Beginning with the Anchorage area, the Division is in the process of developing a route system for the inspection and testing of devices. Inventory schedules using the data processing equipment are being prepared which will list location of the commercial device, type, serial number, date of previous inspection and date of previous approval, date of current inspection and date of current approval. The inventory lists should provide a positive response to the problem of testing devices semiannually in heavily populated areas. In addition, legislation was introduced during the 1984 session of the Legislature which would eliminate semiannual inspections in favor of annual inspections (Senate Bill No. 491).

The Fiscal Year 1985 budget for DMS approved by the Legislature and the Governor reflects a significant reduction in the inspection activity of the Division. In light of this reduction, the proposed statutory change appears justified.

Prior Audit Recommendation No. 7C

DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device, performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes.

Legislative Audit's Current Position

Monthly statistics are compiled from test reports submitted by the inspectors. Since the system is manual, it is relatively cumbersome and error prone. DMS is working towards a uniform method of compiling verification data. DMS should continue to work for a more efficient system of data compilation.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

July 9, 1984

RECEIVED

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
The Legislature
Pouch W
Juneau, Alaska 99801

Dear Mr. Wilkerson:

I have received your follow-up report on the Department of Commerce and Economic Development, Division of Measurement Standards dated June 4, 1984 and have no disagreement with the recommendations in the report. As stated, all recommendations have been addressed and corrective measures taken by the division.

Thank you and your staff for your efforts in performing this follow-up audit.

Sincerely,

Richard A. Lyon
Commissioner

RAL/mm0442M
7984a

08-H2LH

CSHB 148(Jud): "AN ACT RELATING TO MOBILE HOME WARRANTIES"

THIS LEGISLATION MAKES 3 MAJOR CHANGES TO THE CURRENT MOBILE HOME WARRANTY LAW:

1) IT INCREASES THE PERFORMANCE BOND REQUIRED OF A MOBILE HOME MANUFACTURER FROM $35,000 TO $100,000

2) IT ALLOWS A CONSUMER TO PURSUE A PRIVATE CAUSE OF ACTION AGAINST A MOBILE HOME MANUFACTURER FOR WARRANTY VIOLATIONS.

3) IT ALSO TRANSFERS WARRANTY ENFORCEMENT AUTHORITY FROM THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF LAW.

Chairman's Information:

1) CSHB 148(Jud) "An act relating to mobile home warranties"

a) Introduced: Governor
b) Co-Sponsors:

2) INTENT: This legislation raises the performance bond required of a mobile home manufacturer from $35,000 to $100,000; it also allows a consumer to pursue a private cause of action against the manufacturer for warranty violations, and it transfers warranty enforcement authority from DCED to the Department of Law.

FISCAL NOTE: 0

NOTE: Bill which came over from the House has two section 2's;

3) ADDITIONAL REFERRALS: Judiciary

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

HB 148 MEASURE HISTORY PAGE 01 OF 02
CSHB 148 JUD
AN ACT RELATING TO MOBILE HOME WARRANTIES.

PRIME SPONSOR: RULES COMMITTEE BY REQ OF THE GOVERNOR
CO-SPONSORS:

CURRENT STATUS: (S) CALENDAR 3/4

DATE		PAGE	ACTION
01/30/85	(H)	200	READ THE FIRST TIME - REFERRAL(S)
01/30/85	(S)	200	GOVERNOR'S TRANSMITTAL LETTER
01/30/85	(H)	200	ZERO FISCAL NOTE/ANALYSIS HSE SUPPL 11
01/30/85	(H)	200	ZERO FISCAL NOTE
02/08/85	(H)	292	L&C RPT 7DP
03/27/85	(H)	718	JUD RPT CS, NEW TITLE 6DP
03/29/85	(H)		RLS TO CALENDAR
03/29/85	(H)	756	READ THE SECOND TIME
03/29/85	(H)	756	CS (JUD) ADOPTED UNAN CONSENT
03/29/85	(H)	756	ADVANCED TO THIRD READING UNAN CONSENT

DATE		PAGE	ACTION
03/29/85	(H)	756	READ THE THIRD TIME CSHB 148(JUD)
03/29/85	(H)	756	PASSED Y39 N- X1
03/29/85	(H)	757	COTTEN NOTICE OF RECONSIDERATION
04/01/85	(H)	789	RECONSIDERATION NOT TAKEN UP
04/01/85	(H)	789	TRANSMITTED TO (S)
04/02/85	(S)	693	READ THE FIRST TIME - REFERRAL(S)
05/07/85	(S)	1105	L&C RPT 3DP
05/10/85	(S)	1210	JUD COMM REFERRAL WAIVED
03/03/86	(S)		RULES RPT CALENDAR 3/4

CSHB 148:

Additional comments from Robert Mintz (279-0428) of the Consumer Protection Section of the Department of Law.

1) There are currently NO manufacturer's of mobile homes in the State of Alaska;

2) Warranties on Mobile Homes are typically about a year; This provision would not extend to a dealer who purchases a mobile home from a person while it is still under warranty, however if a private person sold a mobile home to another private person and the mobile home was under warranty, then the provisions of this statute would apply.

3) They don't have a clear handle on the number of mobile homes in the state however, AHFC has financed the following numbers of mobile homes:

    a) FY83: 1,872

    b) FY84: 1,619

    c) First half of FY85: 383

4) Penalty provisions:

amount for a period of 24 months after the date the last mobile home was delivered to a buyer in the state. (§ 1 ch 104 SLA 1980)

Sec. 45.30.020. Duties of department.

Repealed by § 5 ch 123 SLA 1972.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.030. Administration.

Repealed by § 5 ch 123 SLA 1972 and § 5 ch 104 SLA 1980.

Cross reference. — For current provisions concerning deposit of performance bonds, see AS 45.30.015.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971; §§ 2, 5, ch. 123, SLA 1972; §§ 3, 4, ch. 114, SLA 1974.

Sec. 45.30.040. Enforcement of compliance. (a) A department inspector shall give written notice to the owner, dealer or manufacturer of a mobile home of each violation of AS 45.30.011. The notice of violation shall accurately describe the violation and give specific reference to the section and paragraph of the statutes.

(b) Repealed by § 5 ch 104 SLA 1980.

(c) Whenever it determines that there may be a violation of the provisions of this chapter by a manufacturer or dealer of mobile homes, the department may give notice of hearing and, within 30 days after giving notice, hold a hearing to determine whether there has been a violation. After notice and hearing,

(1) if the department finds that there has been a violation of the provisions of this chapter, the department may issue an order directing that the person who is violating the provision cure the violation in a reasonable time and in a reasonable manner;

(2) if the department determines that violations of the provisions of this chapter are regular and recurring, it may require forfeiture of the bond to the benefit of the state and arrange for distribution of the proceeds of the bond to the mobile home owners injured by the activities of the dealer or manufacturer, or to mobile home dealers injured by the activities of the manufacturer.

(d) The provisions of AS 44.62.330 — 44.62.630 apply to a hearing held under (c) of this section. (§ 2 ch 80 SLA 1971; am § 3 ch 123 SLA 1972; am § 5 ch 114 SLA 1974; am §§ 2, 3, 5 ch 104 SLA 1980)

Effect of amendment. — The 1980 amendment, in subsection (a), inserted "dealer" preceding "or manufacturer" near the beginning of the first sentence, substituted "AS 45.30.011" for "the regulations adopted under AS 45.30.010" at the end of the first sentence, and substituted "statutes" for "regulations" at the end of the second sentence; repealed subsection (b); and added subsections (c) and (d).

I think this is what they are getting at but I am not 100% sure.

Michael

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bsections (c)

Sec. 45.30.050. Penalty.

Repealed by § 5 ch 104 SLA 1980.

Cross reference. — For current provisions concerning forfeiture of bond, see AS 45.30.040.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971; § 4, ch. 123, SLA 1972; § 6, ch. 114, SLA 1974.

Sec. 45.30.060. Definitions.

Repealed by § 5 ch 123 SLA 1972.

Cross reference. — For current provisions concerning definitions, see AS 45.30.100.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.070. Certain landlord-vendor agreements prohibited. A vendor of mobile homes may not require as a condition of sale that a purchaser locate the mobile home in a particular mobile home park or in one of a particular group of mobile home parks. (§ 6 ch 138 SLA 1976)

Sec. 45.30.100. Definitions. In this chapter,

(1) "buyer" means a person who purchases a mobile home for his personal use and not for purposes of resale;

(2) "department" means the Department of Commerce and Economic Development;

(3) "mobile home" means a vehicle designed and equipped for human habitation, and which may be drawn by a motor vehicle only when authorized by permit. (§ 4 ch 104 SLA 1980)

Editor's note. — This section derives from AS 45.30.061 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Chapter 45. Trade Practices.

Article

1. Interest (§§ 45.45.010 — 45.45.070)
2. Collection of Advance Interest (§§ 45.45.080 — 45.45.090)
3. Merchandise (§§ 45.45.100 — 45.45.110)
4. Funerals (§ 45.45.120)
5. Regulation of Motor Vehicle Repairs (§§ 45.45.130 — 45.45.240)
10. Miscellaneous (§ 45.45.900)

Article 1. Interest.

Section

10. Legal rate of interest
20. Higher rate of interest prohibited
30. Action for recovery of double amount of usurious interest paid
40. Usurious rate as working forfeiture of entire interest
50. Recovery by assignee of usurious contract of amount paid by him
60. Contract not usurious because of agreement to pay taxes
70. Enforcement of contracts entered into under AS 45.45.060

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

REQUEST

Bill/Resolution No.: HB 148,No.1

Title: "An Act relating to.... mobile home warranties..."

Sponsor: House Rules/Governor

Requestor: Ofc. of Gov. - OMB

Date of Request: 12/10/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS:

This bill creates a private cause of action relating to mobile home warranties, and transfers responsibility for enforcement of mobile home warranties from the Department of Commerce and Economic Development to the Department of Law. A 1983 legislative audit report recommended transfer of the enforcement process to the Department of Law. The transfer of the existing mobile home warranty enforcement position, including funding, from the Department of Commerce and Economic Development to the Department of Law, was accomplished July 1, 1984. Consequently, enactment of this bill will not require additional funding nor will it cause a fiscal impact.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Division Date: 12/10/84

Approved by Commissioner: Norman C. Gorsuch Richard I. Pegues /A

Agency: Department of Law

Fiscal notes (0)

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: December 3, 1984

REQUEST

Bill/Resolution No.: [illegible]

Title: Relating to Mobile Home Warranties

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Protection

BRU, Program or Subprogram(s) Affected: Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	Ø				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	Ø	Ø				

ANALYSIS: Attach a separate page if necessary

Prepared By: Joe Swanson Phone: 345-7750

Division: Measurement Standards Date: 12/4/84

Approved by Commissioner: Richard A. Lyon RAL Date: 12.5.84

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84

1593M12384A

Administrative Dir.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 30, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to mobile home warranties. This bill increases government efficiency in enforcement of mobile home warranties, and encourages private consumer self-help.

The bill has two main components: (1) the creation of a private cause of action in a mobile home buyer against the manufacturer's bond, which AS 45.30.015 requires be posted with the state; and (2) a transfer of warranty enforcement authority from the Department of Commerce and Economic Development (DCED) to the Department of Law.

With regard to the first of the components, it is the understanding of both DCED and the Department of Law that, when the mobile home warranty statute, AS 45.30.011, took effect in 1980, a private buyer injured by a manufacturer who sold a defective home to a buyer in this state would be allowed to make a claim against the bond under AS 45.30.040. However, that statute only provided a procedure for the consumer to petition the state to take administrative action against the bond. Experience in the last few years has shown that a buyer may believe that he or she has a valid claim against the bond in a case in which the state enforcing authority does not agree that administrative action is warranted. Providing a clear, private cause of action against the bond may relieve a burden on the government by reducing the number of administrative hearings, and insure that an individual can choose to enforce his or her own rights, whether or not a state agency agrees with the individual.

The second component of the bill is a transfer of the warranty enforcement powers from DCED to the Department of Law. The April 1983 legislative audit of the division of measure-

ment standards, DCED, studied this issue and recommended

> The Department [of Commerce and Economic Development] should seek legislation to transfer the mobile home warranty enforcement program to the Consumer Protection Section of the Department of Law.

Both departments have agreed that this is a more efficient enforcement pattern, as the Department of Law, consumer protection section, already processes mobile home complaints that fall outside the warranty Act, as well as those that may duplicate warranty Act enforcement by DCED. In FY 84, DCED transferred the one mobile home investigator position to the Department of Law through a reimbursable services agreement.

The bill promotes government efficiency by encouraging private self-help, rather than reliance on government. I feel that it will have the support of both industry and consumers. I urge your affirmative action on this measure.

Sincerely,

Bill Sheffield
Governor

STATUTES RELATING TO CSHB 148(Jud)

CHAPTER = 45.30
SECTION = 45.30.011
TITLE = 45
HEADINGS TITLE 45.
Trade and Commerce.
CHAPTER 30.
Mobile Homes and Mobile Home Parks.
CITATION Sec. 45.30.011.
CATCH LINE
MOBILE HOME WARRANTIES.
TEXT (a) After August 27, 1980, a new mobile home sold by a mobile home dealer to a buyer is subject to a mobile home warranty. A mobile home warranty shall be set out in a separate written document entitled "Mobile Home Warranty" which shall be delivered to the buyer by the mobile home dealer at the time a contract of sale is signed. The warranty shall contain the name, address and telephone number of the mobile home manufacturer and the mobile home dealer and shall include at least the following provisions:

(1) the mobile home is free from any substantial defects in materials and workmanship;

(2) the manufacturer or dealer, or both, shall take appropriate action at the site of the mobile home to correct substantial defects in materials or workmanship which become evident within one year of the date of delivery of the mobile home to the buyer if the buyer, or his transferee, gives written notice of the defect by registered or certified mail addressed to the business address of the manufacturer or dealer on a date which is not more than one year and ten days after date of delivery of the mobile home;

(3) the manufacturer and the dealer are jointly and severally liable to the buyer, or his transferee, for the fulfillment of the terms of warranty, and the buyer may notify the manufacturer or the dealer, or both, in the event action is required to correct substantial defects in materials or workmanship;

(4) the warranty is applicable to the mobile home structure, its plumbing, heating and electrical systems, and all appliances and equipment installed or included in the mobile home unit by the manufacturer or dealer; and

(5) notwithstanding separate warranties applicable to appliances contained within a mobile home unit issued by the manufacturers of the appliances, primary responsibility for appropriate corrective action under the warranty rests with

the manufacturer and the dealer of the mobile home unit, and written notice of defects must be initially reported to them.

(b) The warranty provided under (a) of this section is in addition to and not in derogation of all other rights and remedies which a buyer may have under any other law or instrument.

(c) The manufacturer and the dealer may not require the buyer to waive his rights under (a) of this section. A waiver of rights required by a manufacturer or dealer is contrary to public policy and is unenforceable.

(d) A mobile home dealer shall display a notice of reasonable size stating the applicability of the warranty required by this section, and shall, upon request, provide a sample copy of the warranty. The notice shall be posted in each area in which purchase orders and sales contracts for mobile homes are written.

(e) The manufacturer shall compensate a mobile home dealer who incurs expenses as a result of warranty obligations for which the manufacturer is legally responsible or for obligations which the manufacturer imposes upon the dealer. A provision of contract which is contrary to this subsection is void as against public policy.

(f) In this section, a defect is "substantial" if it materially affects the fitness of the mobile home for occupancy or use by the buyer or his transferee.

HISTORY (Sec. 1 ch 104 SLA 1980)

CHAPTER = 45.30
SECTION = 45.30.015
TITLE = 45
HEADINGS TITLE 45.
Trade and Commerce.
CHAPTER 30.
Mobile Homes and Mobile Home Parks.
CITATION Sec. 45.30.015.
CATCH LINE
BONDS.
TEXT (a) A manufacturer constructing mobile homes for sale in the state shall deposit a performance bond in the amount of $35,000 with the department to assure compliance with the provisions of AS 45.30.011.

(b) A manufacturer who discontinues construction of mobile homes for sale in the state shall maintain a performance bond in the required amount for a period of 24 months after the date the last mobile home was delivered to a buyer in the state.

HISTORY (Sec. 1 ch 104 SLA 1980)

CHAPTER = 45.50
SECTION = 45.50.471
TITLE = 45
HEADINGS TITLE 45.
Trade and Commerce.
CHAPTER 50.
Competitive Practices and Regulation of Competition.

ARTICLE 4.
Unfair Trade Practices and Consumer Protection.

CITATION Sec. 45.50.471.

CATCH LINE

UNLAWFUL ACTS AND PRACTICES.

TEXT (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order,

contract, or receipt setting out the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of his estate; upon demand by the person on whose behalf the arrangements are made, all money

or property in the trust including accrued interest, shall be paid to him; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 45.50.850).

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) Repealed by sec. 21 ch 166 SLA 1978.

HISTORY (Sec. 2 ch 246 SLA 1970; am sec. 1 ch 53 SLA 1974; am sec. 1 ch 138 SLA 1974; am sec. 1 ch 183 SLA 1975; am sec. 2 ch 146 SLA 1976; am sec. 3 ch 197 SLA 1976; am sec. 3 ch 234 SLA 1976; am sec. 21 ch 166 SLA 1978)

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

168

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 168 (L&C)

Title: Act relating to Construction Contractors;

Sponsor: Representative Sund

Requestor: House Finance Committee

Date of Request: March 19, 1985

FISCAL DETAIL

Agency Affected: Commerce &Economic Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		69.3	96.9	101.7	106.8	112.2
200 TRAVEL		13.8	15.7	16.5	17.3	18.2
300 CONTRACTUAL		22.8	23.9	25.1	26.4	27.7
400 SUPPLIES		2.7	3.8	4.0	4.2	4.4
500 EQUIPMENT		8.4	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		117.0	140.3	147.3	154.7	162.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	117.0	140.3	147.3	154.7	162.5
FEDERAL FUNDS					
OTHER					
TOTAL	117.0	140.3	147.3	154.7	162.5

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0
PART-TIME	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary

See page 2 Attached for analysis.

Prepared By: Al Adams - Chairman (AFA)

Phone: 465-3706

Division: House Finance Committee

Date: March 19, 1985

Approved by Commissioner:

Date:

Agency:

Distribution (by Agency preparing fiscal note):

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

Current revenues generated by licensing fees harged construction contractors approximate $436.7. HB 78 provides for additional revenues should costs exceed those presently incurred.

This note provides two positions, one in Anchorage and one in Fairbanks to implement the citation procedure. Existing Headquarters staff from Juneau will service Southeast.

COST ANALYSIS FY 86 - Variable costs @ 9 months.

	ANCHORAGE	FAIRBANKS	JUNEAU
100	Investigator I - 28.0	Investigator III 41.3 (1)	-0-
200	3.8	5.0	5.0
300	7.0	9.8 (1)	6.0
400	0.9	0.9	0.9
500	4.2	4.2	-0-

(1) Fairbanks office stands alone, hence higher level investigator and cost of new office space.

STATE OF ALASKA 1985 LEGISLAT..E SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CS HB 168 (L&C)

Title: "An Act relating to construction contractors..."

Sponsor: Sund and Taylor

Requestor: House Finance

Date of Request: 3/14/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

Wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: RB Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 3/14/85

Approved by Commissioner: RB Jim Robison Date: 3/14/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

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

7/1/84

Offered: 2/25/85
Referred: Judiciary and Finance

Original sponsors: Sund, Taylor and Boucher

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 168 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to construction contractors; and providing for an effective date."

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

* Section 1. AS 08.18.011 is amended by adding a new subsection to read:

(b) A general contractor may not allow a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter.

* Sec. 2. AS 08.18.031 is amended by adding a new subsection to read:

(b) The commissioner may not issue a certificate of registration or renew the registration of an applicant whose registration has been revoked or suspended or against whom a fine has been imposed under this chapter until the period of revocation or suspension has expired and any fine has been paid.

* Sec. 3. AS 08.18.051 is amended to read:

Sec. 08.18.051. IDENTIFICATION REQUIREMENTS [REGISTERED NAME]. (a) Except as provided otherwise by [STATE] law, a [NO] person who has registered under one name as required by this chapter may not act in the capacity of a contractor under any other name unless that name also is registered.

(b) All advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor for the contracting business shall [WHICH] show the contractor's name, mailing

[AND] address, and address of the contractor's principal place of business. Advertising and contracts shall also include the contractor's registration number [SHALL SHOW THE NAME AND ADDRESS AS REGISTERED UNDER THIS CHAPTER].

(c) Individual contractors and partners, associates, agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses and the true name of the contractor firm at all times while acting in the capacity of a contractor or performing related activities.

* Sec. 4. AS 08.18.071(b) is amended to read:

(b) If the applicant is a general contractor the amount of the bond shall be $10,000 [$5,000]; if the applicant is a specialty contractor the amount of the bond shall be $5,000 [$2,000]. In lieu of the surety bond the applicant may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner [OF COMMERCE,] in the amount specified for bonds.

* Sec. 5. AS 08.18 is amended by adding new sections to article 3 to read:

Sec. 08.18.116. INVESTIGATIONS. Either the Department of Commerce and Economic Development or the Department of Labor may investigate alleged or apparent violations of this chapter. These departments, upon showing proper credentials, may enter, during regular hours of work, a construction site at which it appears that contracting work is being done. The departments may make inquiries about the identity of the contractor or the person acting in the capacity of a contractor. Upon demand, a contractor or person acting in the capacity of a contractor, or that person's representative, shall produce evidence of current registration.

Sec. 08.18.117. ISSUANCE OF CITATIONS. Either the Department of

Commerce and Economic Development or the Department of Labor may issue a citation for a violation if there is probable cause to believe a person has violated this chapter. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation.

Sec. 08.18.118. PROCEDURE AND FORM OF CITATION ISSUANCE AND PROCEDURE. (a) A citation issued under this chapter shall be in writing. A person receiving the citation is not required to sign a notice to appear in court.

(b) The time specified in the notice to appear on a citation issued under this chapter shall be at least five days, not including weekends and holidays after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The Department of Commerce and Economic Development and the Department of Labor are responsible for the issuance of books containing appropriate citations, and each shall maintain a record of each book issued and each citation contained in it. Each department shall require and retain a receipt for every book issued to an employee of the department designated by the commissioner to provide investigative services to enforce provisions of this chapter.

(d) An employee who issues a citation under this chapter shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The employee who issued the citation may not dispose of it or copies of it or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The Department of Commerce and Economic Development and the

Department of Labor shall require the return of a copy of every citation issued by an employee of the respective department under this chapter, and of all copies of every citation that has been spoiled or upon which an entry has been made and not issued to an alleged violator. The departments shall also maintain, in connection with every citation issued by an employee of the respective department, a record of the disposition of the charge by the court where the original or copy of the citation was deposited.

(f) If the form of citation issued under this chapter includes the essential facts constituting the offense charged, and if the citation is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution.

Sec. 08.18.119. FAILURE TO OBEY CITATION. Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, a person who without lawful justification or excuse fails to appear in court to answer a citation issued under this chapter, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

* Sec. 6. AS 08.18.121(f) is amended to read:

(f) If the Department [COMMISSIONER] of Labor or the Department of Commerce and Economic Development [LABOR] determines that a contractor or a person [IS] acting in the capacity of [AS] a contractor, is in violation of this chapter, that department may [THE COMMISSIONER SHALL] give written notice to the person prohibiting further action by the person as a contractor. The prohibition continues until the person has submitted evidence acceptable to that department [THE COMMISSIONER OF LABOR] showing that the violation has been corrected.

* Sec. 7. AS 08.18.121(g) is amended to read:

(g) A person affected by an order issued under this chapter may seek equitable relief preventing the Department of Labor or the Department of Commerce and Economic Development [COMMISSIONER OF LABOR] from enforcing the order.

* Sec. 8. AS 08.18.131 is amended to read:

Sec. 08.18.131. INJUNCTION. In an action instituted in the superior court by the commissioner [OF LABOR OR THE COMMISSIONER'S REPRESENTATIVE], a person may be enjoined from acting in the capacity of a contractor in violation of this chapter [MAY BE ENJOINED FROM DOING SO]. In addition to other relief, a civil penalty not to exceed $250 may be imposed for each violation. Each day that an unlawful act continues constitutes a separate violation.

* Sec. 9. AS 08.18.141 is amended to read:

Sec. 08.18.141. MISDEMEANOR. (a) A contractor or a person acting in the capacity of a contractor in violation of AS 08.18.011 [THIS CHAPTER] is guilty of a class B misdemeanor. A person who violates another provision of this chapter is guilty of a violation punishable under AS 12.

(b) Criminal prosecution for a violation of this chapter does not preclude the Department of Commerce and Economic Development or the Department of Labor from seeking available civil remedies.

* Sec. 10. AS 08.18.171 is amended by adding a new paragraph to read:

(4) "department" means the Department of Commerce and Economic Development, unless the context indicates otherwise.

* Sec. 11. Sections 1, 2 and 4 - 10 of this Act take effect July 1, 1985.

* Sec. 12. Section 3 of this Act takes effect July 1, 1986.

* Sec. 13. Section 4 of this Act applies to general contractor and

Amend- E. Com- mea- both CEP & L.

specialty contractor licenses that are issued or renewed by the Department of Commerce and Economic Development after July 1, 1985.

Bannister
4/16/85✓

Original sponsors: Sund, Taylor
and Boucher

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 168 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to construction contractors; and providing for an effective date."

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

* Section 1. AS 08.18.011 is amended by adding a new subsection to read:

(b) A general contractor may not allow a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter.

DCED

* Sec. 2. AS 08.18.031 is amended by adding a new subsection to read:

(b) The commissioner may not issue a certificate of registration or renew the registration of an applicant whose registration has been revoked or suspended or against whom a fine has been imposed under this chapter until the period of revocation or suspension has expired and any fine has been paid.

* Sec. 3. AS 08.18.051 is amended to read:

Sec. 08.18.051. IDENTIFICATION REQUIREMENTS [REGISTERED NAME]. (a) Except as provided otherwise by [STATE] law, a [NO] person who has registered under one name as required by this chapter may not act in the capacity of a contractor under any other name unless that name also is registered.

(b) All advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor for the contracting business shall [WHICH] show the contractor's name, mailing

[AND] address, and address of the contractor's principal place of business. Advertising and contracts shall also include the contractor's registration number [SHALL SHOW THE NAME AND ADDRESS AS REGISTERED UNDER THIS CHAPTER].

(c) Individual contractors and partners, associates, agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses and the true name of the contractor firm at all times while acting in the capacity of a contractor or performing related activities.

* Sec. 4. AS 08.18.071(b) is amended to read:

(b) If the applicant is a general contractor the amount of the bond shall be $10,000 [$5,000]; if the applicant is a specialty contractor the amount of the bond shall be $5,000 [$2,000]. In lieu of the surety bond the applicant may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner [OF COMMERCE,] in the amount specified for bonds.

* Sec. 5. AS 08.18 is amended by adding new sections to article 3 to read:

Sec. 08.18.116. INVESTIGATIONS. Either the Department of Commerce and Economic Development or the Department of Labor may investigate alleged or apparent violations of this chapter. These departments, upon showing proper credentials, may enter, during regular hours of work, a construction site at which it appears that contracting work is being done. The departments may make inquiries about the identity of the contractor or the person acting in the capacity of a contractor. Upon demand, a contractor or person acting in the capacity of a contractor, or that person's representative, shall produce evidence of current registration.

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Commerce and Economic Development or the Department of Labor may issue a citation for a violation if there is probable cause to believe a person has violated this chapter. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation.

Sec. 08.18.118. PROCEDURE AND FORM OF CITATION ISSUANCE AND PROCEDURE. (a) A citation issued under this chapter shall be in writing. A person receiving the citation is not required to sign a notice to appear in court.

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(c) The Department of Commerce and Economic Development and the Department of Labor are responsible for the issuance of books containing appropriate citations, and each shall maintain a record of each book issued and each citation contained in it. Each department shall require and retain a receipt for every book issued to an employee of the department designated by the commissioner to provide investigative services to enforce provisions of this chapter.

(d) An employee who issues a citation under this chapter shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The employee who issued the citation may not dispose of it or copies of it or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The Department of Commerce and Economic Development and the

Department of Labor shall require the return of a copy of every citation issued by an employee of the respective department under this chapter, and of all copies of every citation that has been spoiled or upon which an entry has been made and not issued to an alleged violator. The departments shall also maintain, in connection with every citation issued by an employee of the respective department, a record of the disposition of the charge by the court where the original or copy of the citation was deposited.

(f) If the form of citation issued under this chapter includes the essential facts constituting the offense charged, and if the citation is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution.

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* Sec. 6. AS 08.18.121(f) is amended to read:

(f) If the Department [COMMISSIONER] of Labor or the Department of Commerce and Economic Development [LABOR] determines that a contractor or a person [IS] acting in the capacity of [AS] a contractor, is in violation of this chapter, that department may [THE COMMISSIONER SHALL] give written notice to the person prohibiting further action by the person as a contractor. The prohibition continues until the person has submitted evidence acceptable to that department [THE COMMISSIONER OF LABOR] showing that the violation has been corrected.

* Sec. 7. AS 08.18.121(g) is amended to read:

(g) A person affected by an order issued under this chapter may seek equitable relief preventing the Department of Labor or the Department of Commerce and Economic Development [COMMISSIONER OF LABOR] from enforcing the order.

* Sec. 8. AS 08.18.131 is amended to read:

Sec. 08.18.131. INJUNCTION. In an action instituted in the superior court by the commissioner of labor or the commissioner of commerce and economic development, the court may enjoin [COMMISSIONER'S REPRESENTATIVE,] a person from acting in the capacity of a contractor in violation of this chapter. In addition to other relief, the court may impose a civil penalty of not more than $250 for each violation. Each day that an unlawful act continues constitutes a separate violation [MAY BE ENJOINED FROM DOING SO].

* Sec. 9. AS 08.18.141 is amended t· read:

Sec. 08.18.141. MISDEMEANOR. (a) A contractor or a person acting in the capacity of a contractor in violation of AS 08.18.011 [THIS CHAPTER] is guilty of a class B misdemeanor. A person who violates another provision of this chapter is guilty of a violation punishable under AS 12.

(b) Criminal prosecution for a violation of this chapter does not preclude the Department of Commerce and Economic Development or the Department of Labor from seeking available civil remedies.

* Sec. 10. AS 08.18.171 is amended by adding a new paragraph to read:

(4) "department" means the Department of Commerce and Economic Development, unless the context indicates otherwise.

* Sec. 11. Sections 1, 2 and 4 - 10 of this Act take effect July 1, 1985.

* Sec. 12. Section 3 of this Act takes effect July 1, 1986.

* Sec. 13. Section 4 of this Act applies to general contractor and specialty contractor licenses that are issued or renewed by the Department of Commerce and Economic Development after July 1, 1985.

Chairman's Information:

1) CSHB 168 (L&C) "An act relating to construction contractors; and providing for an effective date."

   a) Introduced: Sund

   b) Co-Sponsors: Taylor and Boucher

2) INTENT: To better protect the public from unlicensed and unbonded construction contractors. The bill increases the bonding requirements for general and special contractors, provides for the issuance of citations, and the assessment of civil penalties. Further, this legislation enhances the Department of Labor's enforcement authority and provides such authority to DCED so they can work in concert.

   FISCAL NOTE: 117.0 FY86 for DCED; House letter of intent establishes that the fiscal note is to be shared between Dept of Labor and DCED;

   Note: NEED TO ADOPT HOUSE LETTER OF INTENT

3) ADDITIONAL REFERRALS: Judiciary and Finance.

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption? → L&C SCS contains changes on page 5, lines 8-10; Designates Both Commissioners of Labor & DCED to institute injunctions in Superior Court and makes gramatical changes which puts section in the "active voice."

House Finance Committee
Letter of Intent
for
CSHB 168 (Labor and Commerce)

This bill intends to expand the enforcement authority over contractors by both the Department of Labor and the Department of Commerce and Economic Development. It is the intent that funds provided by the fiscal note be shared by both departments taking into account existing enforcement personnel, capabilities, and office locations.

Al Adams, Chairman
House Finance Committee

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 20, 1985

MEMORANDUM

TO: Representative John Sund

FROM: Nancy Pease Nancy Pease
Legislative Analyst

RE: Licensing and Bonding of Contractors: Update
Research Request 85-180

Kitty Rodriguez of your staff requested an update of Research Request 83-251, "Licensing and Bonding of Contractors in Other States." I have contacted each of the eight states originally surveyed and amended the summary table accordingly (see attachment).

Licensing requirements do not appear to have changed in the eight states surveyed. Of the eight states surveyed, only Ohio has no state licensing or bonding requirements for contractors. However, Ohio counties and municipalities may license and bond contractors. Michigan and Oregon license general and specialty contractors for residential construction but not for commercial construction. Idaho and Montana contractors must be state-licensed in order to bid for public works contracts let by the state, federal or local governments but not for contracts with the private sector. Several states exempt contractors from obtaining licenses for jobs below a designated cost limit. California waives contractor licensing requirements for jobs costing less than $200 while Montana waives licensing requirements for public works jobs costing less than $5,000.

As noted in the earlier memorandum, licensing requirements vary considerably from trade to trade and state to state. Several states, including Alaska, Washington and Oregon, register as contractors persons who are not personally qualified in skilled trades for which they will be contracting. These contractors may be required to hire or subcontract a qualified, licensed specialty tradesman as a condition of the contracting license. Alaska, Washington and Oregon require contracting license applicants to provide proof of liability insurance in addition to a surety bond or assignment of savings. In Alaska and Washington, applicants must carry a minimum coverage of $20,000 for property damage and $100,000 for personal injury to more than one person.

[redacted]

Backup

The summary table shows several changes in bond requirements. Washington has increased the amount of the bonds required of general and specialty construction contractors. Oregon now requires a $5,000 bond for all residential contractors; previously the bond amount varied for general and specialty contracting. Michigan no longer requires a $2,000 bond for specialty contractors but does require a $50 deposit to the Construction Lien Recovery Fund for each specialty trade a contractor practices. Michigan also requires a $1,000 bond before licensing nonresident electricians.

I hope this information is helpful. If you have further questions, please let us know.

NP

Attachments

LICENSING AND BONDING OF CONTRACTORS IN NINE STATES

	Electrical work	Plumbing	General Building Contracting	Specialty Contracting
Alaska[1,2]	license bond ($2,000)	license bond ($2,000)	license bond ($5,000)	license bond ($2,000)
California[3,4]	license bond ($5,000)	license bond ($5,000)	license bond ($5,000)	license bond ($5,000)
Colorado	license ---	license ---	--- ---	--- ---
Idaho	license ---	license bond ($2,000)	license for public works ---	license for public works ---
Michigan[5]	license bond ($50 or $1,000)	license ---	license for residential constr. ---	license for residential constr. bond ($50)
Montana[6]	license ---	license ---	license for public works ---	license for public works ---
Ohio	--- ---	--- ---	--- ---	--- ---
Oregon[1,7]	license bond for residential constr.($5,000)	license bond for residential constr. ($5,000)	license for residential constr. bond ($5,000)	license for residential constr. bond ($5,000)
Washington[1,8]	license bond ($3,000)	license bond as general contractor($6,000)	license bond ($6,000)	license bond ($4,000)

Footnotes: See Next Page

FOOTNOTES

[1]Applicants for contracting licenses must provide proof of liability insurance. In Washington and Alaska, applicants must carry a minimum of $20,000 for propertty damage and $100,000 for personal injury or death of more than one person.

[2]AS 8.18.171 defines "general contractor" as a contractor whose business operations require the use of more than two distinct trades whose work the general contractor superintends; the terms "general contractor" and "builder" are synony mous: a "specialty contractor" is a contractor whose operations do not fall within the definition of "general contractor". Contractors are persons who undertake or bid for projects to construct, alter, repair, move or demolish a building, highway, road, railroad, or a type of fixed structure, including excavation, site development and erection of scaffolds.

[3]No contracting license is required for projects costing less than $200. A bond of three to ten times this amount is required for the licensing of applicants who have been a party to business infractions resulting in the revocatio their own or other contractors' licenses. Swimming pool contractors must post a bond of $10,000.

[4]If the responsible managing employee of a construction firm does not himself own at least 20 percent of the inte the firm, the managing employee may be required to post a $5,000 "qualifying individual" bond in addition to the $5,000 licensing bond.

[5]The bond takes the form of a Deposit to the Homeowners Construction Lien Recovery Fund. The amount of the bond i usually $50. Michigan requires a $1,000 bond before licensing nonresident electricians.

[6]No contracting license is required for public works projects costing under $5,000.

[7]Bonds are required for residential construction (building projects of up to four residential units). All construction trades satisfy the bond requirement for residential construction through the Builders Board.

[8]Washington plumbers must post bonds and apply for contracting licenses as general contractors if they let bids, supervise workers or perform more than two specialty trades.

Prepared by House Research Agency, February 1985.

February 18, 1985

SUMMARY OF CONSUMER COMPLAINTS
INVOLVING CONTRACTOR DISPUTES
Received by the Consumer Protection Section
Department of Law

Fiscal year 1984

We received a total of 136 consumer complaints in FY 84 that involved a contractor or specialty contractor. Six of those consumer complaint files are still pending in our section.

We recovered a total of $15,423.30 for consumers on these complaints. We estimate that we recover only about 10% to 20% of the money consumers claim is due them in these types of complaints, so that the amount actually claimed as consumer loss is estimated to have been approximately $75,000 - $150,000. Because of our questionable jurisdiction over real property transactions we believe many consumers do not file complaints with our office who otherwise would. Our overall recovery rate on all types of consumer complaints is near 50%.

Fiscal year 1985

To date in FY 85 we have received 114 consumer complaints and have recovered $15,448.31 for consumers. Of the 114 complaints filed in FY 85, 41 are still pending. We estimate the total value of these 114 claims as $60,000 - $100,000 on the same basis as explained in the FY 84 summary.

Background Info.

March 28, 1985

HB168- An act relating to construction contractors and providing for an effective date.
OVERVIEW prepared by Rep. John Sund's office

HISTORY OF THE BILL

As the law now stands, anyone wishing to work as contractor must have a license. General contractors must have a $5,000 bond and specialty contractors must have a $2,000 bond.

Little protection is provided to the consumer who receives shoddy work from an unlicensed contractor. He is likely to find that the contractor has left the state and did not post a bond. Also, an unlicensed contractor who does not comply with the law can operate more cheaply and is likely to outbid a licensed contractor.

Enforcement is the job of the Department of Commerce and Economic Development. However, enforcement has been lax for two reasons:
1) a lack of enforcement powers. Cease and desist orders can be issued to a contractor who does not have proper bonding or a license, but criminal prosecution is rare.
2) a lack of personnel. Once a cease and desist order has been issued, the investigator might not return to the site until work has been completed and the contractor has left. The department is not able to effectively monitor contractors at their current staffing level.

HB610, introduced in 1984, began as a vehicle for creating a Board of Builders and, as CSHB610, focused on changes which were substantially similar to HB168. It passed the House with a vote of 34 yeas and 6 nays and was left in the Senate upon adjournment.

PURPOSE OF THE BILL

Under CSHB168, a general contractor must post a $10,000 bond and a specialty contractor must post a $5,000 bond. This essentially doubles the current level required and will allow more adequate compensation for unacceptable work, since the licensing procedure in itself does not guarantee competency.

A contractor must show his registration number in all ads. This is intended to heighten consumer awareness of licensing and bonding requirements when choosing a contractor.

The Department of Commerce and Economic Development and the Department of Labor will have citation authority. They will have the authority to enter work sites to inspect licenses. Working without a license will be a Class B misdemeanor.

A $117,000 fiscal note provide 2 Investigator positions, in Anchorage and Fairbanks, and travel monies for two already existent Juneau positions, to enforce contractor requirements. These provisions will strengthen the enforcement of current regulations.

Bill No. Committee Substitute for House Bill No. 168 (L&C) Date March 29, 1985

Title "An Act relating to construction contractors; and providing for an effective date."

Contact: Eileen Plate
465-2700
Robert J. Bacolas
465-4870

APR 1 5

Committee Substitute for House Bill No. 168 seeks to strengthen the contractor licensing enforcement powers of the Department of Labor and the Department of Commerce and Economic Development.

Currently, the Department of Commerce is responsible for the registration of construction contractors, with enforcement being provided by the Department of Labor. The Department of Labor's enforcement is primarily carried out in connection with other inspection/enforcement responsibilities (mechanical inspections, occupational safety and health inspections, and wage and hour investigations). This bill extends enforcement authority to the Department of Commerce in order that it may focus on residential construction and other areas where the Department of Labor is not highly visible. This would bridge the gap that presently exists in contractor licensing enforcement.

In addition, this bill increases the bonding requirements for both general and specialty contractors, and provides for the issuance of citations, the assessment of civil penalties, and the imposition of injunctive relief for violations of the contractor licensing laws.

The provisions of this bill are designed to combat the proliferation of unlicensed contractors in the state in order to better protect the public from unlicensed and unbonded construction contractors.

A section-by-section analysis of this bill is attached.

The Department of Labor supports passage of this bill. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/- Position paper: Dept. of Labor

Department of Commerce & Economic Development / POSITION PAPER

CSHB 168 (L & C): An Act relating to Construction Contractors; and providing for an effective date.

The Department of Commerce and Economic Development supports CSHB 168 (L & C).

The committee substitute provides the Department of Commerce and Economic Development and the Department of Labor the authority to enforce unlicensed activity with a strong citation program.

Unlicensed activity in the area of construction contractors has been a rapidly growing problem. A joint effort by the departments will strengthen enforcement ability.

The bill also increases bonding requirements and adds additional requirements to mandate that a contractor identify the principal place of business, mailing address and license number.

Harry D. Treager, Director
Division of Occupational Licensing

DATE: February 22, 1985

for Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

DATE: 2/26/85

1572m

Position paper: Dept. of Commerce and Economic Development

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 168(L&C) Sectional Analysis:

Section 1) Adds a new subsection which makes it unlawful for a general contractor to allow a specialty contractor to begin working for him, unless the specialty contractor is licensed.

Section 2) Adds a new subsection which prohibits the commissioner of DCED from issuing a new or renewal registration to a contractor whose registration is currently revoked or suspended, or who has an outstanding fine imposed under this chapter.

Section 3) Subsection (a) makes grammatical changes; subsection (b) and (c) add the principal place of business, the contractor's registration number, and the true name of the firm, to the list of items required in all advertising and contracts.

Section 4) Increases the bond requirements for general contractors from $5,000 to $10,000, and increases the bond requirements for specialty contractors from $2,000 to $5,000.

Section 5) Adds a new section which allows DCED and DOL the authority to investigate alleged violations of this chapter, to issue citations for violations, including the issuance of citations for each day a violation continues. This section also requires records of citations to be maintained by the commissioner, and that there be at least 5 days between the issuance of a citation and the notice to appear. A person failing to appear is guilty of a class "B" misdemeanor.

Section 6&7) reflect the dual authority of DCED and DOL

Section 8) Allows both the Commissioners of DCED and DOL to institute an injunctive proceeding in Superior court and impose a civil penalty not to exceed $250 for each violation of this chapter.

Section 9) Provides that an unlicensed contractor, or a general contractor who hires an unlicensed specialty contractor, is guilty of a class "B" misdemeanor (maximum 90 days jail/$1,000 fine).

Further provides that criminal prosecution does not preclude the departments from seeking civil remedies as well.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4211 SLAB HB 217 - HB 229

1691

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

217

4-14-86

TESTIMONY OF RICHARD T. HALL
SENIOR VICE PRESIDENT, NATIONAL BANK OF ALASKA

Proposed SCS CSHB-217 (Labor and Commerce)

Mr. Chairman, my name is Richard T. Hall. I am Senior Vice President of National Bank of Alaska. My remarks today pertain to a proposed Senate Committee substitute for CSHB-217.

There are three banks offering credit card services in Alaska (1st National, Alaska National Bank of the North and National Bank of Alaska), and while I can only speak for National Bank of Alaska, we have discussed this legislation over the years and find we have similar views and support passage of this bill in its current form but may approach any rate change from a different philosophy.

Approximately 150,000 Alaskans who have VISA and Mastercharge cards issued by Alaska banks are not getting the full benefits of falling interest rates, a result of the way Alaska's laws on credit card interest rates are structured.

What's more, current state laws are placing Alaska banks who offer charge card services at a competitive disadvantage with new competition from out-of-state banks who have recently captured about half the Alaska credit card market and who, ironically, charge substantially higher rates than the local banks.

This results in Alaska banks being disadvantaged, local jobs jeopardized, and in consumers paying higher rates and getting less service than would be the case if we adopt HB217. Passage of this bill will allow the open market to establish rates.

Current law leads to the opposite of state policy that should promote consumer protection, local employment, and business development in Alaska.

Alaska's law - the problem

Alaska is one of the five states with laws restricting interest rates on charge cards that are, on the average, less than what they would be in the open market. But the real problem is not so much the limit, but the way the limit is structured.

Alaska has a "two-tier" limit, a top rate of 18% on the first $1,000 owed on local bank cards, and a lower rate on balances over $1,000 that "floats" at five points over the federal discount rate. Because the discount rate has been falling, this lower rate is now 12%.

Like any other price control, these limits create distortions and shortages in the marketplace. The shortage is in the ability of Alaska banks to offer lower-cost credit card services to local consumers, many of whom must turn to out-of-state cards which charge higher interest rates. Alaska law, therefore, results in service being denied to people the law is intended to protect. State laws do not apply to out-of-state banks who issue cards under more liberal laws of their home states. Some of these rates approach 20%. For example, Sears will charge 19.8% with its new "Discover" card and plans to aggressively promote the card nationwide in 1986. Bank of America charges 19.8% and even Citibank, the largest bank in the nation charges 19.8%.

But an almost bizarre distortion is this: The "two-tier" structure of the Alaska law creates a situation where a majority of card owners who carry relatively low balances on their cards pay the maximum 18% rate, while a minority of more affluent card owners can carry large balances at the lower 12% rate. In effect, they use the card as a source of cheap credit. In other words, the less affluent majority are subsidizing low credit card rates to a more affluent minority.

The solution

House Bill 217, now before you, would partly deregulate Alaska's limit on credit card interest rates by removing the lower limit on balances over $1,000. While the 18% maximum rate would remain. Actual rates on this portion today would fall in the current interest rate environment. This has happened in the other states with one uniform interest rate limit. It is also demonstrated in Alaska where, due to a technicality in the federal credit union statute, a credit union in Alaska is able to charge up to a legal maximum of 21%.

But in actuality, they are only charging 16.5%. This is one reason why, if current laws were changed, the majority of Alaskans with locally-issued bank cards could see a reduction, possibly to 16.5% or less.

But just as important, sufficient earnings would enable local banks to extend service to far more people. These are the people who would enjoy the greatest benefit under the change, since they would not have to buy or look for service to the more expensive or higher rate out-of-state cards.

With earnings now restricted, local banks are themselves restricted as to how widely they can offer card services. Credit card operations are much more complex and expensive to operate than conventional bank lending activity. Because of this, Alaska banks must be restrictive in the issuing of cards. The system results in people being turned away. Out-of-state banks, because they charge higher rates and have huge volumes, can afford to be less restrictive and, therefore, more competitive in Alaska.

Who wins? Who loses with passage of HB217

The winners would include most Alaska consumers and, yes, local banks who offer card services. The majority of those now holding Alaskan-issued bank cards would see a rate reduction. But the real winners are those now unable to get local cards who must buy cards from out-of-state banks. They would enjoy the most substantial gain.

Other winners would include those employees who work in the credit card and accounting departments of banks offering card services, whose jobs would be more secure because the banks can be more competitive against the out-of-state competition.

The losers? To some extent, a small number of those relatively more affluent Alaskans who can take advantage of the current system by using their credit cards as a source of inexpensive credit. For these people, rates would increase.

Other losers would include out-of-state banks, for certain. Alaska bank card services, with lower rates, would be able to serve far more people and capture back that portion of the market lost to the competition.

A 17-year perspective

National Bank of Alaska brought the VISA card to Alaska 17 years ago. We brought it because consumers demanded it for the convenience of its use. It was a service to smaller merchants, who could be relieved of the burden of carrying expensive credit service or accounts receivable in competing with larger retailers. And by providing the service, the local banks had hoped to make a profit.

Unfortunately, times have changed. The program no longer benefits the consumer, many of whom are driven to buy out-of-state cards at higher interest rates. Alaska banks have not attained their profit objectives and, further, have been put into a disadvantaged position against out-of-state card issuers. While merchants have benefited, they could benefit even more through this legislation.

If ever there was a state policy contrary to the spirit of Alaska-hire, benefits to the consumer, and local preference, we are now in that position. We urge you to pass this committee substitute.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SCS CSHB 217(L&C): Sectional Analysis (UPDATED TO REFLECT 5/2 CHANGES IN SCS)

Section 1) Amends the Small Loans Act by requiring a lender who violates the interest rate provisions of that act to reimburse the extra interest and charges. In the case of repeated violations, the commissioner may, after a hearing, require the lender to reduce the interest and charges to 10.5% per annum.

Section 2) Extends the same provisions of section 1 to the Premium Finance Act; i.e. reimbursal for interest charged in excess of the terms of that act, and after repeated violations, adjustment of the interest rate to 10.5%.

Section 3) Increases the interest rate on judgements and decrees from 10.5% to 14%.

Section 4) Repeals and reenacts the service charge provisions of the Retail Sales Installment Act by increasing the rate to 1.5% per month (18% per annum).

The 5/2 SCS eliminates the 1.5% per month interest rate and, and replaces that figure with a 17% per year interest rate.

Section 5) Concerns the "most favored lender doctrine" and states that Alaska declines to override the federal preemption provisions.

Section 6) July 1, 1986 effective date.

CHAIRMAN'S INFORMATION: CSHB 217(Jud)

1) BILL TITLE: " An act relating to interest rates on judgements and decrees, interest rates on agreements subject to the provisions of AS 06 and AS 45, and certain interest rate preemptions by the federal government; and providing for an effective date."

a) Introduced: Duncan, Pearce, Ringstad, Boucher

b) Co-sponsors:

2) INTENT: The L&C CS amends the Small Loans Act and the Premium Finance Act, increases the interest rate on judgements and decrees from 10.5% to 14%, and increases the service charge provision of the Retail Installment Sales Act to 1.5% per month or 18% per annum.

Section 5 of the CS states that Alaska declines to overide the federal "most favored lender doctrine".

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt Senate L&C CS

SCS 5/2 change
Pg 1 line 16

Bannister
5/2/86 ✓

Original sponsors: Duncan, Pearce,
Ringstad and Boucher

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 217 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to interest rates on judgments and decrees, interest rates on agreements subject to the provisions of AS 06 and AS 45, and certain interest rate preemptions by the federal government; and providing for an effective date."

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

* Section 1. AS 06.20.320(a) is amended to read:

(a) A licensee or lender who, in the making or collection of a loan contract, does any act <u>that</u> [WHICH] violates AS 06.20.230 - 06.20.260 or 06.20.280 - 06.20.310 shall at the option of the commissioner reimburse the portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the licensee, the commissioner may, upon a hearing, require the licensee to adjust the loan contract interest or other charges down to <u>10.5 percent a year</u> [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 2. AS 06.40.160(a) is amended to read:

(a) A lender who, in the making of any contract, loan or premium finance agreement or the collection of interest or charges, does any act <u>that</u> [WHICH] violates AS 06.40.010, 06.40.020, 06.40.090, or 06.40.110 - 06.40.130 shall at the option of the commissioner reimburse that portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the lender, the lender shall adjust the contract,

loan, or premium finance agreement interest and other charges down to 10.5 percent a year [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 3. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 14 [10.5] percent a year, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 4. AS 45.10.120(c) is repealed and reenacted to read:

(c) A seller or holder of a retail charge agreement, revolving charge agreement or other retail charge agreement may charge, receive and collect a service charge computed on the outstanding balance from month to month at a monthly rate that results in 17 percent a year. If the service charge so computed is less than $1 for any month, then the service charge is $1. The service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than $5 provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

REPHRASED

* Sec. 5. AS 45.45 is amended by adding a new section to read:

Sec. 45.45.015. ELECTION NOT TO OVERRIDE FEDERAL PREEMPTION. In accordance with Section 525 of P. L. 96-221 (the Depository Institutions Deregulation and Monetary Control Act of 1980), the state declines to override the federal interest rate preemption provisions contained in Sections 521, 522, and 523 of that act.

* Sec. 6. This Act takes effect July 1, 1986.

Bannister
4/7/86

Original sponsors: Duncan, Pearce, Ringstad and Boucher

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 217 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to interest rates on judgments and decrees, interest rates on agreements subject to the provisions of AS 06 and AS 45, and certain interest rate preemptions by the federal government; and providing for an effective date."

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

* Section 1. AS 06.20.320(a) is amended to read:

(a) A licensee or lender who, in the making or collection of a loan contract, does any act that [WHICH] violates AS 06.20.230 - 06.20.260 or 06.20.280 - 06.20.310 shall at the option of the commissioner reimburse the portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the licensee, the commissioner may, upon a hearing, require the licensee to adjust the loan contract interest or other charges down to 10.5 percent a year [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 2. AS 06.40.160(a) is amended to read:

(a) A lender who, in the making of any contract, loan or premium finance agreement or the collection of interest or charges, does any act that [WHICH] violates AS 06.40.010, 06.40.020, 06.40.090, or 06.40.110 - 06.40.130 shall at the option of the commissioner reimburse that portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the lender, the lender shall adjust the contract,

loan, or premium finance agreement interest and other charges down to 10.5 percent a year [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 3. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 14 [10.5] percent a year, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 4. AS 45.10.120(c) is repealed and reenacted to read:

(c) A seller or holder of a retail charge agreement, revolving charge agreement or other retail charge agreement may charge, receive and collect a service charge at a rate of 1.5 percent a month computed on the outstanding balance from month to month. If the service charge so computed is less than $1 for any month, then the service charge is $1. The service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than $5 provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

* Sec. 5. AS 45.45 is amended by adding a new section to read:

Sec. 45.45.015. ELECTION NOT TO OVERRIDE FEDERAL PREEMPTION. In accordance with Section 525 of P. L. 96-221 (the Depository Institutions Deregulation and Monetary Control Act of 1980), the state declines to override the federal interest rate preemption provisions contained in Sections 521, 522, and 523 of that act.

* Sec. 6. This Act takes effect July 1, 1986.

Offered: 4/23/85
Referred: Rules

Original sponsors: Duncan, Pearce,
Ringstad and Boucher

IN THE HOU BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 217 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to interest rates on judgments and decrees, interest rates on agreements subject to the provisions of AS 06 and AS 45, and certain interest rate preemptions by the federal government; and providing for an effective date."

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

* Section 1. AS 06.20.320(a) is amended to read:

(a) A licensee or lender who, in the making or collection of a loan contract, does any act <u>that</u> [WHICH] violates AS 06.20.230 - 06.20.260 or 06.20.280 - 06.20.310 shall at the option of the commissioner reimburse the portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the licensee, the commissioner may, upon a hearing, require the licensee to adjust the loan contract interest or other charges down to <u>10.5 percent a year</u> [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 2. AS 06.40.160(a) is amended to read:

(a) A lender who, in the making of any contract, loan or premium finance agreement or the collection of interest or charges, does any act <u>that</u> [WHICH] violates AS 06.40.010, 06.40.020, 06.40.090, or 06.40.110 - 06.40.130 shall at the option of the commissioner reimburse that portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the lender, the lender shall adjust the contract,

loan, or premium finance agreement interest and other charges down to 10.5 percent a year [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 3. AS 06.45.060(5)(A)(vi) is amended to read:

(vi) the rate of interest may not exceed [THE GREATER OF 15 PERCENT A YEAR OR] the rate specified in AS 45.45.010(b);

* Sec. 4. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 14 [10.5] percent a year, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 5. AS 45.10.120(c) is repealed and reenacted to read:

(c) A seller or holder of a retail charge agreement, revolving charge agreement or other retail charge agreement may charge, receive and collect a service charge at a rate of 1.5 percent a month computed on the outstanding balance from month to month. If the service charge so computed is less than $1 for any month, then the service charge is $1. The service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than $5 provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

* Sec. 6. AS 45.45.010(b) is amended to read:

(b) Interest may not [NO INTEREST MAY], be charged by express agreement of the parties in a contract or loan commitment which for

loans of $10,000 or under is more than six and one-half [FIVE] percentage points and for loans over $10,000 and not more than $25,000 is more than 10 percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds $25,000 is exempt from the limitation of this subsection.

* Sec. 7. AS 45.45 is amended by adding a new section to read:

Sec. 45.45.015. ELECTION TO OVERRIDE FEDERAL PREEMPTION. In accordance with Section 525 of Public Law 96-221 (the Depository Institutions Deregulation and Monetary Control Act of 1980), the state declares that it overrides the federal interest rate preemption provisions contained in the following sections of that act:

(1) section 521, which amends the Federal Deposit Insurance Act (12 U.S.C. 1811-1832) with respect to the interest rate that may be taken, received, reserved, or charged on a loan or discount made, or on a note, bill of exchange, or other evidence of debt, by foreign bank branches and state-chartered banks that are insured in accordance with that act;

(2) section 522, which amends subchapter IV of the National Housing Act (12 U.S.C. 1724-1730g) with respect to the interest rate that may be taken, received, reserved, or charged on a loan or discount made, or on a note, bill of exchange, or other evidence of debt, by institutions that are insured under that subchapter; and

(3) section 523, which amends section 205 of the Federal Credit Union Act (12 U.S.C. 1785) with respect to the interest rate that may be taken, received, reserved, or charged on a loan by a credit union that is insured in accordance with subchapter II of the Federal Credit Union Act (12 U.S.C. 1781 - 1790).

* Sec. 8. This Act takes effect July 1, 1985.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 217

Title: An Act relating to interest rates

Sponsor: Duncan, et al.

Requestor: House Special Committee on Loans

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Banking and Securities

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: N. T. Lusk Phone: 465-2521

Division: Banking, Securities and Corporation Date:

Approved by Commissioner: Loren H. Lounsbury Date: 3/7/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84

1736Wa22285a

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

229

COOPERATIVE EXTENSION SERVICE
UNIVERSITY OF ALASKA, USDA & SEA GRANT COOPERATING

P.O. Box 521, Cordova, Alaska 99574

March 7, 1985

Clemens A. Ady, Director
Special Projects
Chugach Alaska Fisheries, Inc.
4241 21st Avenue West, Suite 204
Seattle, WA 98199

Dear Clem:

Re: Herring Stripping

I have been asked by your local representa... provide comment on current restrictions ... dumping in Prince William Sound.

As I understand the current interpretation of the statute concerning wastage of fish and game resources, "waste" of herring is defined as failure to use the carcass for things such as reduction to meal, fish or domestic animal food, human consumption, bait, etc.

I understand your company is currently supporting legislation to legalize dumping as an alternative primarily for economic reasons. I'll just relay a few observations on the situation:

1. The current restrictions pose a serious financial burden on herring processors. The economics of fully utilizing herring carcasses are at best marginal and in many cases prohibitive. Also, Japanese import quotas on round herring can present real market limitations.

2. The current restrictions significantly affect several coastal communities in Alaska in that they in effect make it non-profitable to strip locally and thus preclude the positive economic benefits of local processing.

3. The sac-roe fishery is an extremely important one both in timing and in the magnitude of economic benefits

4. Deep water dumping is probably one of the most economic alternatives available to processors.

5. Deep water dumping of stripped carcasses would not, in a strict marine ecological sense, constitute "waste" of organic material. The biochemical constituents of the carcasses will be rather quickly reincorporated into the marine food web that supports biomass production. If carcasses are dumped in deep water, a number of mechanical (wave action, turbulence, etc.), biological (bacterial digestion, grazing by other zooplankters and fish), and chemical (oxidation, etc.) processes will within a relatively short amount of time degrade all the material into its basic organic components which will then be reincorporated into either the benthic (bottom) or pelagic (water column) food webs. Such an addition of nutrients, especially the nitrates from degraded amino acids and proteins, could enhance phytoplankton production on a very limited scale, since most oceanic phytoplankton production seems to be limited by available sources of nitrate. It would be, in effect, fertilizing a very, very small volume of ocean water. The degradation process would be sped along by grinding the carcasses but will occur even if they are not ground. Larger chunks of carcasses might make their way into benthic food webs via crabs or bottom feeding fishes such as black cod, halibut, rockfish, etc. In a strict sense, the nutrient balance of Prince William Sound is being upset by continual removal of organic nutrients incorporated into both salmon and herring and could possibly even exceed the rate of usable nutrient input at specific times and places. If such a situation does indeed exist, then these localized nutrient deficits could actually be limiting the overall productivity of the Sound for things such as wild and hatchery-reared salmon fry, herring, etc. Any reintroduction of nutrients removed by commercial fishing, if done in the proper manner, could only help the productivity of the sound. The University of Alaska Institute of Marine Science presently is involved in a multi-

institution program to study just such a process of nutrient cycling in the Bering Sea. The project is called ISHTAR.

6. The main issue in "wastage" of herring carcasses seems to be more moral/ethical than biological.

7. It would probably be to the long-term economic advantage of Alaskan processors to develop an economical means of fully utilizing herring carcasses, i.e., meal, ensiling, etc. I would be glad to help you analyze any of these alternatives.

If you have any questions on any of this or need any additional information, please give us a call.

Sincerely,

Rick Steiner

RICK STEINER
Assistant Professor of Fisheries

gf

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

LETTER OF INTENT FOR HOUSE BILL 229

March 29, 1985

It is the intent of the Legislature that the approval process by the Alaska Department of Fish and Game for operations permitted under Section 1 be kept as simple as possible. The Commissioner should base his authorization upon a letter from the operator of the processing plant which details specific plans to operate in accordance with applicable state laws and regulations.

It is also the intent of the Legislature that an ongoing assessment of economically feasible alternatives for the use of herring carcasses should be a priority within existing fisheries programs of the administration, particularly the Department of Commerce. This priority should be made because of (1) the changing economics of the herring industry which sometimes make it impossible for local citizens in some areas of the state to derive benefits from utilization of the herring resource under current Alaska Statutes, (2) the current lack of economically feasible processing alternatives for the developing Bering Sea herring fisheries, and (3) the tremendous potential for increase in employment in Alaska's processing industry, statewide, which might be realized through such ongoing research.

It is the intent of the Legislature that the Department of Commerce will report to the Legislature by the fifteenth day of the first regular session of each legislature, with this information.

Adelheid Herrmann

Representative Adelheid Herrmann
Co-Chairman, House Resources Committee

March 29, 1985

Date

[redacted] Letter of Intent

Adopted by House 4/1/85

HISTORY OF HB 229

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: March 17, 1985

AS 16.10.172 and 173, the statutes which prohibit the waste of carcasses from herring that have been stripped of roe, were passed by the Legislature in 1977. Section 173 included an exception from these statutes for the Bering Sea until January 1, 1979, because there was little or no infrastructure for the developing herring fishery in this area to support the processing of herring without disposal of the carcasses.

During the 1978 and 1979 herring seasons, many processors in the state who were not equipped to either freeze the roe herring whole or near enough to a reduction plant to have it reduced to fish meal economically, shipped the herring whole, lightly salted, to Japan. This herring was stripped for roe in Japan, Alaska fishermen and processors were paid less for it, and Japanese labor was used to process it, thus leaving Alaska with little economic benefit from this fishery.

In 1980, the Legislature passed Section 1, ch. 27, SLA 1980, Legislative Findings and Policy on Herring Stripping. This law did three things:

(1) It created the language which appears in the statutes (although it is not part of the statutes) following AS 16.10.172. These findings report that in some circumstances, stripping herring may provide such important economic benefits to the state that they may outweigh the waste involved in the process.

(2) It created an exception from the stripping law for the Bering Sea only from September 1, 1980 to July 1, 1982.

(3) This law also added AS 16.10.175 to the statutes, which prohibits removal of herring from the state before it is processed. This was done to solve the problem of herring being shipped from Alaska with little or no processing, that was created when the stripping statutes first became effective.

In 1983, the Legislature passed House Bill 267 which became Chapter 14 SLA. This bill created a third exception from the stripping law for the Bering Sea only until July 1, 1984, because the herring fishery was still developing in western Alaska and there was still no freezing capacity or reduction plant to support many local processing operations.

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 229
Title: An Act Relating to Herring Stripping & Providing an Efftv. Date
Sponsor: Herrmann and Fuller
Requestor: Hs.Spec.Conc.Com.Fish + Res.
Date of Request: Mar 4, 1985

FISCAL DETAIL
Agency Affected: Fish and Game
Program Category Affected: Fisheries Resource Conservation
BRU, Program or Subprogram(s) Affected: Commercial Fisheries BRU and Components

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

(please see attached page)

Robert L. Wilbur

Prepared By: Bob Wilbur Phone: 465-4210
Division: Commercial Fisheries Date: 3-7-85

Approved by Commissioner: Ronald O. Skoog Date: 3-7-85
Agency:

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

7/1/84

Analysis:

HB 260 seeks to repeal an AS16.10.173 exception which allows the roe of commercially harvested herring in the Bering Sea to be stripped and the carcasses disposed of in the Bering Sea. HB 229 seeks to extend that exception through July 1, 1988.

If either bill is enacted, the impacts on state programs and funding requirements will be negligible. The only foreseeable direct costs to the state would involve Board of Fisheries time allocated to public hearing and regulatory considerations, and these should represent comparatively insignificant time and cost requirements under either bill.

Should the exception be repealed (HB 260), some herring fishermen who have traditionally taken herring roe in the Bering Sea by allowing the flesh to decompose prior to roe stripping would have to conform to freezing techniques. While this prevents wastage of the flesh, it may increase capital and processing costs for the affected fishermen and processors and thereby reduce fisherman profits. Some minor impacts to local economics could therefore occur.

5 AAC 27.070. REGISTRATION AND INSPECTION DOCUMENTS. Repealed 4/14/82.

ARTICLE 3.
PROHIBITIONS

Section
90. Unlawful possession of herring or herring gear
92. Unlawful acts within an adjacent seaward biological influence zone
93. Disposal of herring
95. General restrictions
96. Violation of reporting requirements
97. Violation of landing requirement
98. Violation of regulations

5 AAC 27.090. UNLAWFUL POSSESSION OF HERRING OR HERRING GEAR. (a) It is unlawful for any person to possess unprocessed herring aboard a vessel licensed as a commercial fishing vessel within any statistical area unless the season is open or unless the person is acting under the authorization of 5 AAC 27.030(b). This prohibition does not apply to herring possessed for subsistence or personal bait purposes under applicable cable regulations.

(b) It is unlawful for any person to possess aboard a vessel licensed as a commercial fishing vessel within any statistical area any herring or any gear used in the taking of herring if the herring or herring gear are prohibited by other regulations in 5 AAC 27 governing the area, unless the vessel is acting under the authorization of 5 AAC 27.030(b).

(c) It is unlawful for any person to possess, purchase, sell, barter, or transport herring within the state or within waters subject to the jurisdiction of the state if that person knows or has reason to know that that herring was taken or possessed in contravention of the regulations of this chapter. (In effect before 1982; am 4/14/82, Reg. 82)

Authority: AS 16.05.251(a)(4),(7) and (10)
AS 16.05.720
AS 16.05.900
AS 16.05.920

5 AAC 27.092. UNLAWFUL ACTS WITHIN AN ADJACENT SEAWARD BIOLOGICAL INFLUENCE ZONE. It is unlawful for any person to take, attempt to take, cause to be taken, or possess herring, or to operate, attempt to operate, or cause to be operated any vessel or gear or to possess any gear or to take, attempt to take, cause to be taken, or fail to take any action in violation of 5 AAC 27.010(b).

Authority: AS 16.05.251(a)(4),(7) and (10)
AS 16.05.720
AS 16.05.900
AS 16.05.920

5 AAC 27.093. DISPOSAL OF HERRING. In statistical areas N, T, W and Q, herring carcasses may be disposed of only as follows:

(1) any vessel with less than 5 metric tons of herring on board may only dump herring carcasses in waters more than five fathoms in depth;

(2) any vessel with five metric tons or more of herring on board may only dump herring carcasses in waters more than three miles from the mainland;

(3) or as specified by a permit issued by the Department of Environmental Conservation.

Authority: AS 16.05.251(a)(7)
AS 16.10.172–16.10.173

5 AAC 27.095. GENERAL RESTRICTIONS. A person shall obtain a permit from the department before taking herring during the period June 15 through February 28 in statistical areas K, L, M and N. (In effect before 1982; am 4/14/82, Reg. 82)

Authority: AS 16.05.251(a)(2) and (7)

5 AAC 27.096. VIOLATION OF REPORTING REQUIREMENTS. (a) It is unlawful for any person to file a fish ticket representing the catch governed by the fish ticket as having been taken in a particular statistical area when in fact the catch or part of the catch were taken in another statistical area.

(b) It is unlawful to file any fish ticket containing information which has been purposely falsified.

Authority: AS 16.05.251(a) AS 16.05.900
AS 16.05.690 AS 16.05.920
AS 16.05.720

5 AAC 27.097. VIOLATION OF LANDING REQUIREMENT. It is unlawful for any vessel

Article 3. Herring Spawn.

Section
172. Legislative policy on utilization of herring
173. Utilization of commercially taken herring
175. Removal of herring from state

Sec. 16.10.140 — 16.10.170. Taking of herring spawn; exceptions; certain restrictive covenants; penalties. [Repealed, § 2 ch 91 SLA 1970.]

Sec. 16.10.172. Legislative policy on utilization of herring. The legislature finds the following: (1) extensive and valuable herring populations are available for harvest in waters subject to the jurisdiction of the state; (2) commercial markets are available for herring processed in several forms; (3) one processing technique presently employed involves deliberately permitting decomposition of the herring carcass to allow for removal and subsequent sale of the roe product, with the consequence that the flesh is unusable and discarded. The legislature declares that the process referred to in (3) of this section is wasteful and does not constitute utilization of this resource for the maximum benefit of the people. Therefore, it is the policy of the legislature that this process should be eliminated to the fullest extent possible. (§ 1 ch 9 SLA 1977)

Editor's notes. — Section 1, ch. 27, SLA 1980 provides: "LEGISLATIVE FINDINGS AND POLICY ON HERRING STRIPPING. (a) Notwithstanding AS 16.10.172, the legislature finds that in certain circumstances the processing technique described in AS 16.10.172(3), commonly referred to as "stripping", provides benefits of such importance to the state economy that the benefits may outweigh the waste involved in the process.

"(b) It is the policy of the legislature that notwithstanding AS 16.10.173 the disposal of herring carcasses is acceptable only if

"(1) the herring is taken from waters in which the herring population is large enough to support a stripping industry without substantially reducing the availability of the herring for other uses; and

"(2) the stripping process is conducted in an area of the state where local industry either does not exist or, if it does exist, it is insufficient to provide reasonable economic support to the people who live in the area."

Sec. 16.10.173. Utilization of commercially taken herring. (a) A person may not waste or cause to be wasted any commercially taken herring. For purposes of this subsection, "person" has the meaning given in AS 01.10.060 and also includes a joint venture.

(b) As used in this section, "waste" means the failure to use the flesh of commercially taken herring for reduction to meal, production of fish food, human consumption, food for domestic animals, scientific or educational purposes, or round herring bait. Normal, inadvertent loss of flesh associated with the uses described in this subsection which cannot be prevented by practical means does not constitute waste. The com-

missioner may authorize other uses of commercially taken herring consistent with the intent of this section and AS 16.10.172 upon receipt of a request accompanied by a detailed justification.

(c) For purposes of this section, "flesh" means all muscular body tissue surrounding the bony skeleton of the herring.

(d) The Board of Fisheries may adopt regulations under the Administrative Procedure Act (AS 44.62) it considers necessary for implementation of this section. The board may delegate its authority under this section to the commissioner.

(e) The provisions of this section do not apply to herring taken commercially in the Bering Sea (including appurtenant bays, sounds, estuaries, and water of the state) north of 56° North Latitude, until January 1, 1979. (§ 1 ch 9 SLA 1977)

Editor's notes. — Section 1, ch. 14, SLA 1983 reads as follows:

"Section 1. HERRING STRIPPING. (a) Notwithstanding AS 16.10.173 and until July 1, 1984, the stripping of commercially taken herring for the purpose of removing and selling the roe product is authorized if the herring is taken from and the carcass disposal process occurs in the Bering Sea.

"(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) regarding disposal of herring carcasses for each administrative area where disposal occurs.

"(c) The provisions of AS 46.03.100 apply to the disposal of herring carcasses under this section."

Sec. 16.10.175. Removal of herring from state. (a) A person may not remove herring from the state before the herring has been frozen or otherwise processed for shipment.

(b) In this section, "processed for shipment" includes, but is not limited to, icing, stripping or salting of the herring; however, it does not include salting of the herring if five percent or more of the body weight of the herring consists of roe. (§ 3 ch 27 SLA 1980)

Article 4. Migratory Fish and Shellfish.

Section
180. Legislative findings
190. Regulations
200. Unlawful taking prohibited
210. Unlawful sale or offer prohibited
220. Penalties for violation of AS 16.10.200 and 16.10.210
230. Exemptions

Sec. 16.10.180. Legislative findings. The legislature finds and recognizes these facts:

(1) Migratory fish and migratory shellfish are present in commercial quantities inside and outside the territorial waters of the state.

(2) Migratory fish and migratory shellfish taken from the waters of the state are indistinguishable, in most cases, from those taken from the adjacent high seas.

(3) Substantial quantities of migratory fish and migratory shellfish move inshore and offshore intermittently and at various times during

Sec. 46.03.090. Plans for pollution disposal. The department may require the submission of plans for sewage and industrial waste disposal or treatment or both for a publicly or privately owned or operated industrial establishment, community, public or private property subdivision or development. (§ 3 ch 120 SLA 1971)

Sec. 46.03.100. Waste disposal permit. (a) A person who conducts an operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

(b) This section does not apply to a person discharging only domestic sewage into a sewerage system.

(c) A permit for disposal of a hazardous waste may not be issued under this section unless the applicant for the permit has furnished proof to the commissioner of financial ability to control the hazardous waste. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under regulations issued by the department. Acceptance of proof of financial responsibility under this subsection expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, or insurance agreement; or

(3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement. (§ 3 ch 120 SLA 1971; am § 3 ch 220 SLA 1976; am § 9 ch 93 SLA 1981)

Cross references. — As to compliance with financial responsibility requirements, see AS 46.03.833.

Effect of amendments. — The 1981 amendment added subsection (c).

Opinions of attorney general. — This section confers upon the Department of Environmental Conservation permit authority over dredge or fill activities, including residential subdivisions, within wetlands, estuaries, and inland and coastal marshes periodically inundated by discernible bodies of fresh or salt water upland from the mean high tide line to the extent of the aquatic or salt water vegetation line. November 13, 1975, Op. Att'y Gen.

Dredge or fill activities in coastal and fresh water wetlands shoreward to the aquatic vegetation line to result in the disposal of solid waste material into the waters of the state within the meaning of this section and thus, to the extent that these activities are of a commercial or industrial nature, do require a permit from the Department of Environmental Conservation. November 13, 1975, Op. Att'y Gen.

Sec. 46.03.110. Waste disposal permit procedure. (a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and

any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

(b) Upon receipt of a proper application the department shall publish notice of the application in two separate publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made. The notice may also be published in other appropriate information media. The notice shall include a statement that a person who wants to present his views to the department in regard to the application may do so in writing to the department within 30 days of the second publication of the notice. The written response entitles the writer to a copy of the application.

(c) When the department receives an application, the commissioner shall immediately send copies of the application to the commissioner of fish and game, the commissioner of natural resources, the commissioner of commerce and economic development and the commissioner of health and social services.

(d) The department may specify in a permit the terms and conditions under which waste material may be disposed of. The terms and conditions shall be directed to avoiding pollution and to otherwise carry out the policies of this chapter. No permit may be effective for a period in excess of five years from the date of issuance.

(e) If the department has certified a National Pollutant Discharge Elimination System permit under sec. 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. sec. 1341), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under AS 46.03.100. (§ 3 ch 120 SLA 1971; am § 6 ch 104 SLA 1971; am § 116 ch 218 SLA 1976; am §§ 4, 5 ch 220 SLA 1976)

Opinions of attorney general. — This section requires no more than that the Department of Environmental Conservation allow a 30-day public comment period, and that it fully and completely review those comments on receipt. June 11, 1975. Op. Att'y Gen.

The Department of Environmental Conservation cannot issue a waste disposal permit prior to expiration of the 30-day public comment period. June 11, 1975. Op. Att'y Gen.

If the Department of Environmental Conservation has reviewed and considered all public and agency comments prior to the expiration of the 60-day period, and has also completed the preparation of the permit itself within that period, it would be competent for the department to waive the remainder of the 60-day "pre-commencement" period, and issue the permit at that time. June 11, 1975. Op. Att'y Gen.

The public comments received pursuant to subsection (b) of this section function similarly to environmental impact statements for federal agencies contemplating major federal actions significantly affecting the quality of the environment. June 11, 1975. Op. Att'y Gen.

Sec. 46.03.120. Termination or modification of waste disposal permit. (a) The department may terminate a permit upon 30 days written notice if the department finds

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSSSHB 229(Res)am Sectional Analysis:

Section 1) Authorizes herring stripping until July 1, 1986, under the following conditions:

1) herring taken from the Bering Sea or the Prince William Sound Area;

2) carcass disposal process must occur in the Bering Sea or Prince William Sound area;

3) prior authorization must be obtained from the commissioner of ADF&G. The commissioner may authorize the disposal of herring carcasses in the Bering Sea or Prince William Sound Area if the person submits an operational plan demonstrating intent to comply with herring stripping prohibitions by July 1, 1986.

b) Board of Fisheries shall adopt regs regarding the disposal of herring carcasses for each administrative area where the disposal occurs.

c) DEC waste disposal permit does [redacted] apply to the disposal of herring carcasses under this section

Section 2) Repeals section 1 (b), CH 27, SLA 1980 See editor's notes beneath AS 16.10.172 "LEGISLATIVE FINDINGS AND POLICY ON HERRING STRIPPING" in each members packet.

Section 3) Immediate effective date

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

House Special Committee on fisheries

3-12-85=8:30am

COST OF TRANSPORTING HERRING CARCASSES TO SEWARD FISH MEAL PLANT

To: House Resource Committee Files
From: Janet Fries, Committee Aide
Date: March 27, 1985

Source of Carcasses	PWS	Cook Inlet and Kodiak	Bering Sea
Transportation to Seward by tender[1]	$15/ton[2]	$20/ton[2]	$115 - 240/ton[3]
Offloading charge at Seward Fisheries Fish Meal Plant[4]	10/ton	10/ton	10/ton
Total	$25/ton	$30/ton	$125 - 250 /ton

1. These are estimated costs by sources noted.

2. Source: Mike Meehan, Manager, Seward Fisheries Fish Meal Plant, Seward, based on actual deliveries made during the 1984 herring season. The figures have been rounded to the next higher $5. Since no deliveries were made to the Seward plant from the Bering Sea in 1984, another method of determination was used for those estimates, as noted below. Note that when the figures used to determine a probable range of costs for the Bering Sea are used to estimate the Kodiak and Cook Inlet tendering costs, the lower end of the range is well within the figures cited by Meehan, but the upper range is slightly higher. The reason for this is probably because of the high availability of tendering vessels for hire in both of these areas at this time.

3. Source: Range estimates are based on ranges of costs for each of the transportation variables noted below, made by Tom King, Icicle Seafoods, Seattle. Tendering rates for 100 ft. vessels are approximately $1,800 - 2,400 / day, plus fuel costs @ $500 - 800 / day. Vessels hold a range of 150 - 250 tons of carcasses. The trip from Togiak to Seward is approximately 5 days, however, because most of the tenders in Togiak either travel north after the herring season to Norton Sound, or stay in Bristol Bay to tender the salmon season, it is necessary to compute a round trip, or 10 days of tender time. The trip from Norton Sound to Seward is approximately 10 days, however, all the tenders avsilable in Norton Sound after the herring fishery would most likely be heading back to Bristol Bay for the salmon season, so the round trip to Seward would be approximately 15 days.

4. Seward Fisheries charges $10/ton to offload fish waste at their dock in Seward.

Backup

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Commercial Fisheries	HB 229	Herrmann

DEPARTMENT POSITION

Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Robert C. Clasby	2/26/85	/Tim. Kennedy	3/4/85

SUMMAR

OTHER AGENCIES AFFECTED BY BILL	CO[illegible]ENT GROUP(S) AFFECTED BY BILL
DEC	Be[illegible].g Sea Herring Fishermen and Processors
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☐ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Except for 1984, similar legislation has been in effect since about 1979. The intent is to allow this activity until full processing can take place. Most roe herring are now frozen on the grounds, with a small amount being transported to locations such as Kodiak for shoreside reprocessing. It is this product that is stripped on the grounds.

ANALYSIS OF BILL/PROGRAM EFFECTS

None. Regulations governing herring carcass disposal in the Bering Sea are still in effect; see 5 AAC 27.093.

AMENDMENTS PROPOSED

None.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)

Pacific Herring Stocks and Fisheries in the Eastern Bering Sea, Alaska, 1984

A Report to the Alaska Board of Fisheries
November 1984
(Bristol Bay Data Report, No. 84-14)

Submitted by:

Robert C. Lebida
Craig Whitmore
Gene J. Sandone
Bering Sea Herring Program

Alaska Department of Fish and Game
Division of Commercial Fisheries
Anchorage, Alaska

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ABSTRACT

A total of 22,743 metric tons (mt) of Pacific herring and 202 mt of spawn on rockweed kelp (Fucus sp.) was harvested in eastern Bering Sea commercial fishing districts during 1984. This was the third largest Pacific herring harvest recorded in the history of these fisheries. Estimated total value of harvests to fishermen was $8.9 million. Average roe recovery from commercially harvested Pacific herring was 9.8% yielding about 2,229 mt of roe. Approximately 17% of the total estimated Pacific herring biomass of 139,000 mt within the commercial Pacific herring fishing districts was harvested. Subsistence fishermen representing at least 46 families from Yukon River delta villages harvested an estimated 10 mt of Pacific herring. Age 6 and 7 Pacific herring (1978 and 1977 year classes) comprised 29% and 41%, respectively, of the total run and 32% and 46%, respectively, of the total catch. Season openings in Togiak, Security Cove, Goodnews Bay and Cape Romanzof Districts were regulated through Emergency Order during 1984. This allowed a more controlled fishery, enhanced roe yield, resulted in minimal wastage and allowed the Department to make periodic reassessments of the resource. Total spawn sightings for all areas was a record 205 linear kilometers (km) of milt. Due to the continued large returns of age 6 and 7 Pacific herring in 1984, harvestable surpluses of Pacific herring should be available in all districts in 1985. Management strategies for 1985 will be similiar to those followed during 1984.

INTRODUCTION

The objectives of this report are to: 1) provide results from 1984 Pacific herring stock assessment programs, 2) review and evaluate 1984 harvests and management strategies for all commercial fishing districts and the Yukon - Kuskokwim River delta subsistence fishery, and 3) present management strategies for the 1985 Pacific herring fishing season.

A total of 22,743 metric tons (mt) of Pacific herring and 202 mt of spawn on rockweed (Fucus sp.) and 3 mt of imported kelp (Macrocytis sp.) were harvested in eastern Bering Sea commercial fishing districts during 1984 (Table 1, Figures 1 and 2). This was the third largest Pacific herring harvest recorded in the history of these fisheries (Table 2). The spawn on rockweed kelp harvest was about average for the period 1976 - 1983 (average 152.2 mt, range 108.2 - 209.1 mt) (Table 3). Estimated value of total harvests to fishermen was $8.9 million. Wastage of Pacific herring was estimated to be less than 300 mt. Most wastage was due to abandoned gear and loss of gear to sea ice movement rather than to dumping of unwanted Pacific herring. Spawn on kelp wastage appeared to have been minimal. In the sac roe fishery, the number of fishermen increased in Togiak, Goodnews Bay and Cape Romanzof Districts but decreased from 1983 levels in all other districts (Table 4). Twenty-five buyers participated in the fishery compared to 23 during 1983. In the spawn on kelp fishery, the number of pickers nearly tripled in the Togiak District and decreased slightly in the Norton Sound District (Table 3). The number of kelp buyers increased in the Togiak and Norton Sound Districts. Average percent roe recovery from harvested Pacific herring ranged from 8.6 in Cape Romanzof to 11.8 in Security Cove District (Table 2). Percent harvest of estimated Pacific herring biomass ranged from 6.4 in Security Cove to 19.5 in Cape Romanzof District.

Subsistence fishermen representing at least 46 families from three Yukon River delta villages harvested an estimated 10 mt of Pacific herring (Table 5). No subsistence surveys were conducted in Nelson Island or Kuskokwin River delta villages.

The total estimated spawning Pacific herring biomass of 155,100 mt for the surveyed portion of the eastern Bering Sea was lower than the 1983 estimate (Table 6). Recruitment of age 4 Pacific herring (1980 year class) during 1984 was below that documented for age 4 Pacific herring in 1983 (1979 year class).

SEASON SUMMARY

Stock Status

Assessment Methods

Aerial surveys were flown throughout the Pacific herring spawning season in all commercial fishing districts to determine relative abundance, distribution and biomass of spawning Pacific herring. Occurrence and extent of milt, numbers of fishing vessels, and visibility factors affecting survey quality were also recorded. Data collection methods were similiar to those used since 1978. A total of 172 hours (h) was spent in aerial surveys: 83 h in Togiak,

20 h in Security Cove - Goodnews Bay, 8 h in Nelson - Nunivak Islands area, 2 h in Cape Romanzof and 59 h in Norton Sound. Weather and sea conditions were generally fair to good in Togiak and Norton Sound Districts. Storms and turbid water hampered survey coverage much of the season in all other districts.

Standard conversion factors of 1.2 (water depth 5 meters (m) or less), 2.5 (water depth greater than 5 m) and 3.0 mt/50 m2 (water depth greater than 8 m) were used to convert estimated Pacific herring school surface areas to biomass within all districts.

Test fishing with variable mesh gillnets and sampling of commercial landings were conducted in all fishing districts to determine age, size and sexual maturity of Pacific herring and to estimate occurrence and relative abundance of other schooling fishes. Additionally, volunteer purse seine and gillnet vessels collected Pacific herring samples within Togiak District. This information was used during post-season analysis to interpret and modify aerial survey biomass data.

Ground surveys were conducted in most districts to obtain information on the distribution and density of kelp beds and Pacific herring spawn deposition.

Spawning Populations

Togiak District

A total of 37 aerial surveys was flown on 33 days during the 1984 season, from 19 April - 4 June. Half of these surveys were made under fair to excellent conditions.

Test fishing with variable mesh gillnets was conducted from 1 - 29 May. A total of 1,083 Pacific herring was sampled from these catches. Pacific herring comprised 85% of the total catch of pelagic schooling fishes. Test fishing with purse seine gear from volunteer vessels was conducted from 5 - 15 May. A total of 1,321 Pacific herring was sampled from 18 different sets. Test fishing aboard volunteer gillnet vessels was conducted from 11 - 18 May. A total of 268 Pacific herring was sampled. The commercial harvest was sampled from 19 - 21 May. A total of 1,267 and 1,109 Pacific herring was sampled from seine and gillnet catches, respectively.

The in-season Pacific herring biomass was estimated to be 96,100 mt. Analysis of data from aerial surveys, test fishing and commercial harvests resulted in a post-season Pacific herring spawning biomass of 104,200 mt (Table 6). Approximately 73% of the total biomass was composed of age 6 and 7 Pacific herring (1978 and 1977 year classes respectively) (Figure 3). Age 4 Pacific herring (1980 year class) accounted for less than 2% of the biomass. Although the relative proportion of young, newly recruited Pacific herring (age 4 and less) showed a slight increase as the season progressed, it was not possible to identify separate abundance peaks for young and old age (age 5 and greater) Pacific herring.

Spawn deposition appeared to be extensive. A record total of 99 linear kilometers (km) of milt was observed in 171 sightings during aerial surveys with most spawn occurring 18 - 19 May.

Security Cove District
A total of 24 aerial surveys was flown on 16 days during the 1984 season, from 28 April - 1 June. About one-third of these surveys were made under fair to excellent conditions.

Test fishing was conducted during 5 May - 2 June. A total of 1,002 Pacific herring was sampled from these catches. Pacific herring comprised 85% of the total catch of schooling fishes.

During the season, Pacific herring biomass was estimated to be 4,000 mt. A post-season estimate of 4,600 mt was obtained based on post-season aerial surveys and analysis of data from test fishing (Table 6). Age 6 and 7 Pacfic herring represented 71% of the sampled population (Figure 3). Age 4 Pacific herring comprised about 1% of the population. A total of 13 linear km of milt was observed during aerial surveys.

Goodnews Bay District
A total of 15 aerial surveys was flown on 14 days during the 1984 season, from 28 April - 1 June. Survey conditions were the best on record with about 40% of these surveys made under fair to excellent conditions.

Test fishing was conducted from 6 May - 2 June. A total of 719 Pacific herring was sampled from these catches. Pacific herring comprised 70% of the total catch of schooling fishes. During the season, the Pacific herring biomass was estimated to be 3,300 mt. Further aerial surveys and analysis of data from test fishing resulted in a post-season biomass estimate of 3,700 mt (Table 6). Approximately 73% of the total biomass was composed of age 6 and 7 Pacific herring (Figure 3). Age 4 Pacific herring accounted for about 1% of the biomass. A total of 11 linear km of milt was observed during aerial surveys.

Nelson - Nunivak Islands Area
Three aerial surveys were flown during the 1984 season on 30 May, 2 and 15 June. Survey conditions were fair to excellent on all surveys.

No test fishing was conducted in the Nelson Island area. However, a total of 594 Pacific herring was sampled from subsistence catches.

Pacific herring biomass was estimated to be 10,000 mt for Nelson Island and 6,074 mt for Nunivak Island (Table 6). Totals of 10 and 3 linear km of milt were sighted during aerial surveys of Nelson and Nunivak Islands, respectively.

Age 6 and 7 Pacific herring comprised 78% of the subsistence catch (Figure 4).

Cape Romanzof District
A total of two aerial surveys was flown on 2 days during the 1984 season on 30 and 31 May. Under fair surveys conditions, the biomass in Scammon Bay was estimated to be 3,300 mt. Turbid water conditions within Kokechik Bay precluded assessment of that area. Test fishing was conducted during 25 May - 17 June. A total of 764 Pacific herring was sampled from these catches. Pacific herring comprised 94% of the total catch of schooling fishes.

Although aerial survey results could not be used to estimate total biomass, test fishing study results and commercial harvest rates indicated that Pacfic herring were probably slightly more abundant than in 1983. Therefore, a post-season biomass estimate of 5,500 mt was adopted, an amount 500 mt greater than the 1983 estimate (Table 6). Age 6 and 7 Pacific herring comprised 63% of the sampled population (Figure 4). Age 4 Pacific herring comprised less than 1% of the population. In general, spawn deposition extent and intensity appeared comparable to that documented in 1983.

Norton Sound District

A total of 27 aerial surveys was flown on 17 days during the season, from 24 May - 26 June. Sea ice prevented complete district aerial assessment until 25 June, however, about half of the surveys completed over ice free waters were made under fair to excellent conditions.

Test fishing was conducted from 6 June - 1 July. A total of 1,428 Pacific herring was sampled from these catches. Pacific herring comprised 83% of the total catch of schooling fishes.

Due to the extensive distribution of sea ice, the peak aerial survey during the commercial fishing season resulted in a biomass estimate of 10,500 mt. However, the in-season biomass was estimated at 15,000 mt based on projection of 1983 aerial survey and Pacific herring age class composition data. Continued aerial surveys and analysis of data from test fishing resulted in a post-season estimate of 21,000 mt (Table 6). Age 5 and 7 Pacific herring comprised 68% of the total biomass (Figure 4). Peak abundance of Pacific herring occurred 18 - 25 June. A record total of 69 km of milt was observed during aerial surveys. Peak spawning throughout the district occured 10 - 19 June.

SUBSISTENCE FISHERY

Subsistence fishing for Pacific herring is generally most important in villages on the Yukon - Kuskokwim River delta. Average annual Pacific herring subsistence harvests in the eastern Bering Sea have been approximately 100 mt since 1975 (Table 5). About 75% of the total annual harvest is taken in the Nelson Island area at the villages of Tununak, Toksook Bay and Umkumiut (Nightmute). In 1984, subsistence surveys were not conducted in the Nelson Island area. Three villages on the Yukon delta, Scammon Bay, Hooper Bay and Chevak, were surveyed in 1984. Total harvest was 9.9 mt taken by 46 families. Although subsistence survey results are believed to accurately reflect harvest trends, reported catches represent minimum figures since all fishermen cannot be contacted.

COMMERCIAL FISHERY

Togiak District

Commercial Pacific herring fishing has been regulated by Emergency Order since 1981 to eliminate wastage problems and achieve exploitation rate objectives. Four commercial openings were allowed during 18 - 21 May resulting in a total harvest of 17,529 mt (Table 2). Fishing time was regulated by gear type under Board of Fisheries directives, as in the past two years. When commercial

purse seine openings were less than 24 hours, gillnet openings were three times as long. When purse seine openings were 1 hour or less, gillnet openings were 5 hours in duration. Total fishing time during the 1984 season was 11 hours for purse seine gear and 35 hours for gillnet gear. A harvest total of 17,272 mt (98.5%) of Pacific herring was purchased for sac roe, with 152 mt (0.9%) purchased for bait and 105 mt (0.6%) purchased for food. Purse seine vessels accounted for 75% of the total harvest and gillnet vessels accounted for 25%. Average roe recovery for the season was 9.8%, the highest ever achieved. Average roe recovery from purse seine catches was 10.4% and average recovery from gillnet catches was 8.2%. The 1984 Pacific herring harvest was the fourth largest in the history of Togiak District and the highest reported in the State for 1984. Wastage of Pacific herring was estimated at 140 mt. Value of harvested Pacific herring to fishermen was estimated to be $7.2 million. Average price was $385 per short ton (st) for 10% roe recovery, with an increase or decrease of $49 per st for each percentage point above or below 10%. Average price for food and bait herring was $119 per st. Numbers of processors increased 9% from 1983 with 25 companies purchasing Pacific herring (Table 4). Numbers of fishing vessels increased 24% with 196 purse seine and 300 gillnet vessels participating in 1984.

Spawn on kelp harvests were also regulated by Emergency Order in accordance with a plan adopted by the Board of Fisheries in 1984. Three commercial openings were allowed during 21 - 24 May, (30 hours total fishing time) resulting in a total harvest of 184 mt (Table 3). Since several K areas (Figure 5) did not contain marketable quantities of spawn on kelp, all of the harvest came from only two areas (K-4; 98 mt and K-9; 86 mt). Approximately 3% of the estimated total standing stock of rockweed kelp was removed. Six commercial processors purchased spawn on kelp from 330 fishermen, a 64% increase in fishermen from 1983 (Table 3). Value of the total harvest to fishermen was estimated to be $0.2 million. Average price was $0.50 per lb. The 1984 spawn on kelp harvest was about 35% greater than the average harvest for the 1976 - 1983 period (average harvest = 136 mt).

The overall Pacific herring exploitation rate was calculated to be 18.3% of the estimated spawning biomass based on an adjusted total harvest of 19,077 mt (17,529 mt sac roe harvest, 140 mt wastage, 1,408 mt herring equivalent of spawn on kelp) (Table 2). Age 6 and 7 Pacific herring comprised 79% of the harvest (Figure 3). Age 4 Pacific herring represented less than 1% of the harvest. Separate harvest strategies could not be used on young, newly recruited Pacific herring (age 4 and less) and old Pacific herring (age 5 and greater). Although the relative proportion of young Pacific herring did increase slightly as the season progressed, separate abundance peaks for young and old Pacific herring were not evident. This was probably due to poor recruitment of young Pacific herring into the spawning population. Good visibility conditions generally persisted during the season which allowed reliable aerial assessments to be made of Pacific herring biomass. Four commercial openings were allowed 18 - 21 May when biomass was approaching 50,000 mt and Pacific herring were ripening. Test fishing was done with volunteer vessels from 5 - 18 May to monitor sexual maturity and age composition of the Pacific herring spawning population. During this time period, a meeting was held with industry representatives to discuss the quality and roe content of Pacific herring samples. By late May, it became evident that most Pacific herring had spawned and left the district and no

further openings were allowed.

In general, management of the commercial Pacific herring fishery has greatly benefited by adoption of Emergency Order procedures and Board of Fisheries harvest directives since 1981. Wastage has been reduced, catch reporting has been timely and accurate, and stock assessment capabilities have been improved. Increased mobility provided by a chartered helicopter has also aided in efforts to monitor and manage the fishery. Availablity of the Fish and Wildlife Protection vessels P/V WOLSTAD and PUBLIC SAFETY I enhanced efforts to enforce regulations. The most common violations were gillnets fishing after closures and purse seine vessels making sets prior to and after openings. Numerous oil slicks, due to bilge pumping by vessels and various accidents within the large fleet, were again documented. Staff from the Alaska Department of Environmental Conservation and U.S. Coast Guard were present on the grounds to monitor these problems and help reduce occurrences. The effects on Pacific herring spawn (embryos) exposed to oil and fuel in areas such as Nunavachak Bay, where a large portion of the fishing fleet anchors, is not known.

Security Cove District

Commercial Pacific herring fishing has been regulated by Emergency Order since 1981 to provide for a more orderly fishery and allow for periodic reassessment of Pacific herring biomass. The district was opened to the commercial harvest of Pacific herring on 21 May and was closed 4 June for a total fishing time of 345 hours. Total harvest was 294 mt (Table 2). Forty-seven percent of the harvest was taken during 29 May by 13 fishermen. Prior to and after this time period, the number of fishermen making deliveries ranged from 0 - 18 each day. All of the harvest was sold for sac roe. Average sac roe recovery for the season was 11.8%. Wastage of Pacific herring was estimated to be only 10 mt tons. Value of harvested Pacific herring to fishermen was estimated to be $0.1 million. Average price was $272 per st for 10% roe recovery, with an increase or decrease of $37 per st for each percentage point above or below 10%. Four processors, two less than in 1983, purchased Pacific herring (Table 4). Most processors established 8% roe recovery as a minimum required for Pacific herring to be purchased for sac roe. The first processor arrived on the grounds 22 May. A total of 38 fishermen in 39 gillnet vessels participated in the 1984 fishery, the lowest on record. This was a 40% decrease in fishermen and a 53% decrease in vessels from 1983. Area residents (i.e. fishermen living in Platinum, Goodnews Bay, Quinhagak and Bethel) accounted for 16% of the effort and 22% of the harvest.

Overall exploitation rate of Pacific herring was 6.4% of estimated available biomass (Table 2). Age 6 and 7 Pacific herring comprised 79% of the total harvest (Figure 3). Age 4 Pacific herring represented less than 1% of the commercial harvest.

Although weather conditions limited assessment capabilities, management of the 1984 commercial Pacific herring fishery was without major problems. Fish and Wildlife Protection vessel P/V Public Safety I was on the grounds for a portion of the season. Few violations were noted.

Goodnews Bay District

Commercial Pacific herring fishing has been regulated by Emergency Order since 1981. The district was opened to the commercial harvest of Pacific herring on

21 May and was closed 27 May for a total fishing time of 139 hours. Total Pacific herring harvested for the season was 605 mt (Table 2). All of the harvest was sold for sac roe. Wastage of Pacific herring was estimated at 42 mt and was attributed primarily to catches of spawn-outs. Average roe recovery was 10.1% Value of harvested Pacific herring to fishermen was estimated to be $0.2 million. Average price was $250 per st for 10% roe recovery, with an increase or decrease of $25 per st for every percentage point above or below 10%. Four processors purchased Pacific herring, the same number as in 1984 (Table 4). Most processors established 8% as the minimum roe recovery required for Pacific herring to be purchased for sac roe. A total of 130 fishermen in 106 gillnet vessels participated in the 1984 fishery, a 35% increase in fishermen and a 39% increase in vessels from 1983. Local fishermen (i.e. residents of Platinum, Goodnews Bay, Quinhagak and Bethel) accounted for 75% of the effort and about 71% of the harvest.

Overall exploitation rate of Pacific herring was 16.4% of estimated available biomass (Table 2). Age 6 and 7 Pacific herring comprised 81% of the total harvest, (Figure 3). Age 4 Pacific herring accounted for less than 1% of the harvest.

Management of the 1984 commercial Pacific herring fishery was without major problems. Weather conditions permitted continous fishing and the best stock assessment since 1981. Presence of Fish and Wildlife Protection vessel P/V Public Safety I for a portion of the season enhanced efforts to enforce regulations. Few violations were noted.

Cape Romanzof District

Commercial Pacific herring fishing periods have been established by Emergency Order since 1982. Three fishing periods were allowed during 31 May - 3 June for a total fishing time of 90 hours. Total harvest was 1,075 mt (Table 2). All of the harvest was sold for sac roe. Average roe recovery was 8.6%. Wastage of Pacific herring was not a problem in this district. Value of harvested Pacific herring to fishermen was estimated to be $0.3 million. Average price was $300 per st for 10% roe recovery with an increase or decrease of $30 per st for each percentage point above or below 10%. Three processors purchased Pacific herring, the same number as in 1983 (Table 4). A total of 66 fishermen in 59 gillnet vessels participated in the fishery resulting in a 5% increase in fishermen and a 3% increase in vessels from 1983. Fisnermen from the local area (primarily Hooper Bay, Chevak and Scammon Bay) accounted for about 98.5% of the effort and 99.8% of the total harvest, a higher percentage than in previous years. Increased success of local fishermen can be attributed to implementation of exclusive area registration, development of improved catch transfer techniques, use of more suitable commercial gear and excellent weather conditions.

Overall exploitation rate of Pacific herring was estimated to be 19.5% of available biomass (Table 2). Age 6 and 7 Pacific herring comprised about 77% of the total harvest (Figure 4). Age 4 Pacific herring represented less than 1% of the harvest.

Management of the 1984 commercial Pacific herring fishery was without major problems. No Fish and Wildlife Protection vessel or personnel were present in the Cape Romanzof District during the season. However, few fishing violations were observed by ADF&G staff.

Norton Sound

In contrast to other Bering Sea fishing districts, commercial Pacific herring fishing within Norton Sound continues to be opened on a specific date by regulation. During 1984, fishing did not begin until 6 June, although the fishery opened on 15 April. Fishing was continuous and terminated under Emergency Order on 12 June. The total district harvest was 3,240 mt, the fourth highest on record (Table 2). The entire harvest was taken in subdistrict 3 (Cape Denbigh area) since other primary fishing areas were iced over throughout the commercial fishing season. Most of the harvest (92%) was purchased for sac roe and 8% (249 mt) was purchsed as bait. Gillnet vessels accounted for 91% of the total harvest and beach seine vessels accounted for 9%. Average sac roe recovery for the season was 10.3%. Wastage of Pacific herring was estimated at 80 mt and was primarily attributed to abandoned gear due to sea ice movement. Value of harvested Pacific herring to the fishermen was estimated to be $0.9 million. Average price was $250 per st for 10% roe recovery, with an increase or decrease of $50 per st for each percentage point above or below 10%. Average price for food and bait herring was about $50 per st. A total of 8 companies purchased Pacific herring, one less than in 1983 (Table 4). There were 184 fishermen that made gillnet landings and 10 fishermen that made beach seine landings with 5 fishermen making deliveries from both gear types. This was the lowest effort on record since a large scale domestic fishery began in 1980, representing a 28% decrease from 1983 levels. This decline in fishing effort can be attributed to sea ice conditions which prevented Stebbins and St. Michael, as well as some Unalakleet fishermen, from participating in the fishery.

Local fishermen (i.e residents of Nome, Golovin, Koyuk, Shaktoolik, Unalakleet, St. Michael, Stebbins and other area villages) accounted for 42% of the effort and 29% of the harvest. The percentage of harvest taken by local fishermen decreased from 1983, but remained similiar to prior years.

The 1984 commercial spawn on kelp harvest was regulated by Emergency Order for a second consecutive year. This provided for a more controlled fishery and allowed the harvest in subdistrict 1 to be maintained within the 30 mt guideline level. Subdistrict 1 was opened 22 June for only two hours, since below average amounts of spawn on kelp were present. A total harvest of 17.5 mt was made by 32 fishermen (Table 3). Wastage was not a problem. Three companies purchased the harvest. The total value of the subdistrict 1 spawn on kelp fishery was $21,500. The average price paid was $0.56 per lb. The 1984 harvest was about 22% less than the average harvest for 1978 - 1983 (average harvest = 22.4 mt).

Subdistricts 4, 5 and 7 (Norton Bay, Elim and Nome), were opened to the harvest of spawn on kelp on 21 June for an 18 hour period. A total of 3 mt of spawn on imported kelp (Macrocystis sp.) was harvested by a single fishermen-buyer. No rockweed spawn on kelp was harvested from these areas. The value of the spawn on Macrocystis sp. kelp was estimated at $3.00 per lb for a total of approximately $20,000.

Overall exploitation of Pacific herring was 16.5% of the estimated spawning biomass based on an adjusted total harvest of 3,469 mt (3,240 mt sac roe harvest, 80 mt wastage, 149 mt herring equivalent of spawn on kelp) (Table 2). Due to extensive sea ice distribution, a large portion of the biomass did not

become visible until well after the commercial fishery. Age 6 and 7 Pacific herring comprised 67% of the total harvest (Figure 4). Age 4 Pacific herring represented less than 1% of the harvest.

Management of the 1984 commercial Pacific herring fishery was without major problems, however, logistics and biomass assessment were hindered by the presence of sea ice. Catch reporting was timely and accurate. Availability of four Fish and Wildlife Protection officers using a skiff and a single engine aircraft enhanced efforts to enforce regulations. Violations of regulations was greatly reduced over 1983. Only two citations were issued involving licensing requirements.

OUTLOOK AND MANAGEMENT STRATEGY FOR 1985

Based upon continued large returns of the 1977 and 1978 year classes in 1984 (age 7 and 6 Pacific herring respectively), a harvestable surplus of Pacific herring should be available in all districts during 1985. However, since methods to reliably forecast actual returns are still being developed and estimates of recruitment are not available, harvest levels will be adjusted during the season according to observed Pacific herring biomass. If it is not possible to determine Pacific herring abundance using aerial survey methods, stock abundance will be assessed using information from test and commercial catches along with spawn deposition observations. Projections from post-season escapement estimates, using mean rates of natural mortality and growth for each age class, indicate that the 1985 spawning biomass should be 115,700 mt (27% lower than 1984 biomass). However, increased recruitment of ages 3 through 5 year old Pacific herring could increase this figure.

Togiak District

As initiated during 1981, different management strategies will be applied to early run, old age Pacific herring (age 5 and above) and late run, young age Pacific herring (age 4 and below) if these two population components arrive on the grounds at sufficiently different times. Magnitude and age composition of the run will be monitored during the spawning season by aerial surveys, test fishing and commercial catch sampling. Emergency Order authority will be used to adjust the occurrence and length of fishing periods in relation to stock strength and spawning. Projected return, based upon 1984 escapement, is 74,500 mt, which would allow a maximum projected harvest of 14,900 mt (20% exploitation rate). No fishing will be allowed until older age Pacific herring reach a total daily observed biomass of 5,000 mt and spawning has started. This will allow a normal onshore migration, assure commencement of spawning, increase roe quality and content and minimize waste. Harvest of old age Pacific herring will be 10 to 20% of estimated biomass. Spawn on kelp harvests will also be allowed during this period in areas judged to have sufficient spawn deposition and an adequate kelp standing crop. A more conservative approach will be taken in managing harvests of young, newly recruited Pacific herring since these herring will contribute to future harvests and provide future spawning stock. A minimum observed biomass of 20,000 mt of younger age Pacific herring must be present before fishing is allowed. A graduated harvest rate of up to 20% of the biomass of these younger age Pacific herring will be allowed at this time. Additional spawn on kelp openings may also be permitted during this period, if additional spawn deposition and the remaining kelp standing stock are at levels which allow

further harvest.

Security Cove District
Emergency Order authority will be used to adjust the occurrence and length of fishing periods to stock strength and spawning. No fishing will be allowed until total biomass reaches 800 - 1,000 mt and spawning has started. Attempts will be made to maintain an overall harvest of 10 - 20% of the available biomass. Projected return is 3,600 mt. No major change in management strategy from 1984 is anticipated.

Goodnews Bay District
Management strategy for this district will be similiar to that used for Security Cove. The season will be opened by Emergency Order, a minimum total biomass of 800 - 1000 mt will be required on the grounds prior to the first opening, and harvest levels will be maintained between 10 - 20% of available biomass. Projected return is 2,700 mt.

Cape Romanzof District
Emergency Order authority will be used to adjust the occurrence and length of fishing periods so that greater management control, better stock assessment and adequate spawning are assured. A threshold level of biomass cannot be used to determine the first opening, since turbid water conditions usually preclude aerial assessments. Test and commercial catch rates and spawn deposition will be the primary information on which fishery openings and fishing time will be based. Average harvest for the period 1980 - 1984 was 740 mt. Projected return, based upon limited data from 1984, is 3,900 mt.

Norton Sound District
Major changes in management strategy are not anticipated. The season will open by date and will close when 10 - 20% of the available Pacific herring biomass has been harvested. Varied harvests rates will be applied to individual subdistricts based on biomass distribution, roe quality, weather and sea ice conditions. Projected return is 17,000 mt. In-season closures may be used to monitor sac roe recovery so that it can be maximized and to maintain harvest levels within the guideline of 10 - 20% of available biomass. All processors, buyers and tenders will be required to report landings twice each day to allow the Department to adequately evaluate harvest data. The spawn on kelp harvest will be managed to minimize wastage problems and evenly distribute effort levels. Spawn on kelp harvest openings may be of short duration to maintain the guideline harvest level.

Table 1. Pacific herring and herring spawn on kelp harvests by domestic commercial fishermen in the eastern Bering Sea, Alaska, 1909 - 1984.

Year	Herring (mt) 1/						Herring Spawn on Kelp (mt)		
	Aleutian Islands	Bristol Bay	Security Cove/ Goodnews Bay	Cape Romanzof	Norton Sound	Total	Bristol Bay	Norton Sound	Total
1909-1916	-	-	-	-	- 2/	-	-	-	-
1916-1928	-	-	-	-	1,706	1,706	-	-	-
1929	1,142	-	-	-	151	1,293	-	-	-
1930	1,738	-	-	-	400	2,138	-	-	-
1931	958	-	-	-	78	1,036	-	-	-
1932	2,727	-	-	-	480	3,207	-	-	-
1933	1,438	-	-	-	28	1,466	-	-	-
1934	1,391	-	-	-	4	1,395	-	-	-
1935	2,188	-	-	-	14	2,202	-	-	-
1936	1,251	-	-	-	-	1,251	-	-	-
1937	525	-	-	-	5	530	-	-	-
1938	466	-	-	-	9	475	-	-	-
1939	-	-	-	-	5	5	-	-	-
1940	-	-	-	-	13	13	-	-	-
1941	-	-	-	-	3	3	-	-	-
1942-1944	-	-	-	-	-	-	-	-	-
1945	68	-	-	-	-	68	-	-	-
1946	-	-	-	-	-	-	-	-	-
1947-1963	*	*	*	*	*	*	*	*	*
1964	-	-	-	-	18	18	-	-	-
1965	*	*	*	*	*	*	*	*	*
1966	-	-	-	-	11	11	-	-	-
1967	-	122	-	-	-	122	-	-	-
1968	-	82	-	-	-	82	25	-	25
1969	-	43	-	-	2	45	5	-	5
1970	-	25	-	-	7	32	18	-	18
1971	-	-	-	-	18	18	24	-	24
1972	-	74	-	-	15	89	29	-	29
1973	-	46	-	-	32	78	5	-	5
1974	-	112	-	-	2	114	57	-	57
1975	-	50	-	-	-	50	50	-	50
1976	-	-	-	-	8	8	134	-	134
1977	-	2,535	-	-	10	2,545	125	Trace	125
1978	-	7,030	259	-	14	7,303	150	3	153
1979	-	10,115	466	-	1,173	11,754	188	12	200
1980	-	17,774 a	1,039	554	2,215	21,582	86	22	108
1981	639	11,374	1,660	653	3,964	18,290	172	37 b	209
1982	3,234	19,556	1,178	596	3,567	28,131	106	35	141
1983	3,238	24,486 c	1,368	740	4,156	33,988	123	25 d	148
1984	3,246	17,529 e	899 f	1,075	3,240 g	25,989	184	18 3/	202

1/ Pre 1964 harvest primarily in summer and fall for food; post 1964 harvest primarily in spring for sac roe.
2/ Fishery occurred some years but harvest data unavailable.
3/ Additional 3 mt harvested from imported kelp (Macrocystis sp) not included.
* No commercial operations reported.
a-g Wastage not included (mt): a= 5,200; b=5; c=544; d=1-5; e=140; f=52; g=80.

Table 2. Estimated biomass and commercial harvest of Pacific herring in eastern Bering Sea fishing districts, Alaska, 1978 - 1984.

	District	Biomass mt	Harvest mt	% Harvest by Gear: Gillnet	Purse Seine	Beach Seine	Roe %	Estimated Value ($)	% Biomass Harvested
1984									
	Togiak	104,200	17,529 f	25	75	0	9.8	7,178,400	16.8 1/
	Security Cove	4,600	294 e	100	0	0	11.8	109,700	6.4
	Goodnews Bay	3,700	605 d	100	0	0	10.1	168,400	16.4
	Cape Romanzof	5,500	1,075	100	0	0	8.6	305,500	19.5
	Norton Sound	21,000	3,240 c	81	0	9	10.3	887,500	15.4 2/
	Total	139,000	22,743	41	58	1	9.8	8,649,500	16.4 3/
1983									
	Togiak	128,600	24,486 b	19	81	0	8.8	10,517,300	19.1
	Security Cove	5,800	973	100	0	0	9.4	422,300	16.8
	Goodnews Bay	2,900	395	100	0	0	9.4	184,800	13.6
	Cape Romanzof	5,000	740	100	0	0	9.0	367,100	14.8
	Norton Sound	25,500	4,156	100	0	<1	8.6	1,519,200	16.3
	Total	167,800	30,750	36	64	<1	8.8	13,010,700	18.3
1982									
	Togiak	88,800	19,556	31	69	0	8.8	6,174,300	22.0
	Security Cove	4,600	737	100	0	0	9.3	271,000	16.0
	Goodnews Bay	2,400	441	100	0	0	9.5	187,900	18.4
	Cape Romanzof	4,400	596	100	0	0	9.3	221,700	13.6
	Norton Sound	15,800	3,567	100	0	0	8.8	1,046,200	22.6
	Total	116,000	24,897	46	54	0	8.9	7,901,100	21.5
1981									
	Togiak	143,900	11,374	18	82	0	9.1	3,988,000	7.9
	Security Cove	7,500	1,064	100	0	0	8.1	347,070	14.2
	Goodnews Bay	3,900	596	100	0	0	7.7	196,170	15.3
	Cape Romanzof	4,400	653	100	0	0	8.0	211,260	15.0
	Norton Sound	22,800	3,965	100	0	0	8.8	1,500,000	17.3
	Total	182,500	17,652	47	53	0	8.9	6,242,500	9.7
1980									
	Togiak	62,300	17,774 a	16	84	0	9.2	3,205,000	28.5
	Security Cove	1,100	632	100	0	0	8.2	151,000	57.4
	Goodnews Bay	1,100	406	100	0	0	9.5	97,000	36.9
	Cape Romanzof	2,700	554	100	0	0	9.8	132,000	20.5
	Norton Sound	7,600	2,224	100	0	0	8.1	500,500	29.3
	Total	74,800	21,590	31	69	0	8.8	4,085,500	28.9
1979									
	Togiak	216,800	10,115	40	60	0	8.6	6,700,000	4.7
	Security Cove	19,500	385	100	0	0	8.5	327,000	2.0
	Goodnews Bay	6,700	82	100	0	0	4.7	38,500	1.2
	Cape Romanzof	2,700	0	0	0	0	0.0	0	0.0
	Norton Sound	7,000	1,172	29	71	0	7.0	628,200	16.7
	Total	252,700	11,754	41	59	0	8.0	7,693,700	4.7
1978									
	Togiak	172,600	7,033	8	92	0	8.2	2,300,000	4.1
	Security Cove	1,200	259	100	0	0	8.8	78,300	21.6
	Goodnews Bay	400	0	0	0	0	0.0	0	0.0
	Cape Romanzof	2,700	0	0	0	0	0.0	0	0.0
	Norton Sound	4,800	14	100	0	0	-	6,000	0.3
	Totals	181,700	7,306	11	89	0	8.2	2,384,300	4.0

1/ Overall exploitation rate = 18.3% based on adjusted total harvest of 19,077 mt (17,529 mt sac roe harvest, 140 mt wastage, 1,408 mt herring equivalent of spawn on kelp).
2/ Overall exploitation rate = 16.5% based on adjusted total harvest of 3,469 mt (3,240 mt sac roe harvest, 80 mt wastage, 149 mt herring equivalent of spawn on kelp).
3/ Overall exploitation rate = 17.6% based on adjusted total harvest of 24,520 mt.
a-f Wastage not included (mt): a=5,200; b=544; c=80; d=42; e=10; f=140.

Table 3. Commercial harvest of Pacific herring spawn on kelp in eastern Bering Sea fishing districts, Alaska, 1978 - 1984.

	District	Harvest mt	Number of Buyers	Number of Pickers	Estimated Value ($)
1984					
	Togiak	184.4	6	330	203,300
	Norton Sound	17.5 1/	3	32	21,500
	Total	201.9			224,800
1983					
	Togiak	122.8	4	125	284,400
	Norton Sound	25.0 b	1	35	38,500
	Total	147.8			233,778
1982					
	Togiak	106.5	8	214	176,193
	Norton Sound	34.9	1	74	57,585
	Total	141.4			233,778
1981					
	Togiak	171.9	7	108	250,000
	Norton Sound	37.2 a	4	22	45,000
	Total	209.1			295,000
1980					
	Togiak	86.0	21	78	94,600
	Norton Sound	22.2	1	20	73,000
	Total	108.2			167,600
1979					
	Togiak	188.0	16	100	248,160
	Norton Sound	11.8	1	19	15,576
	Total	199.8			263,736
1978					
	Togiak	149.6	11	160	119,800
	Norton Sound	3.4	1	0	2,723
	Total	153.0			122,523

1/ Additional 3.0 mt harvested from 2,000 lb imported kelp (Macrocystis sp) at estimated value of $20,000.

a-b Wastage not included (mt): a=5; b=1.5.

Table 4. Number of buyers and fishermen participating in eastern Bering Sea Pacific herring fisheries, Alaska, 1978 - 1984.

	District	Number of Buyers	Number of Fishermen 1/ Gillnet	Seine Purse	Seine Beach
1984					
	Togiak	25	300	196	*
	Security Cove	4	38	*	*
	Goodnews Bay	4	130	*	*
	Cape Romanzof	3	66	*	*
	Norton Sound	8	189	*	10
1983					
	Togiak	23	250	150	*
	Security Cove	6	94	*	*
	Goodnews Bay	4	84	*	*
	Cape Romanzof	3	63	*	*
	Norton Sound	9	271	*	1
1982					
	Togiak	33	200	135	*
	Security Cove	3	107	*	*
	Goodnews Bay	3	84	*	*
	Cape Romanzof	2	75	*	*
	Norton Sound	7	237	*	0
1981					
	Togiak	28	106	83	*
	Security Cove	7	113	*	*
	Goodnews Bay	5	175	*	*
	Cape Romanzof	4	111	*	*
	Norton Sound	13	332	*	0
1980					
	Togiak	27	363	140	*
	Security Cove	8	175	*	*
	Goodnews Bay	4	165	*	*
	Cape Romanzof	2	69	*	*
	Norton Sound	8	294	*	0
1979					
	Togiak	33	350	175	*
	Security Cove	2	61	0	*
	Goodnews Bay	1	41	0	*
	Norton Sound	7	50	17	0
1978					
	Togiak	16	40	25	*
	Security Cove	3	?	0	*
	Norton Sound	1	11	0	0

1/ Refers to number of vessels in Togiak District only.
* Gear prohibited.

Table 4. Number of buyers and fishermen participating in eastern Bering Sea Pacific herring fisheries, Alaska, 1978 - 1984.

	District	Number of Buyers	Number of Fishermen 1/ Gillnet	Seine Purse	Seine Beach
1984					
	Togiak	25	300	196	*
	Security Cove	4	38	*	*
	Goodnews Bay	4	130	*	*
	Cape Romanzof	3	66	*	*
	Norton Sound	8	189	*	10
1983					
	Togiak	23	250	150	*
	Security Cove	6	94	*	*
	Goodnews Bay	4	84	*	*
	Cape Romanzof	3	63	*	*
	Norton Sound	9	271	*	1
1982					
	Togiak	33	200	135	*
	Security Cove	3	107	*	*
	Goodnews Bay	3	84	*	*
	Cape Romanzof	2	75	*	*
	Norton Sound	7	237	*	0
1981					
	Togiak	28	106	83	*
	Security Cove	7	113	*	*
	Goodnews Bay	5	175	*	*
	Cape Romanzof	4	111	*	*
	Norton Sound	13	332	*	0
1980					
	Togiak	27	363	140	*
	Security Cove	8	175	*	*
	Goodnews Bay	4	165	*	*
	Cape Romanzof	2	69	*	*
	Norton Sound	8	294	*	0
1979					
	Togiak	33	350	175	*
	Security Cove	2	61	0	*
	Goodnews Bay	1	41	0	*
	Norton Sound	7	50	17	0
1978					
	Togiak	16	40	25	*
	Security Cove	3	?	0	*
	Norton Sound	1	11	0	0

1/ Refers to number of vessels in Togiak District only.
* Gear prohibited.

Table 5. Pacific herring subsistence harvest (mt) and effort data from selected eastern Bering Sea areas, Alaska, 1975 - 1984. 1/

Village	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Nelson Island										
Tununak	19.8	13.9	51.9	34.6	31.0	59.2	36.0	43.8	85.0	-
Umkumiut	30.0	8.5	2.8	10.4	7.5	3.1	9.0	0	-	-
Toksook Bay	31.0	31.8	19.3	33.5	46.5	26.6	13.0	31.6	-	-
Total	80.8	61.2	74.0	78.5	85.0	88.9	58.0	75.4	85.0	-
Number of Fishing Familes	109	42	90	83	54	70	93	65	43	-
Yukon - Kuskokwim Delta										
Scammon Bay	-	0.6	-	0.6	5.4	2.8	6.9	3.5	2.3	3.9
Chevak	-	0.6	0.1	-	2.1	3.2	1.7	1.8	1.3	2.3
Hooper Bay	2.5	2.7	2.1	3.5	2.8	3.3	3.6	4.2	4.7	3.7
Kwigillingok	-	9.6	0.9	-	7.2	12.0	-	12.0 2/	-	-
Total	2.5	13.5	3.1	4.1	17.5	21.3	12.2	21.5	8.3	9.9
Number of Fishing Families	34	49	39	29	106	80	45	64	37	46
Areas Combined										
Total Catch & Number of Fishing Families	83.3 / 143	74.7 / 91	77.1 / 129	82.6 / 112	102.5 / 160	110.2 / 150	70.2 / 138	96.9 / 129	93.3 / 80	6.9 / 46

1/ Other areas with small catches have been surveyed irregularly (1975 - 1978; estimated total coastal yearly subsistence catch averaged 100 mt).
2/ Estimate based on post season observations.
- Not surveyed.

Table 6. Relative abundance index (RAI) and estimated biomass of Pacific herring in the eastern Bering Sea, Alaska, 1978 - 1984.

District	1978	1979	1980	1981	1982	1983	1984
			Relative Abundance Index (RAI) 1/				
Togiak	43,050	137,630	15,249	79,352	49,998	88,806	58,807
Security Cove	246	2,912	435	2,228	486 3/	1,602	3,219
Goodnews Bay	241	3,729	- 3/	1,593	- 3/	815	2,579
Nelson Island	1,079	- 3/	- 3/	1,072	- 3/	2,515	8,300
Nunivak Island	215	-	-	5	-	2,300	5,062
Cape Romanzof	539	- 3/	- 3/	- 4/	- 4/	- 5/	3,060 6/
Norton Sound	1,277	1,860	2,242	6,516	4,548	6,796	13,798
Total	46,647	146,131+	17,926+	90,766+	55,032+	102,534	94,825
			Estimated Biomass in mt 2/				
Togiak	172,600	216,800	62,300	143,900	88,800	128,600	104,200
Security Cove	1,200	19,500	1,100	7,500	4,600 3/	5,800	4,600
Goodnews Bay	400	6,700 3/	1,100 3/	3,900	2,400 3/	2,900	3,700
Nelson Island	5,400	5,400 3/	5,400 3/	3,600	3,600 3/	6,600	10,000
Nunivak Island	731	-	-	17	-	6,900	6,074
Cape Romanzof	2,700	2,700 3/	2,700 3/	4,400 4/	4,400 4/	5,000	5,500
Norton Sound	4,800	7,000	7,600	20,800	15,800	25,500	21,000
Total	187,831	258,100	80,200	186,117	119,600	181,300	155,074
% Fluction 7/	-	40	<69>	132	<36>	52	<14>

1/ Number of fish schools equivalent to 50 m surface area, unadjusted for presence of non-herring pelagic species.

2/ Adjusted for presence of non-herring pelagic species. Estimates for 1978 and 1979 represent low end of estimate ranges from Barton and Steinhoff (1980), 1980 estimates from Kingsbury (1980).

3/ Incomplete data due to inclement weather and/or turbid waters, biomass estimates are questionable and are based on 1978, 1979 or 1981 data.

4/ No aerial surveys made, 1981 and 1983 estimates based upon assumption that commercial harvest represented 15 percent of total biomass; 1981 estimate used for 1982.

5/ No satisfactory aerial survey made, 1983 estimate based on assumption of slight increase in biomass over previous year.

6/ No satisfactory aerial survey made, 1984 estimate based on assumption of slight increase in biomass over previous year.

7/ Based on prior year biomass estimate.

- Not surveyed

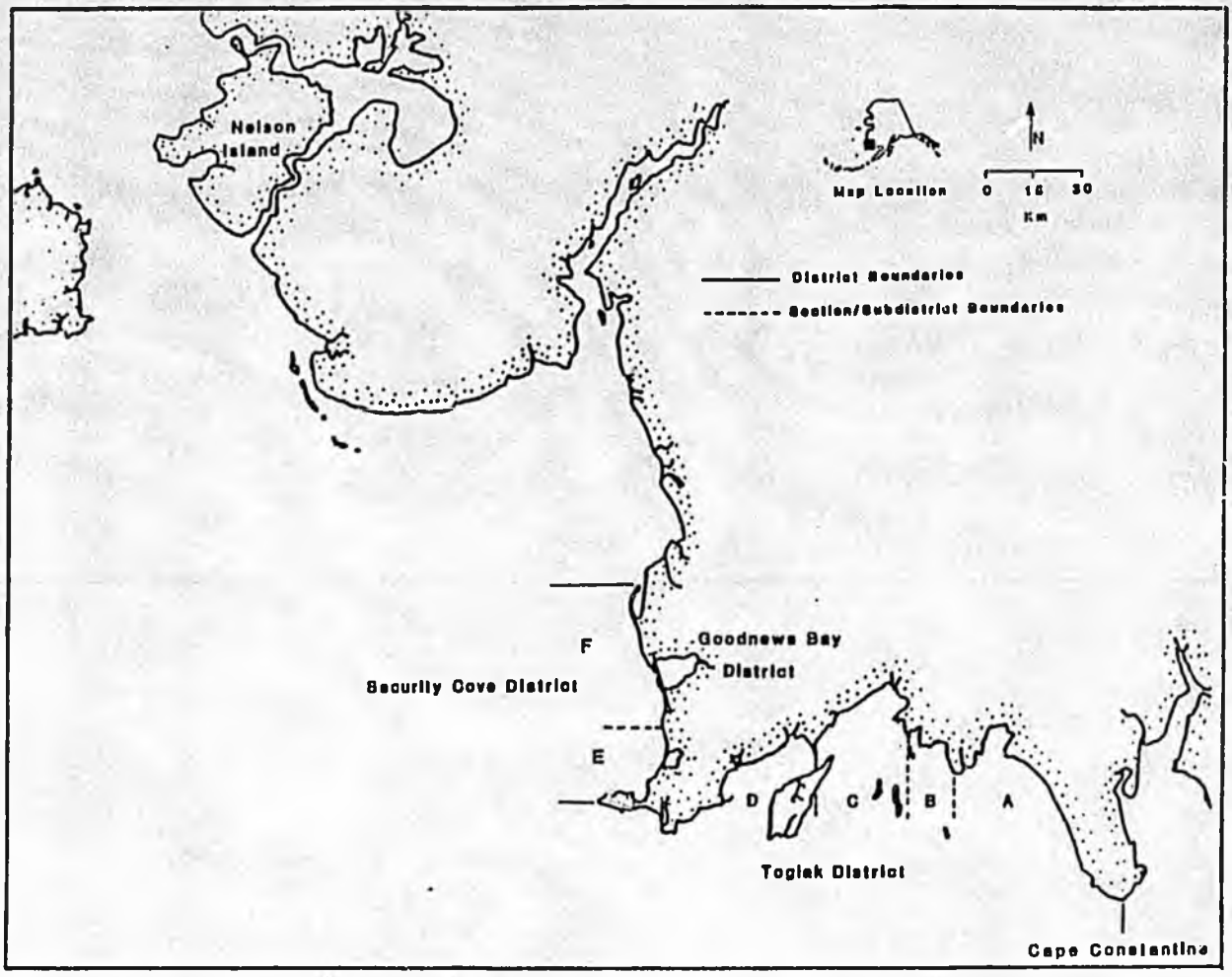


Figure 1. Togiak (A = Kulukak, B = Nunavachak, C = Togiak, D = Hagemeister Sections), Security Cove (E = Security Cove, F = Red Mt. Subdistricts) and Goodnews Bay Pacific herring commercial fishing districts in the eastern Bering Sea, Alaska.

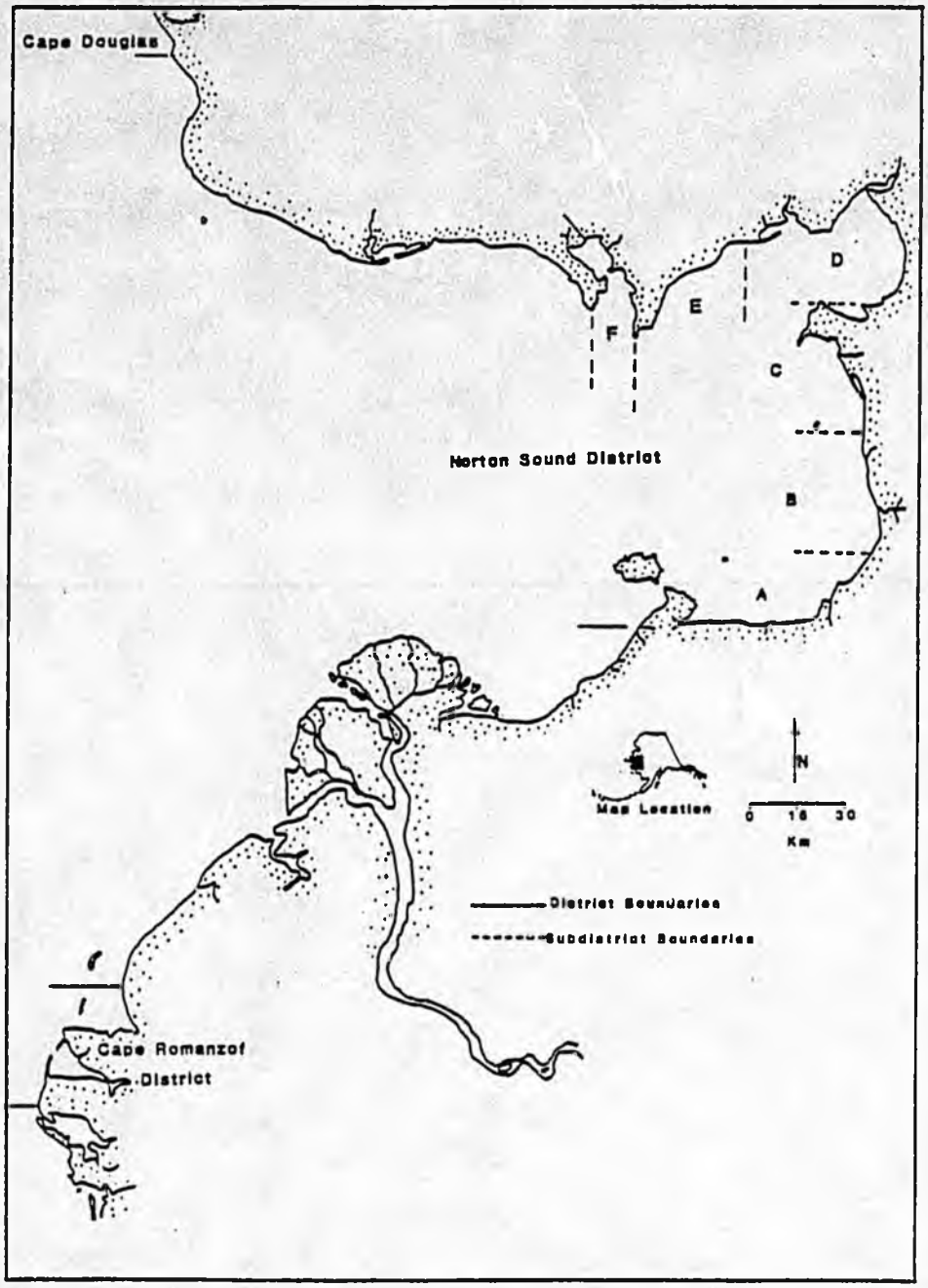


Figure 2. Cape Romanzof and Norton Sound (A = St. Michael, B = Unalakleet, C = Cape Denbigh, D = Norton Bay, E = Elim, F = Golovin Bay Subdistricts) Pacific herring commercial fishing districts in the eastern Bering Sea, Alaska.

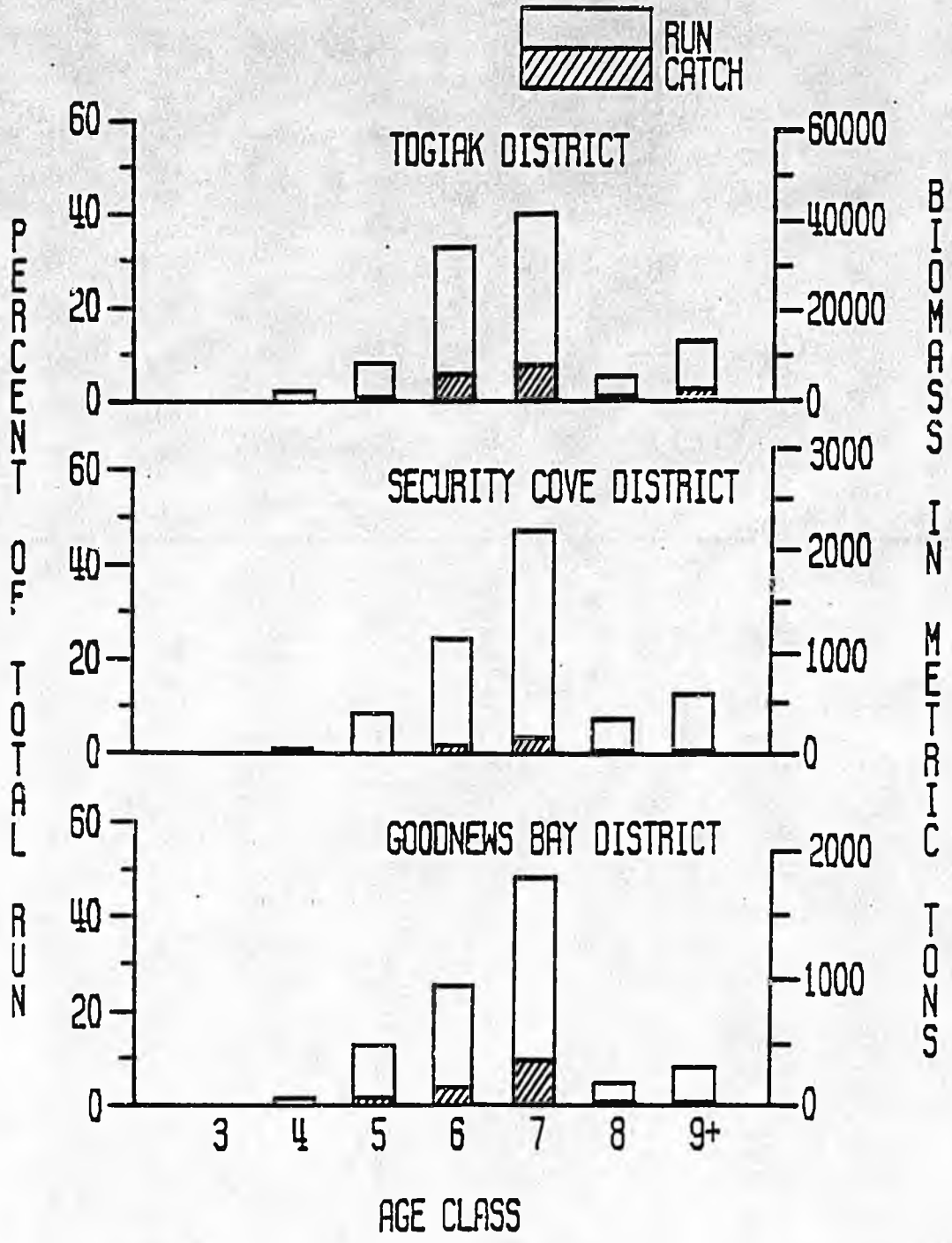


Figure 3. Age composition of Pacific herring in spawning populations and commercial catches in Togiak, Security Cove and Goodnews Bay commercial herring fishing districts in the eastern Bering Sea, Alaska, 1984.

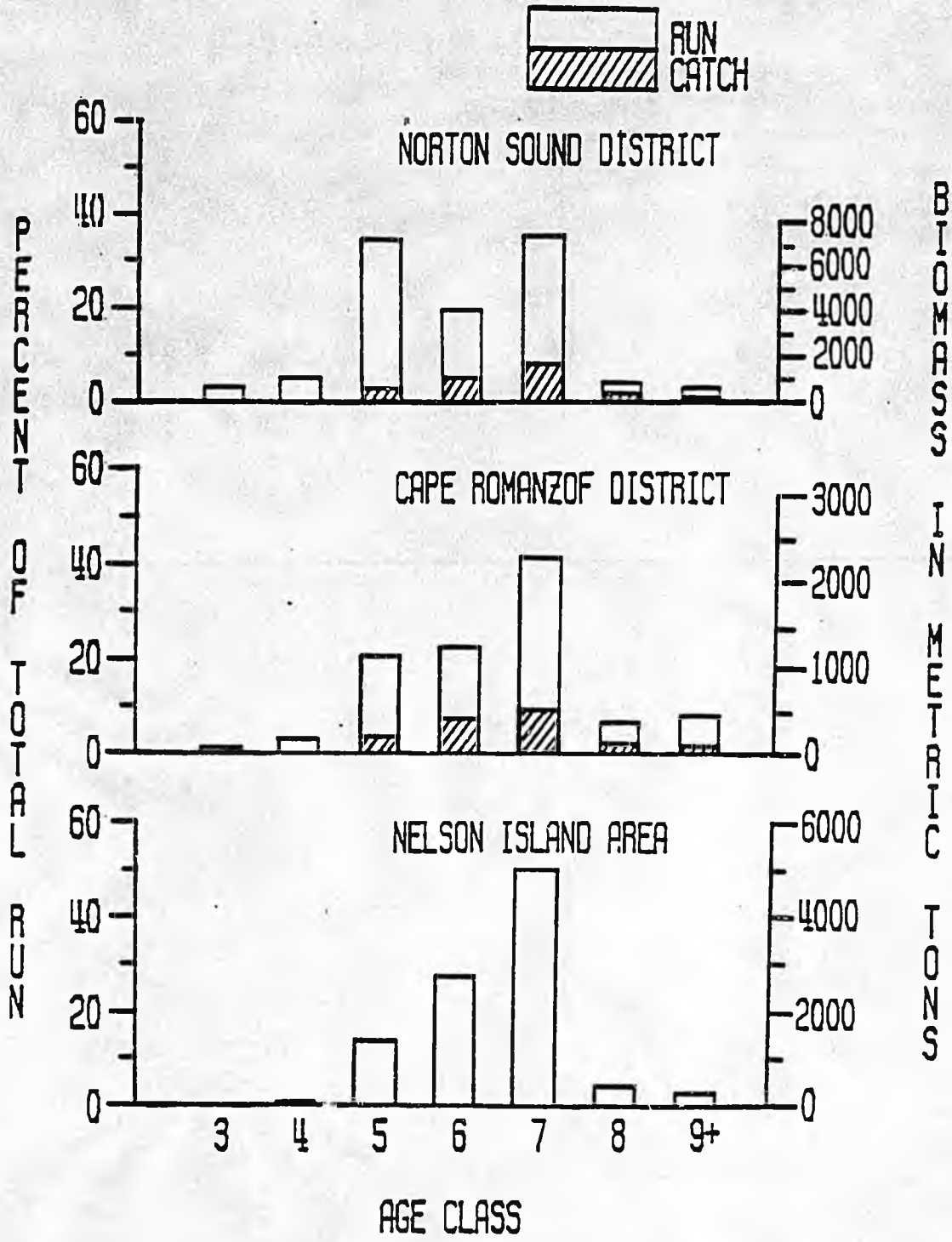


Figure 4. Age composition of Pacific herring in spawning populations and commercial catches in Norton Sound and Cape Romanzof commercial herring fishing districts and Nelson - Nunivak Islands areas in the eastern Bering Sea, Alaska, 1984.

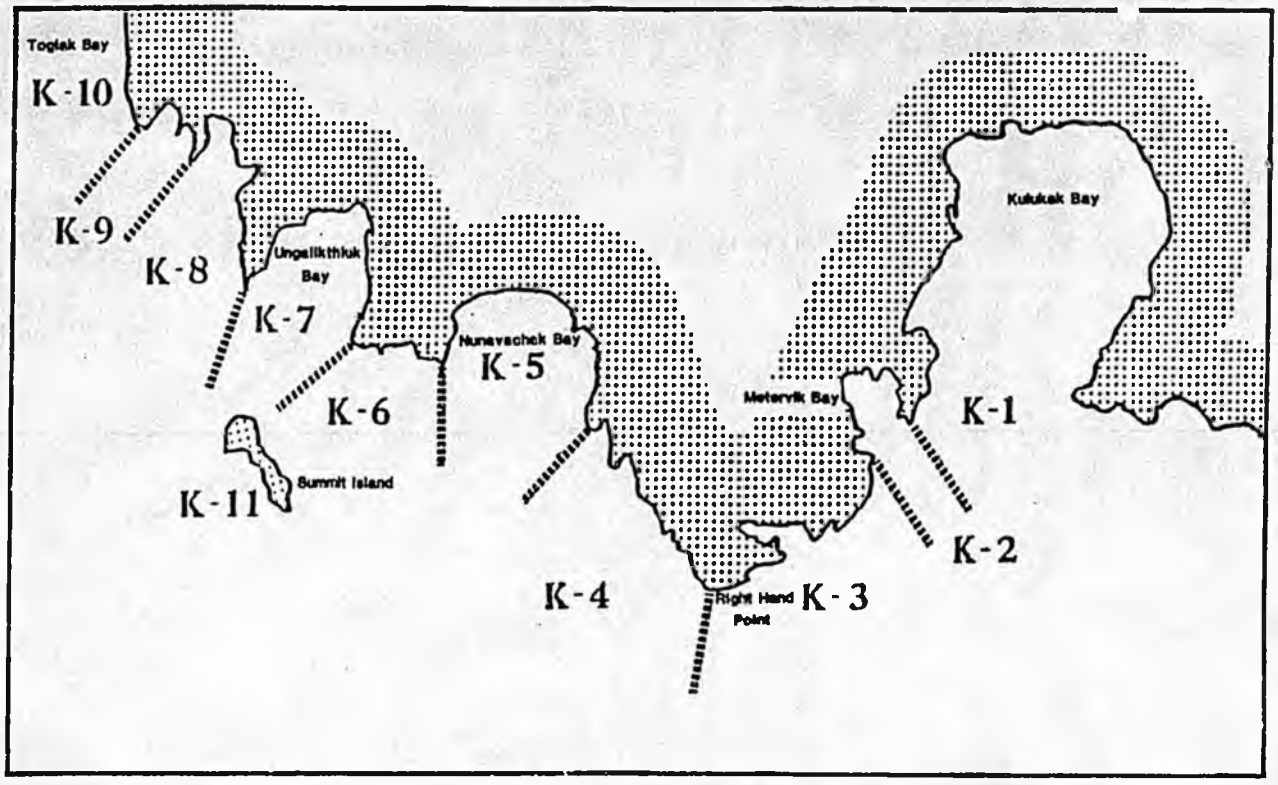


Figure 5. Pacific herring spawn on kelp commercial fishing K areas of the Togiak District in the eastern Bering Sea, Alaska.

ALASKA SPORTS *and* WILDLIFE CLUB

P.O. Box 5122 • Ketchikan, Alaska 99901

March 1, 1985

Mr. Don Collingsworth, Commissioner
Department of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802

Dear Mr. Collingsworth:

As you are aware, there has been growing concern over the Herring Roe Fishery for several years. Our membership, which has been increasing rapidly, has indicated to its Directors a solid backing in pursuing efforts to end this needless depletion of our herring stocks.

We have had several meetings on this subject, which included not only our members, but other sportsmen, charter groups and commercial seiners, trollers and gillnetters. All groups oppose the continuation of taking herring for roe. The comments from various members of these groups (some have more time on Alaskan waters than they care to admit) indicate that herring are in short supply in waters where there once was abundance, that King and Silver Salmon no longer have stomachs filled with herring, but are empty or contain only needlefish. It was the general concensus that herring, to continue to support salmon, seal, sea lion, bait, seagulls, eagles, etc., can no longer withstand the tremendous pressure of providing roe to the Japanese and others. It would seem that the harvest of millions of pounds of salmon roe would be sufficient. Further, it is our opinion that if the harvest of Herring Roe ceased today, it would still take years to re-build to marginal stocks. It is suggested by many that our King Salmon shortages are directly related to the lack of herring in our waters.

It should be noted that Senator Frank Murkowski, several years ago, addressed Governor Jay Hammond on this very subject and received a reply that the Fish and Game had a handle on the Herring Fishery and not to be concerned. We are concerned and in all fairness, do not believe the Fish and Game has "a handle on herring fishing". As one of your own biologists once stated, "there is no such thing as having too many herring in the ocean". We cannot stand by and watch our herring stocks disappear, as evidenced by the decline of the southeast deer population, the northern Caribou herds or more recently, the Alaska King Crab, without a fight. We are not interested in spending millions on studies, we just want the Herring Roe fishing stopped NOW.

The State of Alaska is actively promoting new fish hatcheries, fertilizing and stocking lakes and generally promoting programs that will enhance salmon escapement and returns. We applaud these efforts. The Ketchikan Deer

Mountain Hatchery alone is providing returns of nearly 10,000 King Salmon from early June into late July and this is just a beginning. The returns of September Silver Salmon to Neets Bay, Herring Cove and Ketchikan Creek are difficult to measure and are providing a harvest bonanza for both commercial and sports interests. With these programs prospering and projecting such promising potential in the years ahead, we fail to see the justification for the continued rape of herring stocks. The disaster of such a gamble, we feel, is totally unwarranted.

Finally, our reports indicate a total of 183 southeastern Herring Roe fishing premits, which include both seine and gillnet. It is interesting to note that a large percentage of these permits are held by individuals who are non-residents. Further, with few exceptions, fishermen holding these licenses also have salmon permits and actively seine or gillnet during the summer season. This should preclude any claims of hardship in eliminating the Herring Roe Fishery.

We would appreciate your comments and what action, if any, your Department is taking in this matter, as soon as possible.

Sincerely,

Dick Borch

Dick Borch, President
Bob DeWitt, Vice-President
Terry Myser, Secretary-Treasurer

Board of Directors:

Terry Clark
A. J. Dennis
Ken Eichner
Gary Imard
Art Hack
Johnny Gilbert
Art McMahon
Paul McGarrigan
Earl Mossburg

cc: The Honorable William Sheffield
The Honorable Frank Murkowski
The Honorable Ted Stevens
The Honorable Don Young
The Honorable Bob Ziegler
The Honorable Bill Ray
The Honorable Dick Elliason
The Honorable John Sund
The Honorable Robin Taylor
The Honorable Mike Miller
Alaska Fish & Wildlife Federation
and Outdoor Council Members, and
its Member Organizations

Tuesday.

Adams, D-Kotzebue and chairman of the House Finance Committee, was spelling out strategy agreed upon earlier in the day by that body's 28-member, Democrat-dominated majority caucus.

The Republican-led Senate, meanwhile, wants to pull an additional $100 million from Sheffield's proposed $2.4 billion operating budget and cut another $63 million from loans and public construction projects.

Those reductions would be in addition to the $300 million already erased from the spending blueprints because of oil-induced revenue shortfalls.

House and Senate leaders met privately Monday afternoon — another in a series of closed-door budget meetings — and resolved some of their differences on spending priorities.

The Senate is "entertaining" the House strategy and another leadership meeting is likely later this week, one observer said.

"We think that would be a little too drastic," Adams said of the Senate's plan to cut yet another $100 million from the operating budget. "The House realizes there needs to be some reductions in the cost of running government, but we'd like to see them be more gradual. We need to keep programs and services."

Adams said he's checking the legality of not funding the employee pay hikes negotiated last year. Instead, he wants to give the governor $43.6 million for "optional salary increases" and drop the issue in Sheffield's lap.

That means not funding the $43.6 million that had been requested by Sheffield for salary hikes negotiated in 1984. And it means taking another $43.6 million from current salary money. That would force Sheffield to choose between funding salary increases or maintaining current staff levels.

Scores of state jobs could rest on that decision.

"Take DEC (Department of Environmental Conservation) for example," Adams said. "We'd take their $600,000 in salaries and shift it to the governor's budget.

"We'd specify in the intent language that it's up to the unions and (the state's) negotiating units to come back to the table and say, 'Do you want fewer employees and salary increases or employees and lower salaries?'"

"That leaves it up to the administration to work out," Adams said.

John Shively, Sheffield's chief of staff, labeled that proposal "a negotiating argument."

"We have neither the desire nor the legal right to go outside the agreements" negotiated last year, he said.

from the operating budget.

—$20 million would be saved by refusing to fund fiscal 1985 supplementary requests.

—$43.6 million in salary increases would not be funded, leaving the pay hike question to Sheffield.

—$13.9 million would come from new Alaska Housing Finance Corporation's revolving loan fund.

—$10 million would come from money appropriated for the Department of Transportation and Public Facilities but not spent.

—$69.7 million would be cut from the capital budget.

End Herring Fishery Now, Longliner Says

By Sentinel Staff

Does Sitka Sound have enough herring to sustain what has been slated to be the largest sac roe harvest ever?

Seiners and pilots acting as spotters say they have never seen so many herring in the area.

However, some Sitkans, most of them fishermen for species that use herring as a food source, say the run doesn't look that big to them.

Bob DeJong, area management biologist for the State Department of Fish and Game, said "we're not seeing as many fish as we normally do," but blamed the problem not to a lack of herring but to a lack of good weather.

At today's meeting of the seiners and fishery managers at the Sheffield Hotel, DeJong said he believes the fish are staying in deep waters off shore rather than heading for the beach.

"There is a delay in spring and this lousy weather," said DeJong. Spawning activity takes place annually over a three-week period, he said.

"Conditions are different this year than in recent years. It's colder and there's storm after storm after storm."

Longliner Mike Mayo, who is not taking part in the herring fishery, attended the meeting and said he believes the 20 percent harvest level set by the state is too high. Mayo is a member of the Sitka Fish and Game Advisory Board.

He asked if the planned harvest level of 7,700 tons could be reduced at this point if biologists continue to see fewer fish on the beach.

DeJong replied he saw no problems with the 20 percent limit, noting that the fish returning are largely the mature stocks, about 4 and 5 years in age.

"I would like to see these fish a few years down the road here in Sitka," said Mayo.

Seiners immediately argued that there are more fish in Sitka Sound now than in many years, and that part of the reason is because of conservation efforts by the Department of Fish and Game and seiners.

This year, the quota is so large that some of the 50 limited entry permit holders are using two seiners. The permit holder is required to be on board whichever vessel has its nets in the water. Once the nets are lifted, he can jump aboard another vessel, which then lowers a new set of nets.

"I'm extremely touchy" about overharvesting the fish I'm dependent on," said seiner Wayne Alex. Seiners have too much invested in the fishery to want to jeopardize its future, he said.

Mayo replied he was not asking anyone to give up a living and had no qualms about the harvest of herring.

"I just haven't seen the stocks I saw last year," he said.

DeJong noted the department conducts acoustical studies during the winter, but during the spring studies are more difficult because the fish scatter.

"Let's not get into a gear war here," said one seiner to cut off the impromptu debate.

On Tuesday the seiners agreed not to ask for an opening today. After today's briefing, they agreed to meet again Thursday morning at the Sheffield Hotel.

Updates on the herring sac roe fishery can be obtained by calling the Sitka office of Fish and Game, 747-5022.

All of Herring Slated for Consumption

By Sentinel Staff

This year, just about 100 percent of the entire mass of 7,700 tons of herring expected to be caught in the Sitka Sound sac roe fishery will be processed for human consumption.

Harold Thompson, manager of Sitka Sound Seafoods, said the entire catch is being frozen whole by the shore-based and American floating processors in the area for the fishery. The frozen herring will be transported to Japan, China and Korea for further

Blatchley Junior High May Get Sister School

decision.

"Take DEC (Department of Environmental Conservation) for example," Adams said. "We'd take their $600,000 in salaries and shift it to the governor's budget.

"We'd specify in the intent language that it's up to the unions and (the state's) negotiating units to come back to the table and say, 'Do you want fewer employees and salary increases or employees and lower salaries?'"

"That leaves it up to the administration to work out," Adams said.

John Shively, Sheffield's chief of staff, labeled that proposal "a negotiating argument."

"We have neither the desire nor the legal right to go outside the agreements" negotiated last year, he said.

ended the meeting and said he believes the 20 percent harvest level set by the state is too high. Mayo is a member of the Sitka Fish and Game Advisory Board..

He asked if the planned harvest level of 7,700 tons could be reduced at this point if biologists continue to see fewer fish on the beach.

DeJong replied he saw no problems with the 20 percent limit, noting that the fish returning are largely the mature stocks, about 4 and 5 years in age.

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Seiners immediately argued that there are more fish in Sitka Sound now than in many years, and that part of the reason is because of conservation efforts by the Department of Fish and Game and seiners.

Blatchley Junior High May Get Sister School

By Sentinel Staff

Blatchley Junior High School may soon become the "sister school" of a school in another country.

Blatchley Principal Walt Clark told the Sitka School Board during a short meeting Tuesday night that the program would aid curricula in both sister schools.

Under the program, the Alaska Department of Education would put Blatchley in contact with a foreign school, and the two schools would share materials and students would participate in audioconferences, said Clark.

"Sister schools would be an approach in which the state department (of education) would become a brokerage service and match us with a school in, say, Japan," said Clark.

Clark said Blatchley has already applied for the program and is on a Department of Education list. The principal said he hopes the project will be ready by the time school opens in the fall.

The program would be most beneficial in subject areas in which Sitka has difficulty obtaining materials, said the junior high principal. A prime example, he said, would be Pacific Rim studies.

Various committees are in the process of reviewing and revising school curriculum programs. The social studies committee recently recommended more emphasis on Pacific Rim studies, pointing out that a large amount of Alaska's trade is with the countries of this region. While it is possible to find textbooks on individual countries on the Pacific Rim, said Clark, no resource materials seem to be available that include all Pacific Rim nations and their interaction with Alaska.

Initially, said Clark, the junior high will become involved with a project with a Japanese school. In future years, Blatchley probably would expand the program to other nations.

"It's a real interesting way to expose kids to other information," said board member Peter Esquiro about the sister school program.

"It sounds neat," concurred board member Shirley McCoy.

In other business, the board:

— received a report on review and revision of the math curriculum, which coordinates programs from elementary through high school. A detailed report will be made to the board by instructors at a future meeting, said administrators.

— adopted a resolution authorizing Supt. Art Woodhouse to act as the district's representative in procuring surplus property distributed by the federal government. The resolution is required to create an orderly method of distribution, explained Woodhouse.

— heard a report from Woodhouse that a budget for the 1985-86 school year, adopted by the board Thursday night, was presented to city administration Friday. A joint meeting of the board and the assembly is expected in April, said Woodhouse.

Thursday morning at the Sheffield Hotel.

Updates on the herring sac roe fishery can be obtained by calling the Sitka office of Fish and Game, 747-5022.

All of Herring Slated for Consumption

By Sentinel Staff

This year, just about 100 percent of the entire mass of 7,700 tons of herring expected to be caught in the Sitka Sound sac roe fishery will be processed for human consumption.

Harold Thompson, manager of Sitka Sound Seafoods, said the entire catch is being frozen whole by the shore-based and American floating processors in the area for the fishery. The frozen herring will be transported to Japan, China and Korea for further processing.

The real target of the fishery is the roe, or eggs, of the female fish, but the roe only accounts for around 10 percent of the herring "biomass" that is caught. Thompson said the roe is stripped in the Oriental countries, and packed in a brine solution. It is a popular delicacy for the Japanese, especially during the Christmas season, he explained. The small, golden jelly-like eggs are similar to caviar.

After the roe is removed, the remains of the female fish and the male fish are dried and sold for human consumption, Thompson said. It makes a low cost, high protein food, he said.

Thompson noted that the drying of herring is a growing cottage industry in the importing countries. In Korea some of the herring byproduct of the roe fishery is canned, he said.

Only in unusual circumstances would the fish be stripped of roe in the Sitka area, Thompson said.

When the Sitka Sound sac roe fishery first developed in the 1970s, the roe would be stripped at processing plants here. The 90 percent of the catch that was not roe would be discarded onto barges under the docks and then dumped at sea.

After state and federal governments prohibited such dumping and adopted regulations requiring more utilization of the resource, the non-roe portions would be shipped to a Petersburg plant to be ground for fertilizer and fish oil.

Only in recent years have the sac roe herring fishery byproducts been dried and sold as for human consumptic Thompson said.

Grand Camp
Alaska Native Brotherhood
P.O. Box 76
Angoon, Alaska 99820

March 15, 1985

Honorable Peter Goll
Alaska State House of Representatives
Alaska Capitol Building Pouch V
Juneau
Alaska

Re: CSHB 229

Dear Peter:

This is to confirm my phone call to you in which I expressed my feeling on the CSHB 229 concerning the "Stripping of herring." This is a bad bill and should not be put into law. It allows special Privilege to a small area and will be discriminating to other communities that do not waste any part of the harvest of herring.

Only a small amount of "Roe" is taken from a large take of herring from the female species and if the males are included this becomes a large woton waste, this is not including the immature portion of the complete harvest of herring.

Unalakleet, Stebbins and Shaktoolik, has begun to fish herring commercially since 1979 which is about six years ago and still do not have a freezing plant to handle their harvest makes us stop to think if there will be any at all.

The bill CSHB 229 if passed will open the doors to other areas to "strip for the Roe"only. This is what we should stop from becoming law before it results in depletion of the herring population in our State. We should prevent the practise of stripping herring for the "Roe only" from spreading to other areas of our fishing industries which depends on herring.

All species of fish follow the herring and feeds on it, and where there are no feed there are no salmon. We should do all we can to preserve our herring stock.

Let me touch on Personal use, fishing. There are still those that depand on fish for a living. There are those that cannot get a job during the winter months that have to put up enough fish for the hard winter ahead. So when you vote on personal use fishing bill please remember these people when you vote, this is my plea.

Yours with best regards,

Cyrus E. Peck
Grand Secretary Emeritus
Alaska Native Brotherhood

cc: file &
The Senate

Past ANB Grand Presidents
Dr. Alfred Widmark, Patrick J. Paul, Thomas Jackson, John Hope, Frank See, Dr. Walter Soboleff, Richard Stitt, Steven V. Hotch, Nelson D. Frank, Frank O. Williams, Herbert Hope, Robert R. Martin

Roy Peratrovich, Grand President Emeritus
Dr. Cyrus Peck, Sr., Grand Secretary Emeritus

Bering Sea
Fishermen's Association
805 West 3rd Avenue
Anchorage, Alaska 99501
(907) 279-6519

March 4, 1985

Representative Binkley
Pouch V
Juneau, AK 99811

Dear Representative Binkley:

I am writing to express our strong support for House Bill 229. The bill proposes to waive, for the Bering Sea, the statute prohibiting fishermen from stripping herring for roe.

A number of fishermen from Nelson Island and Nunivak Island are interested in participating in the herring fishery which will open this year. The Bering Sea Fishermen's Association (BSFA) anticipates training a minimum of 80 fishermen from Nelson Island and Nunivak Island in order to prepare them for the fishery. As you know, these areas are poor in terms of a cash economy, and commercial fishing will be the main source of jobs and income for many.

As this is the first time residents of Nelson Island and Nunivak Island will be participating in a commercial herring fishery, their lack of experience during the first year or two will naturally put them at a significant disadvantage in competing for the limited quota of herring available.

The participation of Nelson and Nunivak Island fishermen during the start-up of the commercial herring fishery is dependent upon their being able to strip for roe. At present, there are no facilities available on either Nelson Island or Nunivak Island for refrigeration and processing of herring carcasses. And, it is neither practical nor feasible to build these facilities prior to initial participation in the fishery.

We see waiving the statute prohibiting the stripping of herring for roe in the Bering Sea as an interim yet crucial measure which will provide the people of Nelson and Nunivak Island the opportunity to become competitive in the fishery. Once the fishery is successful, it would then make sense to build refrigeration facilities and to process

herring carcasses -- thus providing more jobs and income for residents.

If I can provide any further information on this very important issue, please do not hesitate to contact me.

Sincerely,

Henry Mitchell

Henry Mitchell, Director
Bering Sea Fishermen's Association

cc: Adelheid Herrmann
Co-Chairman, House Resources Committee

JLS

February 28, 1985

Representative A. Herrman
Pouch V
Juneau, AK

RE: Herring Carcass Utilization

Dear Rep. A. Herrman:

It has come to our attention that you are introducing legislation towards a moritorium on the Herring Carcass Utilization bill now in effect.

We have been deluged with calls from native fishermen in Togiak Twinn Hills and Manakotak villages on the possibility of our company purchasing drift net herring during the Togiak fisheries.

At this time we are budgeting for 2,200 tons of herring (seine) for processing on the M/V Bering Trader and our shore plant in Dillingham. These facilities are set up to freeze the product and will not be able to take any additional product other than that which is already committed.

Most of these fishermen are alternates on the list for the Japanese Herring Co-op in Dillingham, Alaska. These people in the past have not been able to sell because of the volume already caught by the co-op. We would be able to offer these fishermen a market if we could process at our Togiak facility. But there is no freezing. We would have to strip the roe then grind the carcasses.

We would be able to purchase approximately 350 to 400 of gillnet herring if processing is available in Togiak.

This would mean, in dollars, a total of $297,500 to $340,000 for the fishermen that would not have been there previously. The fish tax would be $2,975.00 to $3,400.00 for a shore based facility. The local labor for the herring processing would be approximately $43,000. This is for the nonfishermen type of local villagers.

Again our company would be happy to offer a market but are unable to do so as the laws stand now. We do not want a total moratorium, only for the next two seasons to place freezers into our Togiak facility.

Regards,

Kemp Paulucci Seafoods

Greg Hull
Togiak Plant Manager

KEMP-PAULUCCI SEAFOODS, INC. 2613 NORTHWEST 54th SEATTLE, WA 98107 206-783-7512

Rep. Jack Fuller
ATTENTION: Linda Wilde
Capital Room # 500/502
Pouch V
Juneau, Alaska 99811

Dear Rep. Fuller:

On behalf of 3NC Fisheries, I am requesting a permit to dump the herring carcasses in the Norton Sound area for this coming 1985 fishing season. We anticipate to open the herring processing in the Stebbins area, in hopes that their economy will benefit both their people and our company. We understand that dumping herring has special guidelines and know that there are certain limits to dumping.

3NC Fisheries consists of the Unalakleet, Shaktoolik, and Stebbins Native corporations and is a profit company. Our main goal is to provide some form of economy for our people and service the people in our region. We have worked with the salmon species for the past two years and look forward for a profitable one this coming season.

We understand the problems that may occur with discarding of the herring and we plan to work on this along with your help. Our latest talk with other companies was to sell the whole female herring and transport them out of the Norton Sound Region. It is also our contention that some plan be made with male herring, and in working with your office, we hope that a solution will be drawn up.

If you need further information please call me at 624-3053 during the workhours and at 624-3931 during the evenings. You may also call Davis Nashalook with the Arctic Sea Fisheries in Anchorage at 562-2322.

Our anticipated tonage with herring for the 1985 season is 300 metric tons.

Thank you.

Sincerely yours,

Henry Oyoumick

Henry Oyoumick, 3NC President

cc: Henry Mitchell, Bering Sea Fisheries

Herrmann

REP. JOHN G. (JACK) FULLER

DISTRICT 23
ALAKANUK
BREVIG MISSION
CHEVAK
DIOMEDE
ELIM
EMMONAK
GAMBELL
GOLOVIN
HOOPER BAY
KOTLIK
KOYUK
NOME
SAVOONGA
SCAMMON BAY
SHAKTOOLIK
SHELDON'S POINT
SHISHMAREF
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

CHAIRMAN
BUSH CAUCUS
LEGISLATIVE COUNCIL
ADMINISTRATIVE REGULATION
REVIEW COMMITTEE

MEMBER
POLICY COMMITTEE
SPECIAL COMMITTEE ON LOANS
RULES COMMITTEE
COMMITTEE ON COMMITTEES

Alaska House of Representatives

MEMORANDUM

TO: Rep. Peter Goll, Chairman
House Special Committee on Fisheries
FROM: Rep. Jack Fuller
DATE: March 2, 1985
SUBJECT: Additional information regarding HB 229 - herring stripping

Three different groups of fishermen in Western Alaska have contacted either Rep. Herrmann or me requesting a temporary waiver of the herring stripping law.

In my district, 3NC Fisheries, a cooperative effort of the native corporations of Unalakleet, Stebbins and Shaktoolik, has asked for additional time to gear up. These local people began to fish herring commercially in 1979, and at this time don't have enough on-shore freezing capacity to process all of the herring caught by their members.

In the Yukon-Kuskokwim area, the people of Nelson Island plan to begin their first commercial herring fishery next year. Until now, herring was fished for subsistence only, but with the rebuilding of herring stocks they are looking to this new fishery for much-needed cash income.

In Togiak, about 35 local gillnet fishermen without markets have asked Kemp-Paulucci to operate the shore-based plant this year. This plant will be able to provide a market for all their fish. Kemp just recently bought the plant and plans to install freezers within the next two years, but would only be able to operate the plant this season if they were able to strip.

The closest fish meal plant is in Seward, thousands of miles away, and there is not enough freezing capacity for all of the fish. Because the non-local fishermen who come up to western Alaska to fish sell their catch mostly to floating processors with freezing capacity, the herring stripping law affects local fishermen who are relatively new to the fishery and do not have established markets.

Unlike the rest of the state, the herring fishery in western Alaska is in its infancy. The fishery used to be almost entirely within the domain of outsiders, with very few locals participating even as fishermen. Local fishermen are just now learning to take vertical control of the fishery themselves, without total dependence on outsiders. As fishermen and as managers, they have gained much valuable

HOME
P.O. BOX 689
NOME, ALASKA 99762
(907) 443-2968

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3789

experience in a short time. With limited entry for Bering Sea herring fisheries looming on the horizon, I want local people to have every opportunity to become established in the fishery. Outside of fishing, there are very few ways of making a living in these villages.

The herring season comes at the end of the long winter and before salmon season starts, a time when cash is very low. On-shore herring processing provides much-needed cash income for local people, as well as markets for local fishermen. In Unalakleet alone, stripping 50-60 tons of fish provides up to twenty people with jobs, and puts up to $35,000 into the economy. With an average annual income of less than $3,000 in rural Alaska this is an important source of cash.

I will be providing you with additional back-up from 3NC, Nelson Island and Togiak Natives Limited, which will set out each group's reasons for requesting an extension of the time they are allowed to strip herring, as well as their plans for compliance as the fishery is developed.

MAR 11 1985

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* DELIVER TO: JPOM                                       *
*                                                        *
*                                                        *
* ORIGINAL                                               *
* SENT:          03/08/85  TIME: 14:28                   *
* FROM:          LIOKOD                                  *
* SUBJECT:       KODIAK POM                              *
* PRINT DATE:    03/08/85  TIME: 14:28                   *
*                                                        *
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TO: SENATORS ZHAROFF, FISCHER, STURGULEWSKI, HALFORD

TO: REPRESENTATIVES THOMPSON, HERRMANN, FULLER, GOLL, SUND, PEARCE, HURLEY, BINKLEY, NAVARRE, JENKINS, MARROU

FR: NICK SZABO
BOX 1633
KODIAK, AK. 99615
HM: 486-3853

RE: HB 229 - EXTENDING HERRING STRIPPING IN THE BERING SEA

I STRONGLY SUPPORT HB 229 AND OPPOSE HB 260. SINCE THERE ARE NO CARCASS REDUCTION PLANTS IN THE BERING SEA, THE PASSAGE OF HB 229 WILL ALLOW SMALL PROCESSORS AND GROUPS OF FISHERMEN TO PROCESS THEIR OWN HERRING ROE. THIS ADDED VALUE PROCESSED HERRING ROE COULD BENEFIT MANY SMALL COMMUNITIES.

EOM

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska 99574
(907) 424-3447 (907) 424-7473

3/29/85

Mr. Madam Chairman - Members of the committee:

While you are discussing CS for HB 229 we would like the Committee to consider including Prince William Sound in addition to the Bering Sea. We request your consideration because by doing so you would be increasing the economy of Cordova, Valdez and possibly Whittier, increasing the prices paid for the resource to Alaskan fishermen and subsequently increasing the revenues to the State via the raw fish tax.

The following is a list of reasons we feel are pertanant to your consideration.

1- Current market conditions of stripped herring roe loses exceed the value of frozen roe herring.

2- Increased profits to processors means increased prices to the fishermen. Increased prices means more raw fish taxes to the State.

3- Increased raw fish taxes return more revenue to the communities.

4- Under present processing restrictions local land based processors can only process about 20% of the 5000 ton herring quota.

5- With relief from the present restrictions the local land based processors could process up to 40 or 50% of the quota providing they can purchase that amount from the fishermen.

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska 99574
(907) 424-3447 (907) 424-7473

6- 5 of the 6 established land based processors are Alaskan owned corporations.

7- A large labor force will be required for a two week period rather than a small labor force for a one week period. Probably a four fold increase in labor requirements.

8- Because of the current market conditions - and if the processing restrictions are not relaxed much of this herring will be transported to Canada or the Lower 48 for processing which will be a substantial loss to the local and state wide economy.

9- There are no objections by PWS residents to this proposal.

We urge your careful consideration of this proposal

Thank you

Bob Blake

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4212 SLAB HB 251 - HB 294

1092

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

251

CHAIRMAN'S INFORMATION: HB 251

1) BILL TITLE: "An act extending the termination date of the Board of Veterinary Examiners; and providing for an effective date."

a) Introduced: Senate Labor and Commerce Committee

b) Co-sponsors:

2) INTENT: This measure extends the Board of Veterinary Examiners until June 30th, 1989. A Joint House and Senate Labor and Commerce sunset hearing has been held on the Board of Veterinary Examiners.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

BOARD: VETERINARY EXAMINERS, BOARD OF

TITLE: Board of Veterinary Examiners

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.98.010

STATUS: 85/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: Cannot serve more than two successive complete terms

TERM: 4 years - staggered

DESCRIPTION: 5 members appointed by Governor: 4 licensed veterinarians in active practice in Alaska for 5 years; plus 1 public member; no person may serve who is, or was during the two years immediately preceding appointment, a member of a faculty, board of trustees, or advisory board of a veterinary school.

SPECIAL FACTS: May be removed for cause; quorum - majority

FUNCTION: Regulates and controls applications, licenses, and permits of veterinarians

COMPENSATION: Standard travel/per diem

MEETINGS: At least 3 annually; normally 3 times per year, 3 days maximum, plus 2-4 work sessions

*FOR FURTHER INFORMATION CONTACT: Licensing Examiner, Division of Occupational Licensing, Dept. of Commerce and Economic Development, Box D, Juneau, AK 99811 - 465-2544

Veterinary Examiners

MEMBER	APPT	REAPPT	TERM
David V. George 2505 David Street #49 Juneau 99801 Public	85/06/11		88/01/31
Derrick J. Leedy, DVM P.O. Box 1164 Nome 99762 Veterinarian	85/06/28		89/01/31
Stephen A. Mersch, DVM SR2 Box 880 Soldotna 99669 Veterinarian	84/03/30		87/01/31
Val D. Stuve, DVM 1651 College Road Fairbanks 99701 Veterinarian - Chairman	82/01/75		86/01/31
Pamela A. Tuomi, DVM 2036 East Northern Lights Anchorage 99508 Veterinarian	80/04/01	84/04/09	88/01/31

THIS MEASURE EXTENDS THE TERMINATION DATE FOR THE BOARD OF VETERINARY EXAMINERS UNTIL JUNE 30, 1989. THE SENATE LABOR AND COMMERCE COMMITTEE HELD SUNSET REVIEW HEARINGS ON THIS BOARD AND THE SUNSET REPORT HAS BEEN SUBMITTED TO THE SENATE SECRETARY. I URGE FAVORABLE CONSIDERATION BY THE BODY.

A PERFORMANCE REPORT
ON THE
BOARD OF VETERINARY EXAMINERS

May 27, 1980, to June 30, 1984

Audit Control Number

08-1167-84-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vince O'Reilly Terry Elder

Members of the Board of Veterinary Examiners

Chairman	D. Stuve, D.V.M.
Member	a Ann Tuomi, D.V.M.
Member	Doo roehlich
Member	Vern , Starks, D.V.M.
Member	Stephen Mersch, D.V.M.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

July 24, 1984

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF VETERINARY EXAMINERS

May 27, 1980, to June 30, 1984

Audit Control Number

08-1167-84-R

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the activities and accomplishments of the Board of Veterinary Examiners was conducted to determine if the Board has been operating in an efficient, effective, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Veterinary Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1985, but will continue until June 30, 1986, for the purpose of concluding its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, and complaint functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiner.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Veterinary Examiners is a regulatory board consisting of four licensed veterinarians and one public member. The authority of the Board is outlined within Alaska Statutes 08.98.010-.250.

The Board determines the minimum quality of veterinary care in the State by:

1. Examining and issuing licenses to qualified applicants;

2. Establishing or amending rules and regulations necessary to enforce State statutes; and

3. Holding hearings to revoke or suspend the license of a person violating the veterinary statutes and regulations.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Veterinary Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of the Board's activities relate to the public need factors defined in the "sunset" law. These analyses are not intended to be all-inclusive, but address those areas we were able to cover within the scope of our review.

I. The extent of which the board, commission, or program has operated in the public interest.

A. The Board has served the public by examining and licensing qualified applicants, and proposing changes in regulations that are necessary to enforce State statutes and improve the quality of veterinary care. To conduct these functions the Board has held an average of three board meetings and two examination sessions a year for the past two calendar years.

B. Specifically, the Board has enhanced the practice of veterinary care by adopting regulations concerning:

1. the maintenance of competency of practitioners through continuing education;

2. the establishment of standards for the practice of veterinary medicine;

3. the disbursement of prescription drugs; and

4. the establishment and control of activities relating to veterinary technicians.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The public's confidence and well-being has been enhanced through a statute amendment of requiring a public member on the Board. Currently, the Board membership consists of four licensed veterinarians and one public member.

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board has proposed statutory changes concerning qualifications for licensure, temporary licensing, temporary permits, and licensing applicants by credentials. To improve veterinary care, the Board has proposed to amend the statutes by adding a new section concerning emergency treatment for injured animals. These proposed changes are currently under review in the Department of Law and have not been submitted to the Legislature.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The Board has advertised proposed regulation changes in major newspapers in Anchorage, Fairbanks, and Juneau. The Board has not actively solicited comments on its operations and services it has provided.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board has encouraged public participation through newspaper announcements concerning proposed changes and additions to regulations.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

A. In the last three years there has been one complaint filed against the Board with the Ombudsman Office. The complainant did not believe the Board would take action on his complaint. However, the Ombudsman Office found this to be an unsubstantiated complaint.

B. There have been no complaints filed against the Board with the Attorney General's Office.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. The Board has issued 59 licenses, temporary permits, and temporary licenses in the last three fiscal years.

B. The Board requires foreign medical graduates to have qualifications equivalent to other applicants. This is evidenced by the requirement of the foreign graduates to pass the examination of the American Veterinary Association's Education Commission for Foreign Veterinary Graduates.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. The Human Rights Commission and the Equal Employment Opportunity Office have received no complaints related to the Board's activities.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this section.

A. Legislative Audit has no recommendations concerning the Board's compliance with the public need factors as enumerated in this section of the report.

(Intentionally left blank)

APPENDIX A

BOARD OF VETERINARY EXAMINERS
REVENUES COMPARED WITH EXPENDITURES

For the Fiscal Year Ended June 30, 1983

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$ 4940.00
Less: Expenditures (Note 3)	($ 4198.57)
Excess of Revenues Over Expenditures	$ 741.43

Revenue Type	Amount	Collection Time
Application fee	$ 25	With issuance of License
Examination fee	50	With taking the Examination
Investigation of Credentials fee	50	With issuance of License
License fee	200	With issuance of License
Renewal of License fee	200	Due every four years
Temporary License fee	50	With issuance of License
Temporary Permit fee	50	With issuance of Permit

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Statement of Revenues Compared with Expenditures.

Note 2

The majority of revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1982 and 1983 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by Board members, such as travel, per diem, and contractual items. They do not include expenditures for efforts of other departments assisting the Board or administrative overhead expenses incurred by the Division of Occupational Licensing.

(Intentionally left blank)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

October 4, 1984

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

OCT 05 1984
LEGISLATIVE AUDIT

Dear Mr. Wilkerson:

We have reviewed the preliminary performance report on the Board of Veterinary Examiners, May 27, 1930 to June 30, 1984.

We concur with your findings that the board has operated in the best interests of the public. We also concur with your recommendation that the board be reestablished.

Thank you for your cooperation and the opportunity to comment on the report.

Sincerely,

Richard A. Lyon
Commissioner

RAL/ltO668t
100484b

08-H2LH

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

256

Alaska State Legislature

Representative John Ringstad
District 20-B
P.O. Box 1848
Fairbanks, Alaska 99707
(907) 456-8336

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4998

House of Representatives

MEMORANDUM

TO: Senator Fred Z aroff

FROM: Rep. John Ring ad

DATE: April 12, 1985

RE: HB 256, An ac lating to economic development policy

Attached are materials in support of HB 256. You will find my written comments, letters of support from the Resources Development Council, Fairbanks North Star Borough, and Alaska Miners Assoc. In addition other organizations in support of HB 256 are: Alaska Conference of Mayors, Alaska Municipal League, Western Alaska Building and Construction Trade Council, Alaska State Chamber of Commerce, Anchorage Convention & Visitors Bureau, and the Fairbanks Chapter of the Society of Professional Engineers.

Also included is a summary of a December '84 poll by Alaska Construction & Oil on Alaskan business attitudes. This reflects that 74% of Alaskan business people believe that the state discourages responsible development through its policies and regulations. Further emphasizing the need for economic development are some recent newspaper articles.

Fred, as the Legislature is running short on time, and in the interest of HB 256 being given ample opportunity to pass this session, I respectfully request your action to waive HB 256 out of Senate Labor & Commerce Committee, and allow hearings to take place in one Senate committee only, that being the Senate Resources Committee.

Thank you for your consideration in this matter.

Memo from prime sponsor/ Backup

Alaska State Legislature

Representative John Ringstad
District 20-B
P.O. Box 1848
Fairbanks, Alaska 99707
(907) 456-8336

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4998

House of Representatives

HB 256, an act establishing the economic development policy of the state, is a general policy statement, addressing the need for a stable, diversified economic base, and declaring Alaska's commitment to foster such development through the state's cooperation with the private sector.

Alaska sorely lacks an economic development policy.

This fact has hit us hard, with the sudden decline in revenues we are currently facing. It had been anticipated, that by the time the oil revenue dollars started falling off, Alaska would be well on the road to a stable, diversified economy. The oil revenues are now on the decline, and looking at the world-wide market situation and pricing structure for oil, this is a long-term situation.

HB 256 reflects Alaska's need and desire to further its economic viability. This confirmation is a long-term commitment towards the goal of diversifying our economy, thus creating more jobs for the citizens of this great state, and allowing them the opportunity to continue to make Alaska their home. Further, HB 256 will serve as a signal to domestic and foreign businesses of our commitment to economic development.

Passage of HB 256 will confirm this intent. This legislation is a general policy statement and is not intended to favor any industry or project.

I've been asked about the need for this legislation as a statute rather than a resolve. Billy Berrier, Director of Legal Services, has stated that a resolve does not have the weight or intent that a statute carries. Further, the intent of a resolution only holds for a particular Legislature. Our goal must be a long-term, continuous commitment to develop Alaska's economy.

I ask for your support, and thank you for your consideration of HB 256.

Fairbanks
North
Star
Borough

Mayor: B.B. Allen

February 12, 1985

FEB 19 1985

Representative John Ringstad
Alaska State Legislature
Pouch V
Juneau AK 99811

Dear John:

Based on the advice of several people including Harold Heinze, President, ARCO Alaska, Inc., Bob Bettisworth, Dr. Earl Beistline, Dr. William Wood and others, we have formed a statewide Resource Policy Coalition to address the needs of resource development throughout our state.

At our initial meeting, the first resolution we adopted was a policy statement on economic development. I would like for you and other members of the interior delegation to review the policy statement in hopes that you will do whatever is necessary to establish this as a statement of the State of Alaska's policy on economic development.

This policy statement on economic development has been supported by the Alaska Municipal League, Alaska Conference of Mayors, Fairbanks North Star Borough, Greater Fairbanks Chamber of Commerce, City of Seward, Alaska Mining Association and several others. I think it is important that members of the interior delegation, representing the area where most of the resources are located, provide the leadership by introducing and supporting the resolution for the development and processing of those natural resources.

If you have questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,

Bill

B.B. ALLEN
Borough Mayor

BBA:al

enclosure

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761

Resource Development Council
for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100516, Anchorage, Alaska 99510-0516 – 907/276-0700

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James Wakefield
Cyril R. Wanamaker
Anita Williams
Lew M. Williams
Jed Holley, Staff Consultant

EX-OFFICIO MEMBERS
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Bill Sheffield

March 5, 1985

MAR 12 1985

Representative John Ringstad
Pouch V
Juneau, AK 99811

Dear John:

We are so pleased to see HB 256 introduced with you as sponsor. This is an important bill for the state of Alaska and the Resource Development Council. Your sponsorship is significant and is creating support for the bill by those who know you and your record.

We and others have been pushing for this sort of state economic development policy for several years. With this bill Alaska can have the statutory guidelines for economic development envisioned in our constitution.

I am aware that HB 256 is tentatively scheduled to be heard in House Resources March 20. You can be sure that the Resource Development Council will have testimony prepared to support this bill and encourage its timely passage in the House.

Please let us know if there is any background or related information we can provide to aid its passage.

Thank you again for your support.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula Easley

Paula P. Easley
Executive Director

cc: Michael Abbott, RDC Legislative Coordinator

ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

March 13, 1985

MAR 19 1985

The Honorable Ben Grussendorf
Speaker of the House
ALASKA STATE LEGISLATURE
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Speaker Grussendorf:

The Alaska Miners Association appreciates the efforts of you and the other sponsors of House Bill No. 256 establishing an economic development policy for the state. We want to thank you, and the other sponsors, and inform you of our total support of HB 256 in its present form (see attached).

We have long supported the adoption of such a policy and continue to do so.

Sincerely,

ALASKA MINERS ASSOCIATION

James R. Jinks
Executive Director

Enclosure
cc: Ringstad
Adams
Cato
Frank
Larson
M.W. Miller
Perce
Rieger
Shultz
Sund
Taylor
Uehling
Hanley
Jenkins

THE AftI-DITTMAN POLL

of Alaska business leaders

The AftI-Dittman Poll is a regular monthly feature of Alaska Construction & Oil *and Alaska Analysts/Dittman Research. Each month several hundred Alaska business men and businesswomen are contacted and asked their opinions on questions of statewide importance. The statewide totals are combined and published in the weekly business newsletter* Alaska from the Inside (AftI) *and in* Alaska Construction & Oil. *The respondents included in the sample are representative of their fields of activity and are located throughout the state.*

QUESTION

"Overall, do you feel state government regulations and policies are most likely to encourage or discourage well-planned, responsible resource development?"

RESULTS

	Encourage	Discourage	Undecided
Construction and Timber	22%	78%	—
Petroleum and Mining	13%	85%	2%
Finance and Services	42%	56%	2%
TOTAL	24%	74%	2%

ANALYSIS

Nearly three-quarters (74%) of Alaska's business leaders interviewed in November feel state government regulations and policies *discourage* well-planned and responsible resource development.

The percentage of respondents agreeing varies widely by industry. Petroleum and Mining respondents are the most adamant, with 85% answering "discourage."

A review of the respondents' comments offered during the poll shows that the Alaska Department of Fish and Game was the most frequently mentioned example of a state agency that discourages resource development. The comments also indicated two main reasons for respondents' concern about government policies:

(1) It is difficult to justify the expense and time required to design a well-planned development and take it through the permitting process when the likelihood of success is always in doubt.
(2) The state employees who work in regulatory agencies are more likely to have regulatory ("protective") mentalities which may blind them to the benefits of resource development.

COMMENTS

"Mainly in the permit area — the Department of Fish and Game stops more projects than any agency. They are always on the side of the Sierra Club and SEACC. *No development* is their policy."

"It took 16 years to get a water-use permit for mining and I have a coal prospecting permit application that is nine years old and still pending."

"The tendency in state government is to over-regulate. There can only be one result of that tendency — operating costs are increased both by the requirements for compliance and the cost of processing paper."

"It takes too much time and effort to get permission for access. It discourages people before they even start."

"Regulations are built around a negative attitude."

"Definitely encouraged — a marked improvement noted in both words and deeds!"

"Until the Department of Fish and Game is restricted from making unilateral and arbitary decisions concerning resource development, we will be unable to encourage development no matter how well-planned and responsible!"

CALENDAR

ENERGY-SOURCES TECHNOLOGY CONFERENCE & EXHIBITION — Sponsored by the American Society of Mechanical Engineers at Loews Anatole Hotel, Dallas, TX, (214) 247-1747, Feb. 17-22.

TRAINING SESSIONS ON DRILLING AND BLASTING TECHNIQUES — Explosives Services Corp. of Issaquah, Wash., (206) 392-7112, is conducting a five-day training session on drilling and blasting techniques in Ketchikan, Feb. 18-Feb. 22; and in Anchorage, Feb. 25-March 1.

INTRODUCTION TO MICROCOMPUTERS — A short course presented by the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers, Hilton Hotel New York, NY, (303) 973-9550, Feb. 23-24.

FINANCE FOR THE MINERALS INDUSTRY — A symposium that is part of the annual meeting events for the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers; Hilton Hotel, New York, NY, (303) 973-9550, Feb. 24-28.

STATE OIL AND GAS LEASE SALE NO. 46A — Anchorage Westward Hilton Hotel, Anchorage, Feb. 26.

AGC 66TH ANNUAL CONVENTION/CONSTRUCTOR EXPOSITION — The Associated General Contractors of America 1985 convention, San Francisco, CA, Feb. 27-March 5.

ALASKA SUPPOR NDUSTRY ALLIANCE — Conference on marginal oil field development, Captain Cook Hotel, Anchorage, March 2.

FOURTH ANNUAL ALASKA CONSTRUCTION SUPPLY AND EQUIPMENT SHOW — Exhibits and technical sessions, Sullivan Arena, Anchorage, (907) 346-2424, March 21-22.

ARCTIC '85: CIVIL ENGINEERING IN THE ARCTIC OFFSHORE — A national specialty conference of the American Society of Civil Engineers at the Sheraton Palace Hotel, San Francisco, CA, (713) 772-0876, March 25-27.

34TH ANNUAL VEHICLE MAINTENANCE/MANAGEMENT CONFERENCE — Sponsored by the University of Washington, College of Engineering, at Kane Hall, Seattle, WA, (206) 543-5539, March 25-28.

ALASKA TRANSPORTATION FORUM — University of Alaska-Fairbanks, April 15-16.

CABLE HARVEST TECHNIQUES — Holiday Inn-Downtown, Spokane, WA, (509) 838-6101, April 15-19.

United Way of King County
Thanks to you.

Editorial Opinion and Comment of

FAIRBANKS
Daily News-Miner
"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

A strategy for the future

Alaskans concerned about resource development have been meeting in Anchorage this week to discuss a strategy for the future. The occasion was a conference sponsored by the Resource Development Council, and the agenda was packed with representatives of government and industry.

It's that mix of government and industry that Alaska must tend to if we are to meet our goals of economic development and diversification.

Though the private sector usually operates best with a minimum of government involvement, the high percentage of government-owned land in Alaska necessitates close cooperation from all three levels of government—federal, state and local.

Most of the industries Alaska hopes to encourage—mining, agriculture, fishing, natural gas, petrochemicals—can't be developed unless land is made available and access is provided. That's where governments come in, for private land owners in Alaska continue to hold only a small share of the land, even when Native corporation land holdings are included in the reckoning.

Economic development is not an easy job for our state. For though we're blessed with abundant natural resources that can serve as the foundation of such efforts, we're seeking to balance their development with an appreciation of the natural beauty of our land and of the resources such as fish and wildlife for which natural habitat is critical.

What we can accomplish depends to a large extent upon the attitude of Alaskans. Our state has a high level of citizen involvement in decision-making and it is possible for a few people to influence major decisions.

What we must seek, then, is a recognition that Alaska cannot long afford the luxury of our diverse lifestyles if our economy does not remain strong. Nor will we be able to provide the amenities we've come to enjoy if we do not diversify our state revenue sources.

By recognizing the complexity of the economic development job, Alaskans should be able to plan a strategy that will protect our land and at the same time develop our resources. It will take planning and foresight, but it's not a job to shirk.

FDNM

OPINIO

Revenue projections provide sobering trut

At the opening session of last week's
nformative and stimulating confer-
nce on "Alaska's Economic Priori-
es" at the Sheraton/Anchorage,
airbanksan Mary Nordale, well-
nown attorney and now state com-
.isioner of revenue, presented a
.ost enlightening and encouraging
ummary of Alaska's "Petroleum
evenue, Production and Price Pro-
ctions."

Such projections, however sophisti-
ited the analysis of pertinent data
ailable, of necessity are based upon
sumptions, probablities, and, in
me parts, sheer guesswork. They
fer, however, the best guidelines to
oughtful action we have.

The Alaska oil revenue projections
nding downward from a peak, as is
evitable in the production scenario
anything on a gigantic scale, have
en featured recently in the press
d media as gloom and doom fore-
sts. They are not. On the contrary,
wringing of hands and the wailing
the wigwams of the mighty have
en depressing evidence merely that
me among us love to be dependent.

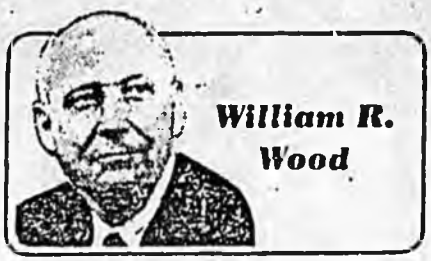
Viewed in the perspective of *what is* B.O.P. (Before Oil Production),
current state revenue projections
the year 2000 and beyond are neith-
bleak nor hopelessly discouraging.
ering, yes. This, of course, all resi-
dents of Alaska should find comfort-
ing and enormously encouraging. At
last, a return to common sense fiscal
behavior is in prospect.

In summary, the Nordale projec-
tions remind us that in 1975 the stat 's
"General Fund Unrestricted Re-
venues" were about $333 million. This
more than doubled the very next year.

The flood of North Slope oil dollars
continued to swell to $2.5 billion by
1980—nearly an eight-fold increase in
five years! The gusher crested at $4.1
billion two years later and has gra-
dually tapered downward since. In
1985 the General Fund Unrestricted
Revenues are estimated to reach a
total of $3.3 billion. A ten-fold increase
in one decade, 1975-1985, Wow! Re-
member how it was in 1960? About $30
million total, or one hundred times
smaller!

No wonder Alaska went on a spend-
ing spree, led by the Legislature and
the administration eager to catch up
on capital needs and services desired
to enhance the good life as they saw it
throughout the state. Let's not forget
they were responding to pressure at
home. All of us were more or less ac-
tive in the "gimme" posture, both
hands outstretched and pleading,
"More! More!"

What really got out of hand was the
bureaucracy, not just in government,



William R. Wood

Views expressed here do not necessarily represent those of the Daily News-Miner

but in the industrial, commercial,
financial, educational, and labor are-
nas as well. The phenomenon of over-
indulgence permeated every corner
of Alaska. It has been particularly de-
vastating to Alaska's future pros-
pects in the over-staffing of regula-
tory activities and paperwork impos-
itions. This has been far too costly for
the residents to afford since the zeal to
achieve the last measure of perfec-
tion for one cause or another has
ranged far beyond the realm of
reason and common sense.

Fortunately, there is the Perma-
nent Fund acting as a safety valve of
sorts to keep the whole barrel from
running dry. It didn't exist until 1977.
Now in 1985 the annual earnings from
this savings account are over $600
million. In the next 10 years it is esti-
mated that the Permanent Fund will
be earning about $1.5 billion and will
approach $2.5 billion annually by the
turn of the century, just 15 years from
now. That amount combined with an
estimated $2.2 billion from oil and
other sources, such as mining,
fishing, timber harvest, tourism, and
agriculture, would bring the General
Fund Unrestricted Revenues to near-
ly $5 billion for state spending in the
year 2000. Moreover, by that time the
Permanent Fund itself would be
something over $20 billion.

Not too shabby a prospect for Alas-
ka, even should the population double
by then to one million residents. All
such projections, of course, are tem-
pered by change, both the predictable
and the unforeseen.

The alarm over necessary spending
cuts this session at the state level may
be a blessing in disguise. Spending
restraints are clearly overdue. There
could be substantial reductions in
government regulatory and adminis-
trative operations even if revenues
were rising instead of falling. A grea-
ter depth of prudence should prevail
in selecting for funding capital im-
provement projects in the statewide
"catch-up" and "Reach for Excell-
ence" programs. In general, priority
might well be given to ...frastructure
items in energy, transportation, and
communications matter:
make possible the crea
wealth from things tha
and from things that do n
where.

The reduction of ove
spending can increase s
adaptability as well as ea
the heart. Having fewe
spend may give our le
time to think—to think n
and deeply about how b
create some new dollar
mineral and agricultura
These two, we are remi
and again, are the only sou
wealth.

Neither boom nor gloom
pect for 1985 and beyon
the whole picture. The o
the rest of the world are
Alaska's opportunity.
character for each of us
meet the challenge i
together toward a greater
self-discipline and self-rel
ing forward together in
and with mutual respect,
whatever needs to be
more.

*Dr. William R. Wood is a reti
of the University of Alaska now
his time as executive directo
Fairbanks '84.*

Opinion

FDNM

Wednesday, February 27,

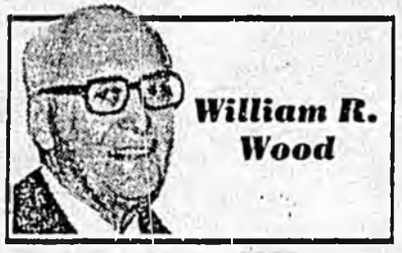
Efforts to diversify economy are serious

The single *big project* is not dominant in the thinking of community speakers at the Fifth Annual International Conference on Alaska's Resources that convened Feb. 13-14 at the Sheraton Anchorage.

Diversification is. From every region of Alaska the message is clear and strong: tourism, mining, and fishing are the common denominators of interest, then timber and farming wherever trees or crops grow. There was mention of fur ranching, poultry farming, dairying, livestock husbandry, and greenhouse culture. This was not idle talk. Serious effort is being made on each in one or more Alaska communities. Innovation, ingenuity, inventiveness, advanced technology, were mentioned to remind us how young we are in Alaska. How fine the prospect for creative young thinkers.

Seven minute presentations were made by 18 representatives from nine cities, six boroughs, two combined city/borough units, Juneau and Sitka, and Alaska's metropolis, the municipality of Anchorage. The coverage was widespread, from Ketchikan to Kotzebue, from Unalaska, Bethel and Bristol Bay to the North Slope Borough, Valdez, and the Fairbanks North Star Borough, from Haines and Cordova to Kenai Peninsula, and Matanuska-Susitna to Kodiak Island. Impressive participation! In addition, several places not listed on the program for presentations joined in the excellent All-Alaska community displays featured throughout the conference: Delta, Nenana, Barrow, Skagway, Seward among others. The occasion sponsored by the Resource Development Council for Alaska provided an excellent opportunity for insight into what Alaskans are thinking and doing.

Few of the presentations and displays turned up any brand-new prospects or special projects, the exception, perhaps, being the great Red Dog lead/zinc/silver venture near Kotzebue. From all points in



William R. Wood

Views expressed here do not necessarily represent those of the Daily News-Miner

Alaska, however, was demonstrated renewed determination to find some way, any way to bring into production for processing and marketing Alaska's extraordinary variety of natural resources. Not all non-attenders of the conference may share in the enthusiasm expressed, yet among those present reporting on how things were at home there seemed evident a common belief that the habitat, whether land or marine, can be enhanced and made more productive and attractive for the ultimate benefit of residents of the Great Land.

Surfacing now and again was recognition that the burden of idle resources, natural and human, could reach the level of the intolerable. The spirit expressed was strong: Let's do all that we can ourselves with what we have. Let's not depend on any one source of income, fur, fish, timber, gold, oil, or government, as we have in the past. Let's make intelligent use of all our possibilities and drive toward a greater measure of self-reliance and self-sufficiency.

Not one speaker even hinted at being satisfied with overdependency upon government at any level or any other largesse giver. Each of the 18 community speakers was enthusiastic, optimistic, excited about the potential of the place where he lives, full of cheer and wit, each proud to be an Alaskan. Rated outstanding at the end of the conference was the far-ranging presentation accenting our people potential by our own Mayor Bill Allen.

The agenda for the conference was studded with other spark presentations, some provoca enough to generate fresh think and new awareness among several hundred in attendar These were offered by a rang specialized talent from Texas, (gon, Washington D.C., Seattle, Canada as well as Alaska's c from Juneau, Fort Yukon, Anch age, and Fairbanks.

Yet the great lift at the conf ence came from the 18 commu ties each with the encouragi news of what it was devising ar undertaking on itw own wi reasonable assistance from the o side to insure a brighter tomorr for the great place where they liv And each of the 18 it was empl sized, is more than willing to sha the good life he enjoys with visito and new residents. Come see us ar time!

Dr. William R. Wood is a retired pre dent of the University of Alaska now volu teering his time as executive director Festival Fairbanks '84.

RDC conference debriefing hits a 'we're-in-this-together' theme

By BERT TARIANT

"We're in this together" was the theme of a debriefing held by the Resource Development Council following its fifth annual International Conference on Alaska's Resources.

The conference was titled "Alaska's Economic Priorities: A Five Year Strategy" and offered a number of communities from around the state an opportunity to present their own economic conditions, problems and priorities.

It was the mayor and/or representatives of the participating communities that gathered after the two days (Feb. 13-14) of presentations and discussions for the debriefing.

"Last year after our conference we got the speakers and major players together for a private meeting to get their feelings on the conference," said Paula Easley, RDC Executive Director. "It worked well so we decided to do the same this year with the communities."

The debriefing wasn't just a pat yourself on the back for a job well done. Easley had a slate of 10 conference objectives on which she wanted input from the communities.

• Identify a process for ranking capital projects for state funding

"There was a large consensus at the debriefing that there needs to be a process for ranking capital projects," Easley said, "but there also is no quick and easy, super way of doing that ranking."

She noted the communities had their wish lists for the state legislature but that most had never looked at that list "from a point of view of what would sustain the local economy."

"So far the state legislature has never looked at Alaska's oil wealth with an eye to prioritizing, to ranking needs," she said. "And part of that is due to the fact there has been no clear direction of what we want to do in our state."

But the concept of declining petroleum revenues as production from Prudhoe Bay begins to slip has "finally begun to sink in," the RDC chief said. "Alaska's communities are very concerned. They want more effort made in dealing with priorities and we'll work with them on it."



RDC Executive Director Paula Easley received a bouquet of roses at the conference close.

• Create a more active, vocal constituency for economic development

"This was definitely accomplished by the conference in the view of the communities," Easley said. "Many had never discussed such an idea before and now the momentum is going."

The communities concluded the Resource Development Commission had gotten the whole thing started and "they don't want to see the ball dropped; they want to keep up the momentum," she said.

"The communities asked us to have 3-4 meetings where the mayors or their representatives get together to discuss the constituency issue before we hold our next international conference," she added.

• Give direction to the Governor and legislature that wise spending decisions are needed now

"The mayors concluded they must work at their own level with their own community government and their legislators if they are to make progress in this area," she said.

The community leaders also requested the Council to help with resources and support in their efforts to get the importance of wise spending decisions across to elected representatives.

• Encourage formation of local economic development

See RDC, Page 18





• RDC conference participants find they share problems

Continued from Page 14

ation's groups that an problem.

Many of the communities felt they had good, dedicated people working in their various resource and business opportunities development sections, Easley said, "but they also felt something was missing."

"They felt their efforts at development had not been as productive as they could be and concluded a big reason for this was that the development departments had not been given a strong enough mandate," Easley said.

• Stimulate cooperative effort between private industry/Native groups, local chambers, labor and government bodies to pursue economic goals

"This topic ties in with development study groups. The communities felt they must get their development departments more in touch with the community and its leaders if a concerted effort for development and economic diversification were to take place."

Easley noted one of the state's boroughs already is in such a position. "The Kenai Peninsula Borough has a Resource Development Council that is staffed with a director, Frank Mellhargey, and that has been instrumental in that borough's expansion," she said.

"Many of the other communities are looking to the Kenai Peninsula Borough as a good example of economic diversification, how it can be done, and done very well," she added.

• Generate awareness of need for major infrastructure investments that enhance development potential

"I think we can safely say the communities around Alaska are very aware of the need for infrastructure investment but we all agreed the key question was: how do you get this message across to the state legislature?"

• Design a system for statewide opinion gathering

"During the conference we told the community participants we would have experts ranking the projects that were presented and some of the communities weren't that happy – not so much at the idea of ranking but that their projects may not get the priority they felt those projects deserved," Easley said.

"We did settle on a plan that will be put into effect with the next conference – the concept of a multi-year opinion survey using people who came to the conference," Easley said.

The key is getting opinions from around the state and Easley said most of that battle is won. "For the first time, the RDC International Conference had more people from outside Anchorage attending, plus 20 village corporations and the Native Regional Corporations," she noted.

"By any definition of a valid survey sample, we had it –

See RDC, Page 16

Fifth Annual International Conference on Alaska's Resources
Alaska's Economic Priorities: A five-Year Strategy and All-Alaska Community Expo



• RDC conference draws strong reviews

• RDC debriefs participants

Continued from Page 15

economic, geographic, ethnic, etc.," she added.

• Provide information on project financing alternatives

The community representatives were very vocal, Easley says, in their "need to know what investors needed from them and how the communities could be prepared with such information."

"They wondered why and how investors choose one area or community over another for a development project," she added. "They were keenly interested in the criteria for such location factors and they want to work on it."

• Educate public on community activities, attractions, needs and constraints to development

At the conference, the RDC also sponsored a "Community Exposition" at which each community and others could place exhibits designed to educate attendees of the communities' status and potentials.

"But unless you have a knowledgeable community leader manning the booth, you are not going to be in a position to answer questions should an investor want to know more about the community," Easley said.

"Unfortunately, most of the community leaders were in the conference hall, listening to the presentations, rather than being out on the booth," she added. "The mayors agreed next year they make sure community leaders were at the booths, ready to answer questions and give insight."

• Foster a "we're in this together" attitude between communities

"I believe this is what excited the participants the most," Easley said. "All of them indicated they were members of the Alaska Municipal League but our conference marked the first time they had ever had a forum to address a large cross section of Alaskans and talk about their problems and potentials."

See RDC, Page 17



Continued from Page 16

"They were not only able to discuss their own problems but also learned much about what is happening in other communities. They found they have many similar problems," she said.

Other areas of concern also were discussed at the debriefing, including need expressed by many for technical expertise in working toward goals. "These people are available but it costs money to bring them in," noted Easley.

"They also suggested that in a future conference, after the communities have had the opportunity to make their presentations, that a second set of discussions be held concerning a more regional approach to problems and priorities," Easley said.

An immediate outcome of the conference and debriefing will be release of a booklet on community economic development.

"The booklet was authored by Ron Wall and others in the Division of Economic Enterprise of the state Department of Commerce & Economic Development," Easley noted, "but a lack of funding had kept the booklet from being published. Ron promised the communities he would get it to them."

Attending the debriefing in addition to Easley and other RDC staff were Mellhargey for the Kenai Peninsula Borough, John R. Pugh and Wayne Haerer for the city and borough of Kodiak, Walt and Paul Fletcher of the Division of Economic Enterprise, Jim Gove of the city of Wrangell, Mayor Dorothy Jones of the Matanuska-Susitna Borough, RDC President Chuck Webber, John Devens of Valdez, Mayor Bill Allen and Buzz Otis of the city of Fairbanks and the North Star Borough, Mayor Fran Ulmer of Juneau, Ted Ferry for the city of Whittier and Anita McGrath of Anchorage.

ALASKA JOURNAL OF COMMERCE & PACIFIC RIM REPORTER Week of February 25, 1985

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

HB 256am: Summary

Amends Title 44 by adding a new chapter which makes a declaration of the State economic policy. Legislature declares that the state has a commitment toward "purposeful" development of its natural resources. The bill also provides legislative intent with respect to development and defines the activities which the state should undertake to promote such an economic policy.

Introduced: 3/1/85
Referred: Resources and Finance

BY RINGSTAD, ADAMS, GRUSSENDORF, CATO, FRANK, LARSON, M.W.MILLER, PEARCE, RIEGER, SHULTZ, SUND, TAYLOR, UEHLING, HANLEY AND JENKINS

IN THE HOUSE

HOUSE BILL NO. 256 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing the economic development policy of the state."

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

* Section 1. AS 44 is amended by adding a new chapter to read:

CHAPTER 67. GENERAL STATE POLICY.

Sec. 44.67.010. DECLARATION OF STATE ECONOMIC DEVELOPMENT POLICY. (a) To further the goals of a sound economy, stable employment, and a desirable quality of life, the legislature declares that the state has a commitment to foster the economy of Alaska through purposeful development of the state's abundant natural resources. It is the legislature's intent that this development

(1) offer long-term benefits and increased employment to Alaskans by strengthening and diversifying the state's economic base and encouraging new activities;

(2) provide opportunities for increased personal income or reduced living costs by creating activity in economic sectors;

(3) have a positive effect on the revenue needs and fiscal conditions of the state and local communities;

(4) be undertaken after consideration of the views of citizens impacted by the development, and only after adequate protection is assured for Alaska's environment, ~~and the Alaskan life style.~~

(b) To take advantage of investment opportunities afforded by Alaska's abundant resources, the legislature finds that the state must

undertake activities that serve as a catalyst to responsible economic development in the state for the benefit of its citizens. It is the policy of the state to

(1) develop and provide information to domestic and foreign investors to use in evaluating project feasibility;

(2) with cooperation from investors, identify constraints to economic development imposed by all levels of government and work with government agencies to solve problems created by those constraints;

(3) with cooperation from investors, identify constraints to economic development such as lack of transportation and energy systems necessary to support the extraction, production, and transport of resources to markets, and implement capital improvement or other programs to resolve the deficiencies;

(4) provide a stable tax and regulatory climate that encourages expansion of the state's economic base;

(5) encourage "value-added" processing in the state;

(6) improve the state's comparative position by offering economic incentives that support the constitutional mandates for utilization, development and conservation of natural resources.

Chairman's Information:

1) HB 256am "An act relating to the economic development policy of the state"

a) Introduced: Ringstad plus 14 others

b) Co-Sponsors:

2) INTENT: Makes a declaration of the State's economic development policy and defines the activities the state should undertake to promote this policy.

FISCAL NOTE: none

NOTE:

3) ADDITIONAL REFERRALS: Resources and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 256

Title: Economic Development of the State

Sponsor: Ringstad

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: March 21, 1985

Approved by Commissioner: Norm D Arnold, Deputy Date: March 21, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

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

Fiscal note (0)

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB
294

Chairman's Information:

1) HB 294: "An act relating to preferential hire of Alaskans; and providing for an effective date"

   a) Introduced: Boucher + 33 other House members

   b) Co-Sponsors:

2) INTENT: This bill establishes a state policy which provides for an employment preference for state residents on projects funded with public monies.

   Under the Privileges and Immunities Clause of the US Constitution, a state must show a compelling reason for giving an employment preference to state residents. This legislation contains 18 "Legislative Findings" in an effort to withstand Constitutional challenges.

   FISCAL NOTE: Fiscal Note: 0

   NOTE:

3) ADDITIONAL REFERRALS: Finance

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 294
Title: "An Act relating to preferential hire of Alaskans..."
Sponsor: Boucher, Davis et al.
Requestor: House Finance
Date of Request: 4/16/85

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		90.6	93.8	97.1	100.5	104.0
200 TRAVEL		10.0	10.6	11.2	11.9	12.6
300 CONTRACTUAL		11.2	11.9	12.6	13.4	14.2
400 SUPPLIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT		3.2	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	116.0	117.4	122.1	127.1	132.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		116.0	117.4	122.1	127.1	132.2
FEDERAL FUNDS						
OTHER						
TOTAL	0	116.0	117.4	122.1	127.1	132.2

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This fiscal note assumes an effective date of July 1, 1985.

Prepared By: Robert J. Bacolas. Sr. Phone: 465-4870
Division: Labor Standards & Safety Date: 4/16/85

Approved by Commissioner: Jim Robison Date: 4/16/85
Agency: Labor

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

Fiscal note

	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	COV.	APPROV.	DISAPP.
1.	Wage & Hour Investiga[illegible] I				16A	GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12				Anchorage				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	32,424	
6.	Benefits	5,222	
7.	Supplemental Benefits	1,988	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES 01		42,264
10.	Travel 02		5,000
11.	Contractual 03		5,600
12.	Commodities 04		500
13.	Equipment 05		1,600
14.	Other		
15.	TOTAL COST		54,964

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	54,964
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR OMB USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The position will inspect public construction job sites for compliance with residency preference provisions of AS 36. This position would obtain and audit certified payroll records for public construction projects to determine compliance with resident employment preference.

The travel expense is for travel costs to construction sites around the state. Contractual and commodities are average per employee costs. The equipment costs would be one-time items.

REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour Administration

HB 294

Revised Date

FY 86

LEG:F

1.	POSITION TITLE: Wage & Hour Investigator I			RANGE/STEP: 16A	BARG. UNIT: GGU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION: Fairbanks	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL	ADDITION							

4.	TYPE OF EXPENDITURE	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	37,356	
6.	Benefits	6,016	
7.	Supplemental Benefits	2,290	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES 01		48,292
10.	Travel 02		5,000
11.	Contractual 03		5,600
12.	Commodities 04		500
13.	Equipment 05		1,600
14.	Other		
15.	TOTAL COST		60,992

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	60,992
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR O&M USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The position will inspect public co struction job sites for compliance with residency preference provisions of AS 36. This position would obtain and audit certified payroll records for public construction projects to determine compliance with resident employment preference.

The travel expense is for travel costs to construction sites around the state. Contractual and commodities are average per employee costs. The equipment costs would be one-time items.

REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

HB 294

Page 3 of 3

Revised Date

FY 86

LEG:F

3/29

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 294
Title: "An Act relating to preferential hire of Alaskans..."
Sponsor: Boucher, Davis et al.
Requestor: House Labor & Commerce
Date of Request: 3/18/85

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. (Robert J. Bacolas by RB) Phone: 465-4870
Division: Labor Standards & Safety Date: 3/19/85
Approved by Commissioner: Jim Robison (Robert W Jordan for) Date: 3/19/85
Agency: Labor

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

7/1/84

Bill No. House Bill No. 294

Date April 25, 1985

Title "An Act relating to preferential hire of Alaskans; and providing for an effective date."

Contact: Robert Landau
465-2700
Eileen Plate
465-2700

Since 1982, one of the Department's highest priorities has been the enforcement of preferential hiring of Alaska residents on state-funded public works projects, pursuant to AS 36.10.010. In late 1983, however, the state's resident hire law was challenged on constitutional grounds and resulted in a Superior Court decision that the law was unconstitutional. That decision is now on appeal to the Alaska Supreme Court.

One of the Superior Court's key findings was that there was insufficient evidence to show that the in-migration of non-residents was displacing qualified and available Alaska residents from public works employment. By explicitly setting forth the legislative findings underlying the resident hire law, House Bill No. 294 would provide a more solid foundation from which to defend the principle of Alaska hire. The Department of Labor, therefore, strongly endorses the comprehensive legislative findings contained in the bill.

In response to concerns that the Department's resident hire enforcement capability should be enhanced, a fiscal note has been prepared to provide funding for two additional enforcement staff.

The Department of Labor supports House Bill No. 294.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

give to Cotten in Senate w/ 294

MEMORANDUM April 22, 1985

SUBJECT: Term "royalty" as used in HB 294

TO: Representative Red Boucher

FROM: Billy G. Berrier
Director
Division of Legal Services

At the request of Representative Cotten, he, Dave Donely and I met to discuss the appropriateness of use of the term "royalty" in findings 15 and 16 of Sec. 36.10.005 of House Bill 294. I was requested to furnish you my comments.

Royalty has a fixed meaning in the oil industry. It is the landowners share of production free of expenses of production. (Handbook of Oil Industry Terms and Phrases - Lagenkamp, PPC Books 1977 and Manual of Oil and Gas Terms, Williams and Meyers, Matthew Bender 1981) A copy of these references is enclosed.

In finding 15 the term is properly used and emphasizes the use of money derived from the ownership interest in land of the state rather than from traditional governmental sources of revenue for traditional governmental functions. This distinction may be relevant and material in determining the market participant status of the state in many instances.

Finding 16 however is factually in error. It is clear that the term there is not intended to be limited to the landowners royalty but was intended to include all natural resource income. This is an incorrect useage of the term "royalty". I would suggest that on page 2, line 24 the term "these royalties" be deleted and the term "natural resources income" be substituted.

BGB:csh
c4/006

CC:Representative Cotten
Dave Donely

Legal Services memo

ROUSTABOUT
A production employee who works on a lease or around a drilling rig doing manual labor.

ROYALTY
See Landowner royalty

ROYALTY, COMPENSATORY
Payments to royalty owners as compensation for loss of income which they may suffer due to the failure of the operator to develop a lease properly.

ROYALTY, FIXED-RATE
Royalty calculated on the basis of a fixed rate per unit of production without regard for the actual proceeds from the sale of the production.

ROYALTY, GUARANTEED
The minimum amount of royalty income a royalty owner is to receive under the lease agreement, regardless of his share of actual proceeds from the sale of the lease's production.

ROYALTY, LANDOWNER'S
A share of the gross production of the oil and gas on a property by the landowner without bearing any of the cost of producing the oil or gas. The usual landowner's royalty is one-eighth of gross production.

ROYALTY OIL
Oil owned by the government, federal, state or local.

ROYALTY, SHUT-IN
Payment to royalty owners under the terms of a mineral lease which allows the operator or lessee to defer production from a well which is shut in for lack of a market or pipeline connection.

RUN
A transfer of crude oil from a stock tank on a production lease to a pipeline gathering system, for transportation to the buyer's facilities; running oil from a tank into a pipeline for delivery to a purchaser.

RUNNING THE TOOLS
Putting the drill pipe, with the bit attached, into the hole in preparation for drilling.

RUN TICKET
A record of the oil run from a lease tank into a connecting pipeline. The ticket is made out in triplicate by the gauger and witnessed by the lease owner's representative, usually the pumper. The run ticket, an invoice of oil delivered, shows opening and closing gauge, API gravity, and tank

ature, tank temperature, and BS&W. The or
purchaser, a copy to the pumper and one for

RUPTURE DISK
A thin, metal plug or membrane in a fitting on a p
blow out or rupture when the pressure exceeds
safety plug. *See* Soft plug.

S

SADDLE
A clamp, fitted with a gasket, for stopping the flo
or splits in a pipeline; a device for making tempo
clamp conforms to the curve of the pipe and is
that fit around the pipe and extend through the

SADDLE BEARING
A broad, heavy bearing located on top of the Sa
walking beam on a cable tool drilling rig or an

SAE
Society of Automotive Engineers

SAE NUMBER
A classification of lubricating oils in terms of vis
established by the Society of Automotive Engine
30, multi-viscosity lubricating oil (q.v.).

SAFETY VALVE
See Relief valve

SALTBED STORAGE
Thick formations or underground layers of salt in w
or leached out with super-heated water for the
products, e.g., heating oils, butane, propane, a

SALT DOME
A subsurface mound or dome of salt. Two ty
recognized: the piercement and non-piercem
thrust upward into the formations above them
piercement domes are produced by local thicken
merely lift the overlying formations to form an an

Roughneck

A driller's helper and general worker on a drilling rig.

Round trip

The process of removing drill pipe, replacing the bit, and returning the drill column to the hole. See Buster Gardner Drilling Co. v. Associated Oil & Gas Exploration, Inc., 214 So.2d 267 at 271, 32 *O.&G.R.* 169 at 176 (La. App. 1968), *writ refused*, 253 La. 59, 216 So. 2d 306 (1968).

Roustabout

A common laborer around a drilling or producing well.

ROV

See RANGE OF VALUES METHOD.

Royalty

(1) The landowner's share of production, free of expenses of production.

(2) A share of production, free of expenses of production, *e.g.*, an OVERRIDING ROYALTY (*q.v.*) of ⅛ of the ⅞ working interest.

The landowner's royalty is frequently ⅛th production, but it may be any other fractional share of production (or, as is typical in California, the royalty may be expressed as a percentage of production rather than a fractional share of production). In some parts of the industry, anything larger than a ⅛th royalty may be called an OVERRIDING ROYALTY (*q.v.*) in practice, even though it goes to the landowner. Thus a 1/6th royalty may be called "an ⅛th royalty and a 1/24th override."

Royalty may be payable in kind (that is, the royalty owner is entitled to a share of the oil or gas as produced), or it may be payable in money (that is, the royalty owner is to be paid in money for the value or market price of his share of the product). The former type of royalty gives its owner in some states, *e.g.*, Texas, a corporeal interest, whereas the latter type of royalty may give rise only to a debtor-creditor relationship after production between the operator and the royalty owner. For other differences in the legal consequences of the two types of royalty clause, see TREATISE § 659.1. Cancellation of the lease is

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The term royalty m some instances as cov and gas. See Denio v. P.2d 392, 149 A.L.R.

In United States v. 1965), the court said oil and gas matters, r payments.

Royalty, as used i Article 213 of the L

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normally not an available remedy for non-payment of royalty. See TREATISE § 656.3.

Although the royalty is not subject to costs of production, usually it is subject to costs incurred after production, *e.g.*, production or gathering taxes, costs of treatment of the product to render it marketable, costs of transportation to market. Occasionally a lease provides that the royalty payable to the lessor shall be a larger or smaller fractional interest depending on the volume of production. A royalty is freely assignable.

The term royalty may be used in a more general or loose sense in some instances as covering all returns from a claimed interest in oil and gas. See Denio v. City of Huntington Beach, 22 Cal.2d 580, 140 P.2d 392, 149 A.L.R. 320 (1943).

In United States v. 525 Co., 342 F.2d 759, 22 *O.&G.R.* 483 (5th Cir. 1965), the court said that the term "royalty" as used with respect to oil and gas matters, refers to the landowner's royalty, and not to oil payments.

Royalty, as used in connection with mineral leases, is defined by Article 213 of the Louisiana Mineral Code (R.S. 31:213) as:

> "any interest in production, or its value, from or attributable to land subject to a mineral lease, that is deliverable or payable to the lessor or others entitled to share therein. Such interests in production or its value are 'royalty,' whether created by the lease or by separate instrument, if they comprise a part of the negotiated agreement resulting in execution of the lease. 'Royalty' also includes sums payable to the lessor that are classified by the lease as constructive production."

As the Comment to this article indicates, the statutory definitions of bonus and royalty are intended to be complementary. Thus if a production payment is created at the time of the execution of a lease, it will be characterized as royalty (and hence payable to those persons entitled to share in royalty) if the production payment is payable from the property being leased, whereas it will be characterized as bonus (and hence payable to those persons entitled to share in bonus) if the production payment is granted by the lessee out of another producing lease.

> "Generally, then, under subparagraphs (1) and (2) of Article 213, any interest in production or its value from or attributable to a lease granted by the holder of an executive right would be royalty and not bonus, even though it might be termed in the documentation as an overriding royalty or a production payment

taken out of the working interest. Coupled with the provisions concerning executive rights, this means that one holding an executive interest cannot, by the device of calling an interest in production an overriding royalty rather than a lessor's royalty, deprive the holder of a mineral royalty or other nonexecutive interest of the right to share in production."

See TREATISE § 339.4.

Bonus is distinguished from "royalties" as that term is used in the Small Business Corporation Act in Swank & Son, Inc. v. United States, 362 F.Supp. 897, 46 *O.&G.R.* 291 (D. Mont. 1973).

The term "royalty" as used in a contract under which royalty was promised for services was held to include "advance royalty" received by the promisor which was recoverable from subsequent production, if any. Rouse v. McDonough, 622 P.2d 106, — *O.&G.R.* — (Col. App. 1980).

The definition in this MANUAL was cited in Whitehall Oil Co. v. Eckart, 197 So.2d 664, 26 *O.&G.R.* 778 (La. App. 1966), *rev'd sub nom.* Gardner v. Boagni, 252 La. 30, 209 So.2d 11, 29 *O.&G.R.* 22 (1968).

See also, ACCRUED ROYALTY; ACREAGE BASED ROYALTY; ADDITIONAL ROYALTY; ADVANCE ROYALTY; APPORTIONMENT; BASE ROYALTY; BONUS ROYALTY; CASH SUBSTITUTE ROYALTY; CASINGHEAD GAS ROYALTY; COMPENSATORY ROYALTY; DEFERRED NET ROYALTY; DISCOVERY ROYALTY; DIVISION ORDER; DRILL SITE ROYALTY; EXCESS ROYALTY; FARMERS' OIL; FEE ROYALTY; FIXED TERM ROYALTY; FREE GAS CLAUSE; GAS ROYALTY; GROSS ROYALTY; LANDOWNER ROYALTY; LESSOR'S ROYALTY; LIEU ROYALTY; MINERAL ROYALTY; MINIMUM ROYALTY; NET PROFITS ROYALTY; NET ROYALTY; NON-PARTICIPATING ROYALTY; OFFSET ROYALTY; OIL ROYALTY; OPEN-END GAS ROYALTY CLAUSE; OVERRIDING ROYALTY; PARTICIPATING ROYALTY; PASS-THROUGH ROYALTY; PERPETUAL NON-PARTICIPATING ROYALTY; PREFERRED NET ROYALTY; PRODUCTS ROYALTY CLAUSE; PROGRESSIVE INCREMENTAL ROYALTY; REDUCTION OF ROYALTIES; RENT ROYALTY; ROYALTY BONUS; ROYALTY IN KIND; ROYALTY OIL OR GAS; ROYALTY REDUCTION; ROYALTY SURCHARGE; SLIDING SCALE ROYALTY; STEP SCALE ROYALTY; SUBSTITUTE ROYALTY; SUSPENDED ROYALTY; TAPERED ROYALTY; TERM MINERAL OR ROYALTY INTEREST; UNACCRUED ROYALTY; VARIABLE ROYALTY.

Royalty acre

A full lease roy
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or of a 1/16 royal
TREATISE § 320.
(1942); Inslee v.

For further dis

Royalty appor

A lease clause
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1972), suggests th
as an *entirety clau*
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Royalty based

See ACREAGE

Royalty biddi

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See also, LEAS

Royalty bonu

A term occasi
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ation received by
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See Griffith v. Ta
(1956); State Nat
509, 143 S.W.2d 7
S.W.2d 643 (Tex
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6–10.

See also, BONU

Alaska State Legislature

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JUNEAU, ALASKA 99811
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BOX 111038
ANCHORAGE, ALASKA 99511
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CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

M E M O R A N D U M

DATE: April 16, 1985

TO: Representative Red Boucher

FROM: Dave Donley

SUBJECT: Staff Analysis of HB294, Alaska Hire Legislation for Public Works Projects

---

HB 294 - An act relating to preferential hire of Alaskans: and providing for an effective date.

Section 1.	AS 36.10.005	Legislative Findings
	AS 36.10.006	Statement of Purpose
	AS 36.10.007	State Policy
Section 2.	Making section 1 retroactive to July 16, 1983	
Section 3.	Immediate Effective Date	

SECTION 1.

AS 36.10.005 LEGISLATIVE FINDINGS

A section on "legislative findings" is created under the state's Resident Hire on Public Works law, AS 36.10. The 18 findings address factors that make Alaska unique and assert that: these factors have contributed to the high rate of unemployment among Alaskan residents; that the state spends most of it's royalty oil earnings on government and public works projects; that the construction industry accounts for a substantial amount of available employment; that Alaskan workers receive a greater amount of unemployment benefits than in other states; and that the state has an obligation to reduce unemployment among it's resident construction workers through projects funded by state royalty oil monies.

Backup

Under the Privileges and Immunities Clause of the U.S. Constitution, a state must show a compelling reason for giving an employment preference to residents. If a resident hire law is challenged in a court of law, sufficient evidence to show that the in-migration of non-residents is displacing qualified and available Alaska residents from public works employment is necessary. By explicitly setting forth the legislative findings underlying the Alaska hire law, a more solid foundation will be provided from which to defend the principals of that law.

AS 36.10.006 STATEMENT OF PURPOSE

In 1983 the legislature amended the existing Resident Hire on Public Works law (AS 36.10.010) in response to problems and concerns identified by the The Legislative Findings (the findings of fact) for the purpose of (1) reducing the level of unemployment among residents and (2) ensuring that qualified resident workers do not remain unemployed while non-resident workers are employed on state public works projects. There are three subsections to the statement of purpose. The first is the most specific and all-inclusive. The second and third subsections are less specific and address each purpose individually. Because we do not know how specific a "statement of purpose" must be to be upheld in a court of law, the purposes are broken out this way to allow the courts, if necessary, to establish how specific the statement needs to be.

AS 36.10.007 STATE POLICY

It is the policy of the state that, for projects funded with public monies, an employment preference will be given to Alaska residents.

SECTION 2.

Makes the act retroactive to July 13, 1983. On this date the present Resident Preference on Public Works Projects law (AS 36.10.010-.020) was enacted. This section makes it clear that (as is well supported by the record) the findings of fact are accurate for 1983 as well as for the present and that statements of purpose and policy are those of the legislature when AS 36.10.010 was amended in 1983.

SECTION 3.

Makes the act effective immediately.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

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

April 12, 1985

The Honorable H.A. "Red" Boucher
Alaska State Legislature
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Boucher:

Re: House Bill No. 295

Enclosed is a breakdown of the Department of Labor's $100,000 fiscal note attached to HB 295.

If you have questions concerning any of the specific budget items, please contact Chuck Caldwell in the Department's Research and Analysis section at 465-4500.

Very truly yours,

Robert W. Landau
Deputy Commissioner

Enclosure

07-G9LH

Alaska Department of Labor

Budget Detail for Continuing Research
on Local Hire Related Issues

	HB 295
PERSONAL SERVICES	
Labor Economist II (6 Mo.)	21,400
Statistical Tech. I (4 Mo.)	11,100
Total Personal Services	32,500
TRAVEL	
Juneau-Anchorage (4 trips) *	1,800
Per Diem (8 3/4 days)	700
Total Travel	2,500
CONTRACTUAL	
Data Entry **	33,000
Printing	2,000
Programming	6,000
Data Processing Operations	20,000
Maint., Postage, Phone, Misc.	3,000
Total Contractual	64,000
COMMODITIES	
Office supplies	1,000
Total Commodities	1,000
TOTAL	100,000

* Meetings with the State's legal counsel.

** Costs or HB 295 relate to data entry of the 1984 Certified Payrolls of State funded construction.

FISCAL NOTE ANALYSIS

THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE
BILL/RESOLUTION NO.: HB 295
TITLE: "An Act making special appropriation for study of unemployment"
AGENCY AFFECTED: Department of Labor

This bill makes a special appropriation to the Alaska Department of Labor to study the affect of employment of nonresidents on unemployment among residents of Alaska and other issues related to Alaska hire.

Assumptions:

1. The Alaska Department of Labor will assign a Labor Economist II for six months and a Statistical Technician I for four months to research and provide this information.

2. Approximately one third of the funds will be used to key enter Alaska's certified payrolls from state funded construction projects.

3. $26,000 will be spent to complete crossmatches of the workers on the certified payroll with wage items on the unemployment insurance wage file, the unemployment insurance claimant file and permanent fund dividend recipients.

5. The project will begin immediately after the effective date of this legislation with a written summary to be presented to the Alaska Legislature by the first day of the next session.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 295

Title: "An Act making special appropriation for study of unemployment"

Sponsor: Boucher et. al.

Requestor: House Labor & Commerce

Date of Request: 4/10/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		100.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	100.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		100.0				
FEDERAL FUNDS						
OTHER						
TOTAL	0	100.0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Jim Robison Phone: 465-2700

Division: Commissioner Date: 4/10/85

Approved by Commissioner: Jim Robison Date: 4/10/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

REVISED

Bill No. House Bill No. 294 (C

Date March 28, 1985

Title "An Act relating to preferential hire of Alaskans; and providing for an effective date."

Contact: Robert Landau
465-2700
Eileen Plate
465-2700

Since 1982, one of the Department's highest priorities has been the enforcement of preferential hiring of Alaska residents on state-funded public works projects, pursuant to AS 36.10.010. In late 1983, however, the state's resident hire law was challenged on constitutional grounds and resulted in a Superior Court decision that the law was unconstitutional. That decision is now on appeal to the Alaska Supreme Court.

One of the Superior Court's key findings was that there was insufficient evidence to show that the in-migration of non-residents was displacing qualified and available Alaska residents from public works employment. By explicitly setting forth the legislative findings underlying the resident hire law, House Bill No. 294 would provide a more solid foundation from which to defend the principle of Alaska hire. The Department of Labor, therefore, strongly endorses the comprehensive legislative findings contained in the bill.

The Department of Labor supports House Bill No. 294. It will not have a fiscal impact on the department.

APPROVED:

Jim Robison

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 294

Title: "An Act relating to preferential hire of Alaskans..."

Sponsor: Boucher, Davis et al.

Requestor: House Labor & Commerce

Date of Request: 3/18/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

Wage & Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Robert Bacolas by RB

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 3/19/85

Robert W Jordan for

Approved by Commissioner: Jim Robison Date: 3/19/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

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

7/1/84

Alaska Department of Labor
Research & Analysis
P.O. Box 1149
(907) 465-4500
Juneau, Alaska 99802

LEGISLATIVE FINDINGS	ATTACHMENTS	COMMENTS
(1) because of its unique climate and its distance from contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;	1	The degree of economic instability is documented here. Determination as to which factors were most significant in causing this instability will require additional study. Comparing total nonagricultural wage and salary employment between Alaska and the U.S. shows a much higher seasonal fluctuation in Alaska (as indicated by both the monthly percentages of the respective annual averages, and the standard deviation of that relationship). Longer term economic instability is not as evident in the 1970-1984 data. This is probably because of the stabilizing effects of relatively high per capita State expenditures in the past several years.
(2) the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;	1, 2	The legislative members are probably in the best position to comment on the hardships experienced by their constituents. Recently the Alaska Dept. of Labor, Research and Analysis section did a computer cross match of the social security numbers of individuals who worked at any time in 1984 (under the coverage of Unemployment Insurance), with the social security numbers of Permanent Fund dividend recipients. This is the first time Alaska has had objective data to infer nonresident employment patterns. More work is planned to further analyze the relationships between residency and the receipt or nonreceipt of a Permanent Fund dividend.
(3) the rate of unemployment among residents of the state is one of the highest in the nation;	3, 4	Alaska's unemployment rate relative rank varies from year to year. In 1984 Alaska's annual average unemployment rate was tied for the fifth highest in the country; in 1983 it was sixteenth. Since our current time series began in 1976 Alaska's annual average unemployment rate has always been above that of the total nation.
(4) the state has one of the highest ratios of nonresident to resident workers in the nation;	2, 5, 6, 7	The recent computer match (see attachment 2) indicates that Alaska has a high percentage of nonresident workers. Unfortunately no similar data exists for other states. Comparing the nonagricultural wage and salary employment by place of residence (from the 1980 census) to its closest equivalent by place of work does indicate that Alaska has a higher than average level of nonresident employment. Alaska ranks second in the percentage of benefits paid to workers who collect outside the state (interstate benefits).

LEGISLATIVE FINDINGS	ATTACHMENTS	COMMENTS
		Future possibilities for research into this question are possibly working cooperatively with the U.S. Bureau of Labor Statistics.
(5) the state has a compelling interest in reducing the level of unemployment among its residents;	7	In addition to the individual's economic and social hardship attributed to unemployment there were $83,807,759 in benefits paid to unemployed workers, which were funded by Alaska's UI employer and employee taxes. Reducing the level of unemployment would correspondingly reduce the expenditure level.
(6) the construction industry in the state accounts for a substantial percentage of the available employment;	8, 9	Alaska's construction employment consistently accounts for a larger percentage of its total employment than the national average for the same time period.
(7) construction workers receive a greater percentage of all unemployment benefits paid by the state than is typical of other states;	10	Alaska's construction workers receive a large portion of total Unemployment Insurance benefit payments (as indicated in attachment 10). Unfortunately similar data is not published in a single source for other states. This data can be acquired directly from most states at a later time.
(8) historically, the rate of unemployment in the construction industry in the state is higher than the rate of unemployment in other industries in the state;	11, 12	Alaska's unemployment rate by industry has only been available since October 1982 (1981 data), and then only for the annual average. In all three years it has been available construction's unemployment rate has been the highest of any Alaska industry for which the U.S. Bureau of Labor Statistics has had sufficient sample to publish.
(9) it is appropriate for the state to consider the welfare of its residents when it funds construction activity;	none	This is a policy, not an economic issue.
(10) it is in the public interest for the state to allocate public funds for capital projects in order to reduce unemployment among its resident construction workers;	none	Economic impacts of spending alternatives can be made (such as the article by Scott Goldsmith of the Institute of Social and Economic Research in September 1984), but determination of what is in the public interest remains a policy issue.

LEGISLATIVE FINDINGS	ATTACHMENTS	COMMENTS
(11) in-migration of nonresident construction workers contributes to or causes the high unemployment rate among resident construction workers because nonresident workers compete with residents for the limited number of available construction jobs;	2	The recent computer match of Permanent Fund dividend recipients to workers covered by Unemployment Insurance in 1984 supports this finding, but additional computer matching and analysis is necessary to: a) cross check duration in the state, as indicated by the quarters in which workers either worked or claimed UI benefits, to receipt or nonreceipt of a Permanent Fund dividend; and b) match UI claims for both interstate (see Finding 44 by Judge Johnstone in the Francis, v. Robison case) and intrastate claimants against the file of Permanent Fund dividend recipients.
(12) nonresident workers displace a substantial number of qualified, available, and unemployed Alaska workers on jobs on state funded public works projects;	2	The Research and Analysis section of the Alaska Dept. of Labor does not yet tabulate state funded public works data separately from all other construction. However, when other units of this department have enforced the residency requirements of Title 36 employers are nearly always able to find unemployed, qualified residents. James N. Francis was replaced by a resident when his employer reacted to Department of Labor enforcement. Inferring from the entire construction industry's high percentage of nonrecipients (of Permanent Fund dividends) this seems likely. Additional research to isolate state funded construction would be useful in any future defense of Title 36 residency provisions.
(13) the state has a special interest in seeing that the benefits of state construction spending accrue to its residents;	none	Again determination of the state's interest is a policy issue. Economic theory does indicate that money spent locally has a multiplier effect as a portion is respent in subsequent iterations. Nonresident construction workers probably spend less locally than residents would.
(14) the natural resources of land owned by the state belong to the citizens of the state;	none	This is a legal and/or policy issue.
(15) Alaskans have chosen to use the majority of the royalties derived from the state's natural resources to fund state government;	none	This data is not collected by our department. Defer verification to the Office of Management and Budget.

LEGISLATIVE FINDINGS	ATTACHMENTS	COMMENTS
(16) the vast majority of the state's revenue is derived from these royalties rather than from other forms of taxation;	none	Data from the Department of Revenue indicates that this has been true since 1976.
(17) because the state has no personal income tax or sales tax, nonresident workers use services provided by the state but do not contribute fairly to the costs of those services;	none	The logic of the next finding supports this finding.
(18) Alaskans, more than the residents of other states, suffer economically when nonresidents displace qualified residents since resident workers contribute local taxes as well as their share of the royalties from natural resources.	none	The economic suffering of Alaskans, displaced by nonresidents, is more than that of the residents of other states, primarily because of the higher cost of living in this state. The Bureau of Labor Statistics Urban Family Budget for 1981 (the last year that it was estimated), indicated that the lower and intermediate budgets for a four-person family were the highest of any city surveyed (150% and 126% of the national average respectively).

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

DATE: March 14, 1985

TO: All Representatives

FROM: Representative H.A. "Red" Boucher

SUBJECT: Alaska Hire Legislation

On Friday, March 15, I will be introducing two pieces of legislation that deal with the subject of Alaska Hire. The Department of Labor has endorsed both pieces of legislation and Representative Davis, prime sponsor of HB 266, another Alaska Hire bill, has agreed to cosponsor this version of the legislation. I would like to invite you to cosponsor either or both of the two attached bills.

The first bill adds legislative finding of fact and purpose to the current Alaska Hire law (AS 36.10.010). This law is currently in effect but has been challenged in the pending Alaska Supreme Court case of Francis V Robinson.

The additions proposed by this bill were drafted in cooperation with the Department of Labor and incorporate case law established since the 1983 adoption of the Alaska Hire Law. The most notable case law being a recent decision by the Wyoming Supreme Court which upheld a local hire law similar to Alaska's.

The second bill makes a special appropriation of $100,000 to the Department of Labor to study how the state may provide preference to Alaskan workers.

Both bills have been endorsed by the Department of Labor as providing the necessary factual foundation to support a resident hire preference under current legal standards. The study would allow the Department to assemble information currently not available to support future state action to ensure that Alaskans receive preference for jobs in Alaska

For your background I am attaching a memorandum on this subject. Representative Gruenberg has allowed Dave Donley of his staff to assist me on this matter. For more information contact Dave Donley at 465-4986. If you are interested in cosponsoring either or both of these bills, contact Linda Hanger in my office at 465-4931.

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 998

BACKGROUND

The history of preferential hire for residents of Alaska has been turbulent, with the first Alaska hire law being adopted in 1960. Over the years, the 1960 law was enforced with varying degrees of enthusiasm. In 1972 an effort was made to obtain employment for Alaskans on the construction of the Trans-Alaska Pipeline by the adoption of the "Local Hire Under State Leases Law." The 1972 law required that Alaska residents be employed in preference to non-residents in all construction involving oil and gas development. However, In 1978, in Hicklin V. Orbeck, the U.S. Supreme Court struck down the 1972 law as being contrary to the Privileges and Immunities clause of the U.S. Constitution. Even though the 1972 law was struck down, the 1960 law was not challenged and remained in effect, though unenforced, until 1983.

In 1983, in response to public desire for an enforceable Alaska hire law and new legal developments, the Alaska legislature amended the 1960 law. The 1983 act, currently in effect, requires 95% Alaska hire on most construction projects funded by State or local dollars.

In 1984, the 1983 act was challenged in Francis v. Robison. On May 23, 1984, Superior Court Judge Johnston ruled that the law was in violation of the privileges and immunities clause of the U.S. Constitution. By request of the State of Alaska, the Alaska Supreme Court stayed Judge Johnston's action until the State could appeal the decision.

The case is currently on appeal before the Alaska Supreme Court and a decision is expected in the later half of 1985.

In January of this year, the Supreme Court of Wyoming upheld a Wyoming Hire law that is even stronger than our current Alaska Hire law. The Wyoming law requires 100% Wyoming hire, not just 95%, on public construction projects. The Wyoming Supreme Court overruled a lower Wyoming court which found, as Judge Johnston found for the Alaska Hire law, that the Wyoming law violated the privileges and immunities clause of the U.S. Constitution.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

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

March 15, 1985

The Honorable Red Boucher
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Boucher:

I have reviewed your draft legislation pertaining to preferential hire of Alaskans and making a special appropriation to the Department of Labor for study of unemployment in Alaska and other issues related to Alaska hire.

As you know, since 1982, one of the Department's highest priorities has been the enforcement of preferential hiring of Alaska residents on state-funded public works projects, pursuant to AS 36.10.010. In late 1983, however, the state's resident hire law was challenged on constitutional grounds and resulted in a Superior Court decision that the law was unconstitutional. That decision is now on appeal to the Alaska Supreme Court.

One of the Superior Court's key findings was that there was insufficient evidence to show that the in-migration of non-residents was displacing qualified and available Alaska residents from public works employment. By explicitly setting forth the legislative findings underlying the resident hire law, the draft bill would provide a more solid foundation from which to defend the principle of Alaska hire. The Department of Labor, therefore, strongly endorses the comprenensive legislative findings contained in the draft legislation.

I note that section 2 of the draft bill proposes a retroactive effective date for the provisions of section 1. The Department has no problem with the retroactive date per se. However, the legality of the retroactive effective date could play a major role in determining the constitutionality of section 1 as a whole should a legal challenge to the section arise in the future. Therefore, a careful legal review may be in order to assure that the provisions of section 1 do fall within the legal parameters of the types of provisions which can be retroactive.

The department also strongly endorses the proposal to fund a study of unemployment and resident hire in Alaska. The basic purpose of the study would be to collect and organize specific information on the impact of nonresidents on employment in Alaska. Currently, such information is not available in a form that would meet the current legal

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1984

January 10, 1985

STATE OF WYOMING, Plaintiff,	)	
v.	)	No. 84-35
ROGER ANTONICH, Defendant.	)	

Bill of exceptions from the County Court of Converse County, the Honorable John Allan Holtz, Judge.

A. G. McClintock, Attorney General, Gerald A. Stack, Deputy Attorney General, John W. Renneisen, Senior Assistant Attorney General, and Michael A. Blonigen, Assistant Attorney General, for plaintiff.

Daniel E. White, Cheyenne, for defendant.

Before *THOMAS, C.J., and ROSE, **ROONEY, BROWN, and CARDINE, JJ.

ROSE, J., delivered the opinion of the Court; THOMAS, C.J., filed a specially concurring opinion.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Second. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82001 of any typographical or other formal errors, in order that corrections may be made before final publication in the permanent volume.

*Became Chief Justice January 1, 1985.
**Chief Justice at time of oral argument.

> ployment offices and request the names of other available laborers. Every person required to employ Wyoming laborers shall inform the nearest state employment office of his employment needs. If the state employment office certifies that the person's need for laborers cannot be filled from those listed as of the date the information is filed, then the person may employ other than Wyoming laborers."

On September 22, 1983, the Converse County prosecuting attorney charged Roger Antonich, general superintendent of Westates Construction Company, with violating § 16-6-203, supra. The information alleged that Antonich fired a Wyoming worker from a public-school construction project in order to hire out-of-state workers. The county court judge dismissed the charge on the ground that § 16-6-203, supra, violates the privileges and immunities clause of the federal constitution. The court relied on Hicklin v. Orbeck, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), and recent cases from other jurisdictions in which the courts have invalidated statutory preferences for local workers. After examining these and similar opinions, we conclude that certain distinguishing features in Wyoming's Preference Act sufficiently limit its scope so as to satisfy the demands of the privileges-and-immunities clause.

PRIVILEGES-AND-IMMUNITIES CLAUSE ANALYSIS

An examination of a state enactment to determine its validity under the privileges-and-immunities clause involves a two-step analysis. First, the reviewing court must determine whether the statute burdens a fundamental right or activity, since only those "privileges" and "immunities" which bear upon the concept of interstate harmony fall within the scope and purpose of the clause. United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden, ___ U.S. ___, ___ S.Ct. ___, 79 L.Ed.2d 249, 258-259 (1984); Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 383-388, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978); Toomer v. Witsell, 334 U.S. 385, 395-396, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948). Second, the court must examine the reasons for the discriminatory treatment to determine their validity and their relation to the degree of discrimination imposed by the statute. This portion of the test was developed by the United States Supreme Court in Toomer v. Witsell, supra:

> "Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of

Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden, supra; Hicklin v. Orbeck, supra. We turn, therefore, to an examination of the relationship between this legitimate reason underlying the Wyoming Preference Act and the discrimination mandated against nonresidents.

Enactments to alleviate high unemployment levels through the hiring of residents in preference to nonresidents generally have swept too broadly to survive challenges brought under the privileges-and-immunities clause. The prime example of such legislation is the "Alaska Hire" Act at issue in Hicklin v. Orbeck, supra. That Act required the employment of qualified Alaska residents in preference to nonresidents for positions associated with

> "* * * all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party * * *." 437 U.S. at 520, n.2.

The United States Supreme Court cited three bases for holding that the discrimination imposed by this statute failed to bear a close relation to the problem of high unemployment in Alaska. First, the state had made no showing that nonresidents were a peculiar source of widespread unemployment. Rather than the influx of nonresidents looking for work, the major cause of unemployment appeared to be the inadequate education and training and the geographical remoteness of many jobless residents--particularly the Eskimo and Indian residents. 437 U.S. at 526-527. Secondly, the Court determined that Alaska Hire did not narrowly address the problem of unemployment, since the Act simply preferred all residents, regardless of their employment status, education or training. 437 U.S. at 527. Finally, the Supreme Court observed that the discriminatory effect of Alaska Hire extended well beyond those activities in which the state held a substantial proprietary interest:

> "* * * In sum, the Act is an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the State's residents. We believe that Alaska's ownership of the oil and gas that is the subject matter of Alaska Hire simply constitutes insufficient justification for the pervasive discrimination against nonresidents that the Act mandates." 437 U.S. at 531.

A number of state courts have adopted the foregoing rationale in invalidating enactments which grant an employment preference to local workers. Laborers Local Union No. 374 v. Felton Construc-

> "Every inquiry under the Privileges and Immunities Clause 'must . . . be conducted with due regard for the principle that the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures.' Toomer v. Witsell, 334 U.S. 385, 396, 92 L.Ed 1460, 68 S.Ct. 1156 (1948). This caution is particularly appropriate when a government body is merely setting conditions on the expenditure of funds it controls." 79 L.Ed.2d at 261.

The Wyoming statute at issue in the present case requires merely that governmental funds, allocated to public-works projects, be used to hire qualified, available residents in preference to nonresidents. The statute does not effect the sort of wide-ranging discriminatory treatment fatal to Alaska Hire in Hicklin v. Orbeck, supra. Since the Wyoming Preference Act limits its discriminatory effect to government-created jobs, it presents minimal affront to the privileges and immunities of noncitizens. United Building and Construction Trades Council of Camden Count, and Vicinity v. Mayor and Council of the City of Camden, supra.

We hold that the Wyoming Preference Act does not violate the privileges-and-immunities clause of the federal constitution, notwithstanding the Act's infringement upon a recognized fundamental right. The Act narrowly addresses the goal of reduced unemployment among the state's taxpayers by preferring available, qualified residents for government-funded positions. Since the degree of discrimination bears a close relation to the state's valid reasons for discriminatory treatment, we affirm the Act's validity under the test established in Toomer v. Witsell, supra, and refined in subsequent cases.

Although not determinative of our decision here, we recently held in Galesburg Construction Company, Inc. of Wyoming v. Board of Trustees of Memorial Hospital of Converse County, Wyo., 641 P.2d 745 (1982), that Wyoming's preference for resident bidders on public-works contracts, § 9-8-302, W.S.1977, does not violate the equal-protection provisions of the state and federal constitutions. Our result in the instant case, upholding Wyoming's preference for resident workers on public-works projects, harmonizes with our decision in Galesburg Construction Company, Inc. of Wyoming v. Board of Trustees of Memorial Hospital of Converse County, supra.

The bill of exceptions is sustained.

> only in the sense that it limits benefits generated by a state program to those who fund the state treasury and whom the State was created to serve. * * * Such policies, while perhaps 'protectionist' in a loose sense, reflect the essential and patently unobjectionable purpose of state government--to serve the citizens of the State."

Conceding that the Court there was dealing with the application of the Commerce Clause, because of the mutually reinforcing relationship between the two clauses, I find that concept applicable in this instance with respect to the Privileges and Immunities Clause.

It cannot be held objectionable for a sovereign state to adopt legislation which provides in essence that to the extent possible public works contracts benefit the citizens of the state whose contributions to the public treasury fund those projects. A state should not be foreclosed by the invocation of the Constitution of the United States of America from loyalty to interests of its own citizens. So long as a statute is narrowly drawn to protect only the right of the state to contract as it sees fit with respect to expenditures for public works projects which it owns and which it funds, I am satisfied that as a matter of law such a statute does not offend the Privileges and Immunities Clause found in Art. IV, § 2 of the Constitution of the United States of America. This, of course, makes it unnecessary for the court to pursue the remand technique invoked in United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden, supra.

I would agree that the bill of exceptions should be sustained for the foregoing reasons.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4213 SLAB HB 295 - HB 305

1693

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

2095

Bill No. House Bill 295

Date March 26, 1985

Title "An Act making a special appropriation to the Department of Labor for Study of Unemployment in Alaska and other issues related to Alaska hire; and providing for an effective date."

Contact: Robert Landau
465-2700
Eileen Plate
465-2700

House Bill 295 makes an appropriation to the Department of Labor for a special study of unemployment and resident hire in Alaska.

Specifically, under this appropriation measure, the Department would collect and analyze a variety of information on the impact of nonresidents on employment in Alaska. Currently, such information is not available in a form that will withstand legal scrutiny. Although the State's counsel in the pending resident hire lawsuit wove together different kinds of information to show the impact of nonresidents on employment, the Superior Court concluded that there was insufficient evidence to show that the influx of nonresident workers was a "peculiar source" of unemployment in the construction industry in Alaska against which the resident hire law was directed.

The study which this bill provides for was also recommended by a recent legal analysis prepared by Attorney Robert Goldberg. This analysis, "Legislative Remedies for Rural Unemployment," specifically recommends that the State collect a substantial body of specific, reliable data on unemployment, income, population trends, etc. and that specific legislative and/or administrative findings be made on the basis of the data.

The Department expects that the study will support the State's contention that nonresidents are a primary cause of high unemployment in Alaska, and that it will also show that the resident hire law is necessary to remedy the problem.

The Department strongly supports this proposal to fund a study of unemployment and resident hire in Alaska.

APPROVED:

Jim Robison

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

Alaska Department of Labor

Budget Detail for Continuing Research
on Local Hire Related Issues

	HB 295
PERSONAL SERVICES	
Labor Economist II (6 Mo.)	21,400
Statistical Tech. I (4 Mo.)	11,100
Total Personal Services	32,500
TRAVEL	
Juneau-Anchorage (4 trips) *	1,800
Per Diem (8 3/4 days)	700
Total Travel	2,500
CONTRACTUAL	
Data Entry **	33,000
Printing	2,000
Programming	6,000
Data Processing Operations	20,000
Maint., Postage, Phone, Misc.	3,000
Total Contractual	64,000
COMMODITIES	
Office supplies	1,000
Total Commodities	1,000
TOTAL	100,000

* Meetings with the State's legal counsel.

** Costs for HB 295 relate to data entry of the 1984 Certified Payrolls of State funded construction.

Chairman's Information:

1) HB 295: "An act making a special appropriation to the Department of Labor for study of unemployment in Alaska and other issues related to Alaska hire; and providing for an effective date."

   a) Introduced: Boucher + 21 other House members

   b) Co-Sponsors:

2) INTENT: This bill makes a special appropriation ($100,000) to the Department of Labor for a study of unemployment and Alaska hire related issues.

   FISCAL NOTE: Fiscal Note: $100,000 (special appropriation)

   NOTE:

3) ADDITIONAL REFERRALS: Finance

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 295

Title: "An Act making special appropriation for study of unemployment"

Sponsor: Boucher et. al.

Requestor: House Labor & Commerce

Date of Request: 4/10/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		100.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	100.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		100.0				
FEDERAL FUNDS						
OTHER						
TOTAL	0	100.0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Jim Robison Phone: 465-2700

Division: Commissioner Date: 4/10/85

Approved by Commissioner: Jim Robison Date: 4/10/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

Fiscal note

FISCAL NOTE ANALYSIS

THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE
BILL/RESOLUTION NO.: HB 295
TITLE: "An Act making special appropriation for study of unemployment"
AGENCY AFFECTED: Department of Labor

This bill makes a special appropriation to the Alaska Department of Labor to study the affect of employment of nonresidents on unemployment among residents of Alaska and other issues related to Alaska hire.

Assumptions:

1. The Alaska Department of Labor will assign a Labor Economist II for six months and a Statistical Technician I for four months to research and provide this information.

2. Approximately one third of the funds will be used to key enter Alaska's certified payrolls from state funded construction projects.

3. $26,000 will be spent to complete crossmatches of the workers on the certified payroll with wage items on the unemployment insurance wage file, the unemployment insurance claimant file and permanent fund dividend recipients.

5. The project will begin immediately after the effective date of this legislation with a written summary to be presented to the Alaska Legislature by the first day of the next session.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

305

A PERFORMANCE REPORT
ON THE
BOARD OF BARBERS AND HAIRDRESSERS

July 1, 1980 to April 29, 1983

Audit Control Number
08-1114-53-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the Board
of Barbers and Hairdressers

President	Maurice Smith
Member	Wilma Raduege
Member	Irene Roberts-Erickson
Member	Marse Kueber
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

April 29, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF BARBERS AND HAIRDRESSERS

July 1, 1980 to April 29, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Barbers and Hairdressers for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Barbers and Hairdressers should be reestablished. The law now specifies that the Board will terminate June 30, 1984, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the licensing examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Office of the Ombudsman.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.
8. Discussions with the United States Food and Drug Administration.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Barbers and Hairdressers was created in 1980. This Board is the result of the Legislature combining the Board of Barbers and the Board of Hairdressing and Beauty Culture Examiners. The membership of the Board consists of two licensed barbers, two licensed hairdressers, and one public member. Each member is appointed by the Governor for a three year term, but can serve no more than two consecutive full terms.

The Board regulates the vocations of barbering, hairdressing, and cosmetology. The Board has been given the authority to examine applicants, issue licenses and permits, suspend or revoke licenses and permits, and investigate complaints. The Board issues the following licenses: beauty or barber schools, school owners, shop owners, instructors, barbers, hairdressers, and cosmetologist practitioners. They also issue temporary and student permits.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries and provides other administrative help to the Board.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committee should take into consideration the Findings and Recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing complimentary statutes, complaints, and various Board functions. As a result of our examination we found:

1. The Department of Environmental Conservation (DEC) is required by Alaska Statute 44.46.020 to adopt regulations for a standard of cleanliness and sanitation in connection with the construction, operation, and maintenance of barber shops, hairdressing, or cosmetology establishments. DEC has codified regulations to fulfill their statutory responsibility in 18 AAC 30.700-760. These statutes and regulations provide adequate protection for public sanitation.

2. Postsecondary Education, under the Department of Education, issues Certificates of Registration to postsecondary institutions (of which barber and beauty schools are) that meet minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility as required by AS- 14.48.010. These statutes provide protection to those students who wish to attend beauty college or barber school.

3. The Department of Revenue, as required by AS 43.70.020, issues business licenses to individuals engaging in business in this State.

4. Included in OL investigation/complaint files were complaints against Board members for their conduct during the State examination. They included asking improper questions, such as where the student went to school, not adequately examining the work performed by the student, changing final grades, including the grade of a Board member's apprentice, and holding the examination only in Fairbanks and Anchorage (see Recommendation No. 1).

As a result of our examination, we conclude that there is not sufficient reason to support the licensing of schools, school owners, shop owners, and instructors. The licensing of practitioners can be done by the Division of Occupational Licensing by licensing those individuals who have met predetermined educational or experience qualifications.

An alternative to licensing of practitioners would be certification. Certification is a form of State regulation that recognizes individuals who have met predetermined qualifications established by a state agency. Only those who meet the qualifications may legally use the designated title. Non-certified individuals may offer similar services to the public as long as they do not describe themselves as being "certified."

Therefore, we recommend that the Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh the potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing complimentary statutes, complaints, and various Board functions. As a result of our examination we found:

A. In two instances after the practical examination was given and grades were calculated, Board members and examination proctors reviewed the grades and changed six individuals' failing grades to passing grades (see Recommendation No. 4).

B. For the past two and a half years, State examinations have been held exclusively in Anchorage and Fairbanks. Of the last 12 exams, 9 have been in Anchorage and 3 have been in Fairbanks. This presents an economic hardship to those students who wish to take the examination from other parts of the State, because they must pay travel and living expenses for themselves and their model for up to three days.

C. There have been numerous complaints made to the Division of Occupational Licensing concerning the Board's conduct during the State examination.

D. The Board issues duplicative and unnecessary licenses which only provide another layer of licensing without providing any additional public protection (see Recommendation No. 2).

The licensing of practitioners could be done by the Division of Occupational Licensing by licensing those individuals who have met predetermined education and experience qualifica-

tions. These qualifications could be obtained from either schooling or apprenticeship at the hourly requirement already established in the regulations.

An alternative to the licensing of practitioners would be certification. Certification grants recognition to individuals who have met predetermined qualifications. Only those who have met these qualifications may legally use the designated title, however, noncertified individuals may offer similar services to the public as long as they do not describe themselves as being certified. This would assist the public in identifying competent practitioners.

Because the public can be adequately protected through either licensing or certifying practitioners, we recommend that the Board of Barbers and Hairdressers be allowed to terminate on June 30, 1984.

However, in the event that the Board is reestablished we recommend the following changes be made in their operations.

Recommendation No. 2

The Board should seek legislation that would reduce and restrict its various licensing functions.

The Board, in addition to testing individual practitioners to determine their minimum qualifications for licensure, also issues four other categories of licenses. These other categories are schools, school owners, shop owners, and instructors. Each of these additional categories represent an extra unnecessary layer of licensing, specifically:

A. Schools - AS 08.13.185 establishes the fee and 12 AAC-09.125 establishes the requirements for school licenses and in summary they are:

   1. An initial fee of $700 and biennial renewal fee of $400.

   2. A Certificate of Registration issued by the Department of Education.

   3. The name of the school owner.

   4. The location of the school with an exact description of the floor plan that meets the Board's specifications.

In addition to the license issued by the Board, a school has to obtain a business license issued by the Department of Revenue which also requires the owner's name, school location, and a $25.00 fee. In order to obtain a Certificate of Registration from the Department of Education, the school has to meet the minimum standards set out in AS 14.48.060. Among these are, the school can operate so that "the quality and content of each course or program of instruction, train-

ing or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered," and, that "the institution has, or has access to adequate space, equipment, instructional materials, and personnel where applicable to achieve the stated objective of the course or program of study." There is an initial $100 fee with additional renewal fees for the Certificate of Registration.

B. School Owner - AS 08.135 establishes the fee and 12-AAC 09.120 establishes the requirements for a school owner's license and in summary they are:

1. An initial fee of $70 with a biennial renewal fee of $60.

2. The names of all parties having financial interest in the school.

3. A copy of the valid bond filed with the Department of Education.

Again, a business license requires the names of the owners, and the bond is already required to be filed with the Department of Education.

C. Shop Owner - AS 08.13.185 establishes the fee and 12 AAC 09.110 establishes the requirements for a shop owner's license and in summary they are:

1. An initial fee of $45 with a biennial renewal fee of $40.

2. The business name, physical location, and addresses of all shops owned.

3. A report of a sanitary health inspection by the Department of Environmental Conservation.

4. The license number of the practitioner employed as a manager of the shop if the owner is not a licensed practitioner.

The Department of Environmental Conservation has independent statutory authority in AS 44.46.020 to adopt regulations for "standard of cleanliness and sanitation in connection with the construction, operation, and maintenance of . . . barbershops, hairdressing or cosmetology establishments." Again, a business license requires the name and location information. The fourth requirement is unnecessary; there is no additional protection gained from having a licensed practitioner as owner or manager when all the employees have to be licensed practitioners.

D. Instructors - The statutory authority for licensing instructors is construed from AS 08.13.185, which

establishes an instructor's license fee of $70 and a $60 biennial renewal fee. Using that as authority, the Board adopted regulations for licensing of instructors. The licensing requirements established in the regulation are summarized as follows:

1. A current practitioner's license.

2. Three years of practice or one year of practice and six-hundred hours of student instructor training.

3. Passing the written and practical portions of the instructor's examination given by the Board.

The licensing of these instructors is not necessary since the third minimum standard required by the Department of Education for their Certificate of Registration in AS 14.48-.060 is that "the education or experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study."

As we have seen, each of the four categories represent an unnecessary and duplicative licensing function.

The Board tests each individual to determine if they have the minimum qualifications to practice all phases of their profession. Therefore, the additional categories of licensing provide no additional public protection.

Recommendation No. 3

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the Board's statutes and regulations to determine if any were obsolete, vague, or unduly restrictive. Examples of what we found are as follows:

A. The Board has promulgated considerable regulations for the licensing of instructors when the only statutory authority to issue instructors' licenses is implied by AS 08.13.185 which defines license fees.

B. AS 08.13.120 authorizes and 12 AAC 09.110(b) provides the criteria for the licensing of shops, however, the Board does not license shops.

C. AS 08.13.120 also requires that either the shop owner be a licensed practitioner, or employ a licensed practitioner as the manager. Since all practitioners in the shop must be licensed, that requirement is not necessary.

AS 08.13.030 provides that the Board shall exercise general control over the vocations of barbering, hairdressing, and cosmetology. This cannot be done effectively without clear and concise statutes and regulations. Therefore, the Board should review their statutes and regulations for obsolescence, vagueness, and restrictiveness, and propose appropriate changes where necessary.

Recommendation No. 4

The Board should improve their procedures for the administration of the State examination.

We reviewed the examination function of the Board and noted problems and complaints concerning the Board's administration of the examination, specifically:

A. The State examination is currently given only in Anchorage and Fairbanks. While we recognize that these locations represent the residence of a large majority of students taking the examination, there remains a high economic cost to students from other parts of the State who have to pay travel and living expenses for themselves and their model for the duration of the examination. We suggest that the Board administer the examination periodically statewide with the possible use of examination proctors.

B. After two separate examinations, the Board members and proctors met after the practical examination had been completed. They reviewed the score sheets and in six cases, changed failing grades to passing grades. The Division of Occupational Licensing has notified the Board that grades cannot be changed at a post-examination review session.

C. The Division of Occupational Licensing has received numerous complaints from students concerning Board members' behavior during the practical examination. The complaints included Board members asking students questions such as where they went to school, and not adequately checking the work done by the students. Again, Occupational Licensing sent a letter to the Board addressing these and other problems and offered suggestions for their possible resolution.

According to AS 08.13.030, it is the Board's duty to examine applicants and approve the issuance of licenses and permits to practice. We, therefore, recommend the Board improve their procedures for administering the State examination.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board issues licenses to schools, school owners, shop owners, and instructors that are unnecessary (see Recommendation No. 2).

B. The Board has only held the State examinations in Fairbanks and Anchorage. Of the last 12 examinations, 9 have been in Anchorage and 3 in Fairbanks. This can cause an economic hardship to individuals from other parts of the State who have to travel to take the examination (see Recommendation No. 4).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board is not issuing shop licenses as required by Alaska Statute 08.13.120 (see Recommendation No. 3).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board proposed various statutory changes to definitions of a cosmetician, an instructor, and other statutory areas. None of these changes have been submitted to the Legislature from the Executive Branch.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The Board does not actively solicit comments on its effectiveness.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board has published notices of its meetings in Anchorage, Fairbanks, and Juneau. However, such notices have not always been published in a consistent and timely manner as required by statute.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

A. During our review, we found the average case length for complaints and investigations filed with the Office of the Ombudsman to be approximately 1 month; with the Division of Occupational Licensing, approximately 7 months, and; with the Attorney General's Office, Consumer Protection Agency was approximately 1 month.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. In two instances after the practical examination was completed and the final grades were calculated, the Board members and examination proctors reviewed the grades and changed six individuals' grades in various sections of the examination from failing to passing (see Recommendation Nos. 1 and 4).

B. According to the Division of Occupational Licensing's records for the Fiscal Year 1982, there were a total of 464 new licenses issued. Of these new licenses, 181 were issued by credentials.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

A. Applications for licensure as a practitioner require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the recommendations section of this report.

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APPENDIX A

BOARD OF BARBERS AND HAIRDRESSERS
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1982

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$75,697
Less: Expenditures (Note 3)	70,713
Excess of Expenditures Over Revenues	$ 4,984

Revenue Type	Amount	Collection Time
School	$ 700	With license issuance
School Renewal	400	Biennially
School Owner	70	With license issuance
School Owner Renewal	60	Biennially
Instructor	70	With license issuance
Instructor Renewal	60	Biennially
Shop Owner	45	With license issuance
Shop Owner Renewal	40	Biennially
Barber Practitioner	[illegible]	With license renewal
Barber Practitioner Renewal	40	Biennially
Hairdresser Practitioner	55	With license issuance
Hairdresser Practitioner Renewal	40	Biennially
Cosmetology Practitioner	45	With license issuance
Cosmetology Practitioner Renewal	30	Biennially
Temporary Permit	30	With permit issuance
Student Permit	20	With permit issuance
Examination	25	With application
Investigation	25	With application
Delinquent Fee for Late Renewal	20	With application

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments (such as the Department of Law) assisting the boards and the Division.

(Intentionally left blank)

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

August 12, 1983

RECEIVED
AUG 15 1983

Mr. Gerald Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Re: Preliminary Audit Report
Board of Barbers and Hairdressers

Thank you for the opportunity to comment on the Preliminary Audit Report of the Board of Barbers and Hairdressers. We have reviewed your recommendations and, based on information you supplied and information in our files, at this time we concur that the Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

Opposition to this position will come from licensed professionals. The consuming public has indicated neither support for continuing nor dissolving the board. Complaints have been made that the board was not acting in the best interests of hairdresser students.

RECOMMENDATION #1

The Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

We would concur. However, we will respond to those individual items your report has listed as A, B, C, and D.

Item A. We concur. This problem did occur. The division has attempted to correct this type of action by requiring the Licensing Examiner to place the score sheets in a sealed envelope.

Item B. Your assessment is correct. However, Anchorage and Fairbanks are the only locations where there are schools with sufficient facilities that can accommodate the number of applicants who must be tested.

Item C. This statement is correct. Complaints have been discussed with the board.

Item D. Response follows (see Recommendation #2).

08-H2LH

RECOMMENDATION #2

The board should seek legislation that would reduce and restrict its various licensing functions.

We disagree with the general assumption that the additional categories of licensure represent an unnecessary layer of licensing. Each category evaluates and identifies separate functions. We would agree to eliminate the school owner license, but would strongly support continued licensing of the facility. Students are able to obtain State student loans to attend beauty and/or barbering schools. The school should be responsible for an accurate and legitimate course of training or instructions. We would not be opposed to having all fees paid to one State agency, be it Department of Education or the Department of Commerce and Economic Development.

We support some registration or recording of the shop owner, for public protection. It would be necessary to identify a responsible party for redress of damages in the event of public harm.

Because instructor fees are addressed in statutory language, it is assumed the legislative intent was another level of competency. It also substantiates a licensee just out of beauty school could not begin teaching others. We would support a position of graduation from a licensed school and a specified number of years in practical experience to qualify for an instructor's license.

The additional licensing does offer additional public protection by insuring competent practitioners.

RECOMMENDATION #3

The board should review existing statutes and regulations and seek appropriate revision where necessary.

We would concur with this recommendation in substance. The board has continually worked on regulations. Efforts were made for statutory change.

RECOMMENDATION #4

The board should improve their procedures for the administration of the State examination.

We agree. Responses to the items listed as A, B, and C were provided on previous pages of this response.

Division records will reflect that efforts were made to address these problems and assist the board. They recently began training licensed professionals to serve as proctors. With the division's assistance, extra examinations were conducted to reduce the expense to a number of applicants from the Kenai area.

The division is currently polling the licensed professionals as to the attitude toward the existing State examination process. The survey asks if there is a need for State examinations.

We would encourage schools to assume responsibility of graduating competent, qualified professionals and to set graduation standards to ensure only those meeting professional criteria would receive diplomas or certificates.

Should the survey indicate a desire to eliminate State exams, we would look toward higher requirements in courses and for graduation.

Persons entering the profession by apprenticeship could be required to pass a school examination before licensure.

Again, thank you for the opportunity to respond to your Preliminary Audit Report.

Sincerely,

Richard A. Lyon
Commissioner

RAL/mc5/3
812a

Senate Finance Committee

Senator Jan Faiks, Co-Chairman Senator John Sackett, Co-Chairman

JCS:

Hairdressers/barbers:

Aside from the fact that I think it's dumb that the state has to regulate who cuts your hair the amendments requested by the Board (through John Melvin) do provide for a greater degree of flexibility in determining who shall be licensed to cut hair in Alaska.

Largely, they want to make sure that people who provide hair dressing services are properly trained and know what they're doing.

The amendments make sense and would, in my opinion, add to the bill.

Thur. May 8th

JCS:

Attached is a copy of the BARBERS/HAIRDRESSERS bill, SCS CSHB 305(L&C), which was held till today.

John Melvin called and wanted additions to the bill.

I have drafted the two amendments (attached).

Amendment #1 adds a new phrase to existing law which would give the board more discretionary authority when deciding to reinstate a license.

Amendment #2 would add a new subsection to the Qualifications of Applicants chapter of existing statutes, broadening the requirements of applicants for licensure and giving the board flexibility in deciding an applicants qualifications for licensure.

The reason these amendments were not added in committee is because the board just held a meeting following labor and commerce's committee issuance of the CS for HB-305.

Proposed Statutory Changes to AS 08.13,

Barbers and Hairdressers

Section 08.13.140. Lapsed License. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, or otherwise at the discretion of the Board, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Section 08.13.080. Qualifications of Applicants. An applicant for examination must

(1) have successfully completed all courses that a school with a program in barbering is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;

(2) have successfully completed all courses that a school with a program in hairdressing is required to teach to be licensed under AS 08,13.110 if applying for a license to practice hairdressing;

(3) have successfully completed all courses that a school with a program in cosmetology is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; or

(4) have served an apprenticeship under AS 08.13.032 [(Sec. 1 Ch 159 SLA 1980)]; or

(5) have completed a combination of coursework and apprenticeship acceptable to the board. (Sec. 1 Ch 159 SLA 1980)

ND/dg15258D
043086b

Amendment #1
SACKETT

AMENDMENT to SCS CSHB 305(L&C), relating to barbers, hairdressers, and cosmetologists,

add new Sec. 8 AS 08.13.140 is amended to Read.

Page 4, line 9, ~~ADD a new section to read:~~

Section 08.13.140. Lapsed License. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, or otherwise at the discretion of the Board, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Renumber remaining sections accordingly

AMENDMENT #2

by Sackett

SCS CSHB 305(L&C), relating to barbers, hairdressers, and cosmetologists,

Page 3, line 6: following the word "instructor" delete the period, add a semi-colon and the word or, and on line 7, add a new subsection to read:

(6)have completed a combination of coursework and apprenticeship acceptable to the board. (Sec. 1 Ch 159 SLA 1980).

Cramer
4/28 86

Original sponsors: Sund, Taylor,
Jenkins and Collins

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 305 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to barbers, hairdressers, and cosmetologists; and providing for an effective date."

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

* Section 1. AS 08.03.010(c)(16) is amended to read:

(16) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 1989 [1986].

* Sec. 2. AS 08.13.050 is amended to read:

Sec. 08.13.050. RECORDS OF THE BOARD. The Department of Commerce and Economic Development [BOARD] shall keep a record of the board's [ITS] proceedings related to the issuance, refusal, suspension, and revocation of each license and permit. The record shall contain the name of the person to whom a license or permit is issued, the person's place of business, the date of issuance for each license and permit, and whether it is currently valid. The record shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

* Sec. 3. AS 08.13.070 is amended to read:

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit unless exempted under AS 08.13.160(d);

(2) practice barbering, hairdressing, or cosmetology except in a shop or school licensed under this chapter unless exempted under AS 08.13.160(d) or permitted under AS 08.13.160(e);

(3) open or conduct a school of barbering, hairdressing, or cosmetology without a license;

(4) teach in a school of barbering, hairdressing, or cosmetology, or supervise an apprentice without an instructor's license;

(5) [(3)] operate a shop in violation of AS 08.13.120;

(6) [(4)] permit an employee or other person being supervised who is not exempted under AS 08.13.160(d) to practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit;

(7) [(5)] permit the use of the person's license, temporary permit, or student permit by another person;

(8) [(6)] obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

* Sec. 4. AS 08.13.080 is amended to read:

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for examination must

(1) have successfully completed all courses that a school with a curriculum [PROGRAM] in barbering approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;

(2) have successfully completed all courses that a school with a curriculum [PROGRAM] in hairdressing approved by the board is required to teach to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;

(3) have successfully completed all courses that a school with a curriculum [PROGRAM] in cosmetology approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; [OR]

(4) have served an apprenticeship under AS 08.13.082; or

(5) specify the field of practice in which the applicant intends to teach and have held a license to practice in the field for three years or have held a license in the field for one year and have completed 600 hours of student training as an instructor in the field of practice from a licensed school with a curriculum approved by the board if applying for a license as an instructor.

* Sec. 5. AS 08.13.082(a) is amended to read:

(a) The period of apprenticeship required to qualify an applicant for a license to practice barbering is 2,000 [1,500] hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than 12 [NINE] months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

* Sec. 6. AS 08.13.100(d) is amended to read:

(d) A person holding a current valid license from a board of barbering, hairdressing, or cosmetology in another state [OR COUNTRY] is entitled to a license under this chapter without examination in this state. An application must [SHALL] include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training, testing and working experience that [WHICH] the board finds to meet the minimum requirements of the state; and

(3) payment of a credential investigation fee.

* Sec. 7. AS 08.13.130 is amended to read:

Sec. 08.13.130. DISPLAY OF LICENSE OR PERMIT. A practitioner [PRACTITIONERS] shall display the practitioner's [THEIR] license in a conspicuous location in the practitioner's [THEIR] place of business. Each shop owner is responsible for the display of the licenses of

employees. [PRACTITIONERS WHO PRACTICE OUTSIDE OF A PLACE OF BUSINESS SHALL CARRY THEIR LICENSE WITH THEM TO BE SHOWN TO PERSONS UPON WHOM WORK IS PERFORMED.] A person holding a student permit or temporary permit shall display the permit in a conspicuous location in the school in which the person is enrolled or the shop in which the apprentice works. The school or shop owner is responsible for the display of a permit for each enrolled student or apprentice [HAVE THAT PERMIT AVAILABLE FOR INSPECTION WHEN ENGAGED IN PRACTICE].

* Sec. 8. AS 08.13.160(d) is amended to read:

(d) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, or cosmetology in a community having a population of less than 1,000 people that [WHICH] is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person;

(3) a licensed health care professional;

(4) a person licensed by another licensing jurisdiction in a field of practice licensed by this chapter while demonstrating techniques or products to persons holding licenses or permits under this chapter.

* Sec. 9. AS 08.13.160 is amended by adding a new subsection to read:

(e) The board shall adopt regulations to permit a person licensed under this chapter to practice outside a licensed shop or school for limited purposes including

(1) care of clients confined to an institution or health care facility;

(2) care of clients with limited mobility;

(3) participation in charitable events; and

(4) participation in workshops or demonstrations of techniques or products.

* Sec. 10. AS 08.13.170 is repealed and reenacted to read:

Sec. 08.13.170. TEMPORARY PERMITS. The department shall issue a temporary permit to an applicant for licensing who holds a license to practice as a barber, hairdresser, or cosmetologist in another state. The permit is valid until the board either issues a permanent license or rejects the application. The board shall act on an application within six months.

* Sec. 11. AS 08.13.180 is amended to read:

Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed school of barbering, hairdressing, or cosmetology, and a person apprenticed to a licensed instructor [PRACTITIONER] in a shop approved by the board shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new permit as determined by the board.

* Sec. 12. AS 08.13.210 is amended to read:

Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of barbering, hairdressing, and cosmetology shall be supervised by the Department of Environmental Conservation [HEALTH AND SOCIAL SERVICES].

* Sec. 13. AS 08.13.220(1) is amended to read:

(1) "apprentice" means a person who receives on-the-job training under [THE] direct supervision [OF A PRACTITIONER, WHO DOES

NOT RECEIVE A WAGE OR COMMISSION BEFORE COMPLETING 350 HOURS OF TRAINING, AND FOR WHOSE WORK NO CHARGE IS MADE BEFORE COMPLETING 350 HOURS OF TRAINING];

* Sec. 14. AS 08.13.220(2) is amended to read:

(2) "barbering" means shaving, trimming, or cutting, styling, curling, permanent waving, bleaching, coloring, cleansing, or chemically straightening the beard or hair of a living person for a fee and for cosmetic purposes;

* Sec. 15. AS 08.13.220(4) is amended to read:

(4) "cosmetology" means the use of the hands, [MECHANICAL OR ELECTRIC APPARATUS OR] appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the scalp, face or neck, including skin care, make-up, and temporary removal of superfluous hair, [HUMAN BODY] for cosmetic purposes for a fee;

* Sec. 16. AS 08.13.220 is amended by adding a new paragraph to read:

(9) "instructor" means a person who teaches barbering, hairdressing, or cosmetology in a school or who supervises an apprentice.

* Sec. 17. A person who, on the effective date of this Act, holds a valid license issued by the Board of Barbers and Hairdressers may continue to practice as permitted by the license until the license expires and may renew the license in the appropriate field of practice without meeting the new requirements for licensure.

* Sec. 18. This Act takes effect immediately in accordance with AS 01.-10.070(c).

WORK DRAFT WORK DRAFT WORK DRAFT

Cramer
4/28/86

Original sponsors: Sund, Taylor, Jenkins and Collins

BY THE LABOR AND COMMERCE COMMITTEE

IN THE HOUSE

SENATE CS FOR CS FOR HOUSE BILL NO. 305 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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(16) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, [1989] 1986].

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Sec. 08.13.050. RECORDS OF THE BOARD. The Department of Commerce and Economic Development [BOARD] shall keep a record of the board's [ITS] proceedings related to the issuance, refusal, suspension, and revocation of each license and permit. The record shall contain the name of the person to whom a license or permit is issued, the person's place of business, the date of issuance for each license and permit, and whether it is currently valid. The record shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

* Sec. 3. AS 08.13.070 is amended to read:

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit unless exempted under AS 08.13.160(d);

(2) practice barbering, hairdressing, or cosmetology except in a shop or school licensed under this chapter unless exempted under AS 08.13.160(d) or permitted under AS 08.13.160(e);

(3) open or conduct a school of barbering, hairdressing, or cosmetology without a license;

(4) teach in a school of barbering, hairdressing, or cosmetology, or supervise an apprentice without an instructor's license;

(5) [(3)] operate a shop in violation of AS 08.13.120;

(6) [(4)] permit an employee or other person being supervised who is not exempted under AS 08.13.160(d) to practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit;

(7) [(5)] permit the use of the person's license, temporary permit, or student permit by another person;

(8) [(6)] obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

* Sec. 4. AS 08.13.080 is amended to read:

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for examination must

(1) have successfully completed all courses that a school with a curriculum [PROGRAM] in barbering approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;

(2) have successfully completed all courses that a school with a curriculum [PROGRAM] in hairdressing approved by the board is required to teach to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;

(3) have successfully completed all courses that a school with a curriculum [PROGRAM] in cosmetology approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; [OR]

(4) have served an apprenticeship under AS 08.13.082; or

(5) specify the field of practice in which the applicant intends to teach and have held a license to practice in the field for three years or have held a license in the field for one year and have completed 600 hours of student training as an instructor in the field of practice from a licensed school with a curriculum approved by the board if applying for a license as an instructor.

* Sec. 5. AS 08.13.082(a) is amended to read:

(a) The period of apprenticeship required to qualify an applicant for a license to practice barbering is 2,000 [1,500] hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than 12 [NINE] months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

* Sec. 6. AS 08.13.100(d) is amended to read:

(d) A person holding a current valid license from a board of barbering, hairdressing, or cosmetology in another state [OR COUNTRY] is entitled to a license under this chapter without examination in this state. An application must [SHALL] include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training, testing and working experience that [WHICH] the board finds to meet the minimum requirements of the state; and

(3) payment of a credential investigation fee.

* Sec. 7. AS 08.13.130 is amended to read:

Sec. 08.13.130. DISPLAY OF LICENSE OR PERMIT. A practitioner [PRACTITIONERS] shall display the practitioner's [THEIR] license in a conspicuous location in the practitioner's [THEIR] place of business. Each shop owner is responsible for the display of the licenses of

employees. [PRACTITIONERS WHO PRACTICE OUTSIDE OF A PLACE OF BUSINESS SHALL CARRY THEIR LICENSE WITH THEM TO BE SHOWN TO PERSONS UPON WHOM WORK IS PERFORMED.] A person holding a student permit or temporary permit shall display the permit in a conspicuous location in the school in which the person is enrolled or the shop in which the apprentice works. The school or shop owner is responsible for the display of a permit for each enrolled student or apprentice [HAVE THAT PERMIT AVAILABLE FOR INSPECTION WHEN ENGAGED IN PRACTICE].

* Sec. 8. AS 08.13.160(d) is amended to read:

(d) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, or cosmetology in a community having a population of less than 1,000 people that [WHICH] is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person;

(3) a licensed health care professional;

(4) a person licensed by another licensing jurisdiction in a field of practice licensed by this chapter while demonstrating techniques or products to persons holding licenses or permits under this chapter.

* Sec. 9. AS 08.13.160 is amended by adding a new subsection to read:

(e) The board shall adopt regulations to permit a person licensed under this chapter to practice outside a licensed shop or school for limited purposes including

(1) care of clients confined to an institution or health care facility;

(2) care of clients with limited mobility;

(3) participation in charitable events; and

(4) participation in workshops or demonstrations of techniques or products.

* Sec. 10. AS 08.13.170 is repealed and reenacted to read:

Sec. 08.13.170. TEMPORARY PERMITS. The department shall issue a temporary permit to an applicant for licensing who holds a license to practice as a barber, hairdresser, or cosmetologist in another state. The permit is valid until the board either issues a permanent license or rejects the application. The board shall act on an application within six months.

* Sec. 11. AS 08.13.180 is amended to read:

Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed school of barbering, hairdressing, or cosmetology, and a person apprenticed to a <u>licensed instructor</u> [PRACTITIONER] in a shop approved by the board shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new permit as determined by the board.

* Sec. 12. AS 08.13.210 is amended to read:

Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of barbering, hairdressing, and cosmetology shall be supervised by the Department of <u>Environmental Conservation</u> [HEALTH AND SOCIAL SERVICES].

* Sec. 13. AS 08.13.220(1) is amended to read:

(1) "apprentice" means a person who receives on-the-job training under [THE] direct supervision [OF A PRACTITIONER, WHO DOES

NOT RECEIVE A WAGE OR COMMISSION BEFORE COMPLETING 350 HOURS OF TRAINING, AND FOR WHOSE WORK NO CHARGE IS MADE BEFORE COMPLETING 350 HOURS OF TRAINING];

* Sec. 14. AS 08.13.220(2) is amended to read:

(2) "barbering" means shaving, trimming, or cutting, styling, curling, permanent waving, bleaching, coloring, cleansing, or chemically straightening the beard or hair of a living person for a fee and for cosmetic purposes;

* Sec. 15. AS 08.13.220(4) is amended to read:

(4) "cosmetology" means the use of the hands, [MECHANICAL OR ELECTRIC APPARATUS OR] appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the scalp, face or neck, including skin care, make-up, and temporary removal of superfluous hair, [HUMAN BODY] for cosmetic purposes for a fee;

* Sec. 16. AS 08.13.220 is amended by adding a new paragraph to read:

(9) "instructor" means a person who teaches barbering, hairdressing, or cosmetology in a school or who supervises an apprentice.

* Sec. 17. A person who, on the effective date of this Act, holds a valid license issued by the Board of Barbers and Hairdressers may continue to practice as permitted by the license until the license expires and may renew the license in the appropriate field of practice without meeting the new requirements for licensure.

* Sec. 18. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Offered: 3/3/86
Referred: Rules

Original sponsors: Sund, Taylor and Jenkins

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 305 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to barbers, cosmetologists, and estheticians; and providing for an effective date."

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

* Section 1. AS 08.01.010(24) is amended to read:

(24) Board of Barbers and Cosmetologists [HAIRDRESSERS] (AS 08.13.010).

* Sec. 2. AS 08.03.010(c)(16) is amended to read:

(16) Board of Barbers and Cosmetologists [HAIRDRESSERS] (AS 08.13.010) -- June 30, 1989 [1986].

* Sec. 3. AS 08.13.010 is amended to read:

Sec. 08.13.010. CREATION AND MEMBERSHIP OF BOARD. (a) There is created the Board of Barbers and Cosmetologists [HAIRDRESSERS] consisting of five members appointed by the governor.

(b) The board consists of

(1) two persons licensed as barbers under this chapter;

(2) two persons licensed as cosmetologists [HAIRDRESSERS] under this chapter; and

(3) one public member.

* Sec. 4. AS 08.13.030 is amended to read:

Sec. 08.13.030. POWERS AND DUTIES OF THE BOARD. (a) The board shall exercise general control over the vocations of barbering, cosmetology, esthetics, and manicure and pedicure [HAIRDRESSING, AND COSMETOLOGY].

(b) The board shall

(1) examine applicants and approve the issuance of licenses and permits to practice;

(2) authorize the issuance of licenses for schools of barbering, cosmetology, and esthetics [HAIRDRESSING, AND COSMETOLOGY].

(c) The board may

(1) suspend or revoke a license or permit;

(2) on its own motion or upon receipt of a written complaint, conduct hearings and request the Department of Commerce and Economic Development to investigate the practices of a person, shop, or school involved in the practice or teaching of barbering, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING, OR COSMETOLOGY];

(3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

* Sec. 5. AS 08.13.040 is amended to read:

Sec. 08.13.040. MEETINGS AND EXAMINATIONS. The board shall meet as often as necessary to conduct its business. It shall conduct separate examinations covering each field of practice: barbering, cosmetology, esthetics, and manicure and pedicure [HAIRDRESSING, AND COSMETOLOGY]. Examinations shall be given at least twice in every year for each field of practice for which applications for licensure are pending. An applicant may take an examination in more than one field during the same testing session.

* Sec. 6. AS 08.13.050 is amended to read:

Sec. 08.13.050. RECORDS OF THE BOARD. The Department of Commerce and Economic Development [BOARD] shall keep a record of the board's [ITS] proceedings related to the issuance, refusal, suspension, and revocation of each license and permit. The record shall contain the name of the person to whom a license or permit is issued,

the person's place of business, the date of issuance for each license and permit, and whether it is currently valid. The record shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

* Sec. 7. AS 08.13.070 is amended to read:

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice barbering, cosmetology, esthetics, or manicuring and pedicuring [HAIRDRESSING, OR COSMETOLOGY] without a license, temporary permit, or student permit unless exempted under AS 08.13.160(d);

(2) practice barbering, cosmetology, esthetics, or manicure and pedicure except in a shop or school licensed under this chapter unless exempted under AS 08.13.160(d) or permitted under AS 08.13.-160(e);

(3) open or conduct a school of barbering, cosmetology, or esthetics [HAIRDRESSING, OR COSMETOLOGY] without a license;

(4) teach in a school of barbering, cosmetology, or esthetics or supervise an apprentice without an instructor's license;

(5) [(3)] operate a shop in violation of AS 08.13.120;

(6) [(4)] permit an employee or other person being supervised who is not exempted under AS 08.13.160(d) to practice barbering, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING, OR COSMETOLOGY] without a license, temporary permit, or student permit;

(7) [(5)] permit the use of the person's license, temporary permit, or student permit by another person;

(8) [(6)] obtain or attempt to obtain a license [,TEMPORARY PERMIT,] or student permit by fraudulent means.

* Sec. 8. AS 08.13.080 is amended to read:

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for

examination must apply on a form provided by the board, submit a recent unmounted, autographed photograph of the applicant, and must

(1) have successfully completed all courses that a school with a curriculum [PROGRAM] in barbering approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;

(2) have successfully completed all courses that a school with a curriculum [PROGRAM] in cosmetology approved by the board [HAIRDRESSING] is required to teach to be licensed under AS 08.13.110 if applying for a license to practice cosmetology [HAIRDRESSING];

(3) have successfully completed all courses that a school with a curriculum [PROGRAM] in esthetics approved by the board [COSMETOLOGY] is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice esthetics [COSMETOLOGY]; [OR]

(4) have served an apprenticeship under AS 08.13.082;

(5) have successfully completed all the courses that a school with a curriculum in manicure and pedicure approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice manicure and pedicure; or

(6) specify the field of practice in which the applicant intends to teach and have held a license to practice in the field for three years or have held a license in the field for one year and have completed 600 hours of student training as an instructor in the field of practice from a licensed school with a curriculum approved by the board.

* Sec. 9. AS 08.13.082 is amended to read:

Sec. 08.13.082. APPRENTICESHIP. (a) The period of apprenticeship required to qualify an applicant for a license to practice

barbering is 2,000 [1,500] hours. [THE APPRENTICESHIP MUST BE SERVED IN A SHOP APPROVED BY THE BOARD.] The apprenticeship may not be completed in less than 12 [NINE] months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology [HAIRDRESSING] is 2,000 hours. [THE APPRENTICESHIP MUST BE SERVED IN A SHOP APPROVED BY THE BOARD.] The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(c) The period of apprenticeship required to qualify an applicant for a license to practice esthetics [COSMETOLOGY] is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than three [SIX] months from the date of its commencement and must be completed in not more than nine months [ONE YEAR] from the date of its commencement.

(d) The board shall adopt regulations to establish the requirements for an apprenticeship to qualify an applicant for a license to practice manicure and pedicure.

* Sec. 10. AS 08.13.100 is amended to read:

Sec. 08.13.100. LICENSE. (a) The board shall authorize the issuance of a license to each qualified applicant who has passed each part of the [AN] examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license must [SHALL] state the areas of practice (barbering, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING, COSMETOLOGY], or any combination) that [WHICH] the practitioner is qualified to perform.

(c) The board may by regulation create areas of limited professional licensing in the field of esthetics, including regulating [COSMETOLOGY, EXCEPT THAT THE BOARD MAY NOT RESTRICT OR OTHERWISE REGULATE] the practice of manicure and [OR] pedicure. Any limitation must be stated on the license.

(d) A person holding a current valid license from a board of barbering, cosmetology, or esthetics [HAIRDRESSING, OR COSMETOLOGY] in another state [OR COUNTRY] is entitled to a license under this chapter without examination in this state. An application must [SHALL] include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training, testing and working experience that [WHICH] the board finds to meet the minimum requirements of the state; and

(3) payment of a credential investigation fee.

* Sec. 11. AS 08.13.110 is amended to read:

Sec. 08.13.110. SCHOOL LICENSE. The board shall adopt regulations for the licensing of schools of barbering, cosmetology, and esthetics [HAIRDRESSING, AND COSMETOLOGY]. The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner.

* Sec. 12. AS 08.13.130 is amended to read:

Sec. 08.13.130. DISPLAY OF LICENSE OR PERMIT. A practitioner [PRACTITIONERS] shall display the practitioner's [THEIR] license in a conspicuous location in the practitioner's [THEIR] place of business. Each shop owner is responsible for the display of the licenses of employees. [PRACTITIONERS WHO PRACTICE OUTSIDE OF A PLACE OF BUSINESS

SHALL CARRY THEIR LICENSE WITH THEM TO BE SHOWN TO PERSONS UPON WHOM WORK IS PERFORMED.] A person holding a student permit or temporary permit shall display the permit in a conspicuous location in the school in which the person is enrolled or the shop in which the apprentice works. The school or shop owner is responsible for the display of a permit for each enrolled student or apprentice [HAVE THAT PERMIT AVAILABLE FOR INSPECTION WHEN ENGAGED IN PRACTICE].

* Sec. 13. AS 08.13.150 is amended to read:

Sec. 08.13.150. GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF A LICENSE OR PERMIT. The board may refuse, suspend, or revoke a license, student permit, or temporary permit for a failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board.

* Sec. 14. AS 08.13.160(d) is amended to read:

(d) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING, OR COSMETOLOGY] in a community having a population of less than 1,000 people that [WHICH] is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person;

(3) a licensed health care professional;

(4) a person licensed by another licensing jurisdiction in a field of practice licensed by this chapter while demonstrating techniques or products to persons holding licenses or permits under this chapter.

* Sec. 15. AS 08.13.160 is amended by adding a new subsection to read:

(e) The board shall adopt regulations to permit a person

licensed under this chapter to practice outside a licensed shop or school for limited purposes including

(1) care of clients confined to an institution or health care facility;

(2) care of clients with limited mobility;

(3) participation in charitable events; and

(4) participation in workshops or demonstrations of techniques or products.

* Sec. 16. AS 08.13.170 is repealed and reenacted to read:

Sec. 08.13.170. TEMPORARY PERMITS. The department shall issue a temporary permit to an applicant for licensing who holds a license to practice as a barber, cosmetologist, esthetician, manicurist or pedicurist in another state. The permit is valid until the board either issues a permanent license or rejects the application. The board shall act on an application within six months.

* Sec. 17. AS 08.13.180 is amended to read:

Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed school of barbering, cosmetology, or esthetics [HAIRDRESSING, OR COSMETOLOGY], and a person apprenticed by [TO] a licensed instructor [PRACTITIONER] in a shop [APPROVED BY THE BOARD] shall obtain a student permit. A student permit to practice barbering or cosmetology [HAIRDRESSING] is valid for two years. A student permit to practice esthetics [COSMETOLOGY] is valid for nine months [ONE YEAR]. The board shall establish by regulation the term of a student permit to practice manicure and pedicure. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new permit as determined by the board.

* Sec. 18. AS 08.13.180 is amended by adding a new subsection to read:

(b) A person is eligible for a student permit if the person

(1) is at least 16 years of age; and

(2) has graduated from high school or holds a G.E.D. equivalency.

* Sec. 19. AS 08.13.185 is repealed and reenacted to read:

Sec. 08.13.185. FEES. The department shall adopt regulations under AS 08.01.065 that establish the amount and manner of payment of fees for examination and investigation, and for initial licenses and renewals for the following:

(1) schools;

(2) school owners;

(3) instructor;

(4) shop owner;

(5) practitioner of barbering;

(6) practitioner of cosmetology;

(7) practitioner of esthetics;

(8) practitioner of manicure and pedicure;

(9) student permit.

* Sec. 20. AS 08.13.190 is amended to read:

Sec. 08.13.190. FAILURE TO POSSESS A LICENSE OR PERMIT. A person who practices barbering, <u>cosmetology, esthetics, or manicure and pedicure</u> [HAIRDRESSING, OR COSMETOLOGY], or operates a shop, or operates a school of barbering, <u>cosmetology, or esthetics</u> [HAIRDRESSING, OR COSMETOLOGY], or teaches in a school of barbering, <u>cosmetology, or esthetics</u> [HAIRDRESSING, OR COSMETOLOGY], without a license, temporary permit, or student permit and who is not exempt under AS 08.13.120 or <u>08.13.160(d)</u> [UNDER AS 08.13.160(d)] is guilty of a class B misdemeanor.

* Sec. 21. AS 08.13.210 is amended to read:

Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of barbering, cosmetology, esthetics, and manicuring and pedicuring [HAIRDRESSING, AND COSMETOLOGY] shall be supervised by the Department of Environmental Conservation [HEALTH AND SOCIAL SERVICES].

* Sec. 22. AS 08.13.220 is amended to read:

Sec. 08.13.220. DEFINITIONS. As used in this chapter,

(1) "apprentice" means a person who receives on-the-job training under [THE] direct supervision [OF A PRACTITIONER, WHO DOES NOT RECEIVE A WAGE OR COMMISSION BEFORE COMPLETING 350 HOURS OF TRAINING, AND FOR WHOSE WORK NO CHARGE IS MADE BEFORE COMPLETING 350 HOURS OF TRAINING];

(2) "barbering" means shaving, trimming, or cutting, styling, curling, permanent waving, bleaching, coloring, cleansing, or chemically straightening the beard or hair of a living person for a fee and for cosmetic purposes;

(3) "board" means the Board of Barbers and Cosmetologists [HAIRDRESSERS];

(4) "esthetics" ["COSMETOLOGY"] means the use of the hands, [MECHANICAL OR ELECTRIC APPARATUS OR] appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the scalp, face or neck, including skin care, make-up, and temporary removal of superfluous hair, [HUMAN BODY] for cosmetic purposes for a fee;

(5) "cosmetology" ["HAIRDRESSING"] means performing, for a fee, the following services for cosmetic purposes:

(A) shaving, trimming, or cutting the beard of a living person; [AND]

(B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person;

(C) esthetics; and

(D) manicure or pedicure;

(6) "instructor" means a person who teaches barbering, cosmetology, or esthetics in a school or who supervises an apprentice;

(7) "practitioner" means a person licensed to practice barbering, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING, OR COSMETOLOGY] under this chapter;

(8) [(7)] "shampoo person" means a person who, for a fee and under the supervision of a practitioner of barbering or cosmetology [HAIRDRESSING], cleanses or conditions the hair of the human head with products that [WHICH] have no effect other than cleaning or conditioning the hair;

(9) [(8)] "shop" means [IS] an establishment operated for the purpose of engaging in barbering, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING, OR COSMETOLOGY].

* Sec. 23. AS 44.46.020 is amended to read:

Sec. 44.46.020. DUTIES OF DEPARTMENT. The Department of Environmental Conservation shall

(1) have primary responsibility for coordination and development of policies, programs and planning related to the environment of the state and of the various regions of the state;

(2) have primary responsibility for the adoption and enforcement of regulations setting standards for the prevention and abatement of all water, land, subsurface land and air pollution, and other sources or potential sources of pollution of the environment,

including by way of example only, petroleum and natural gas pipelines;

(3) promote and develop programs for the protection and control of the environment of the state;

(4) take actions that are necessary and proper to further the policy declared in AS 46.03.010;

(5) adopt regulations for

(A) the prevention and control of public health nuisances;

(B) the regulation of sanitation and sanitary practices in the interest of public health;

(C) standards of cleanliness and sanitation in connection with the construction, operation, and maintenance of a camp, cannery, food handling establishment, food manufacturing plant, mattress manufacturing establishment, industrial plant, school, barbershop, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING OR COSMETOLOGY] establishment, soft drink establishment, beer and wine dispensaries, and for other similar establishments in which lack of sanitation may create a condition that [WHICH] causes disease;

(D) the regulation of quality and purity of commercially compressed air sold for human respiration.

* Sec. 24. AS 44.62.330(a)(51) is amended to read:

(51) Board of Barbers and Cosmetologists [HAIRDRESSERS] (AS 08.13.010)

* Sec. 25. (a) A person who, on the effective date of this Act, holds a valid license issued by the Board of Barbers and Hairdressers may continue to practice as permitted by the license until the license expires and may renew the license in the appropriate field of practice without meeting the new requirements for licensure.

(b) Notwithstanding AS 08.13.090, the Board of Barbers and Cosmetologists shall issue a license to practice manicure and pedicure to a person who is a practitioner of manicure and pedicure in the state on the effective date of this Act without examination.

* Sec. 26. This Act takes effect immediately in accordance with AS 01.-10.070(c).

NOTES TO DECISIONS

Practice of law not defined. — There is no rule defining the practice of law. Nor is there a statute defining the term except in the context of the requirements of active practice of law as a qualification for justices. In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978).

Sec. 08.08.240. Suspension upon conviction of certain crime.

Repealed by § 11 ch 181 SLA 1976.

Editor's notes. — The repealed section derived from § 13, ch. 196, SLA 1955.

Article 5. General Provisions.

Section
245. [Repealed]
250. Short title

Sec. 08.08.245. Definitions.

Repealed by § 3 ch 135 SLA 1967.

Editor's notes. — The repealed section derived from § 3, ch. 47, SLA 1965.

Sec. 08.08.250. Short title. This chapter may be cited as the Alaska Integrated Bar Act. (§ 1 ch 196 SLA 1955)

Chapter 13. Barbers and Hairdressers.

Article
1. Board of Barbers and Hairdressers (§§ 08.13.010 — 08.13.050)
2. Examination and Licensing (§§ 08.13.070 — 08.13.190)
3. General Provisions (§§ 08.13.200 — 08.13.220)

Collateral references. — 10 Am. Jur. 2d, Barbers and Cosmetologists, §§ 1-15.
53 C.J.S., Licenses, §§ 1-3.

Article 1. Board of Barbers and Hairdressers.

Section
10. Creation and membership of board
20. Term of office and removal of members
30. Powers and duties of the board
40. Meetings and examinations
50. Records of the board

(2) have successfully completed all courses that a school with a program in hairdressing is required to teach to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;

(3) have successfully completed all courses that a school with a program in cosmetology is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; or

(4) have served an apprenticeship under AS 08.13.082. (§ 1 ch 159 SLA 1980)

Sec. 08.13.082. Apprenticeship. (a) The period of apprenticeship required to qualify an applicant for a license to practice barbering is 1,500 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than nine months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice hairdressing is 2,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(c) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not more than one year from the date of its commencement. (§ 1 ch 159 SLA 1980)

Sec. 08.13.090. Examinations and other requirements. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The written examination shall cover subjects designated by the board and shall test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment and chemicals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may by regulation establish requirements for a practical examination for licensure. (§ 1 ch 159 SLA 1980)

Sec. 08.13.100. License. (a) The board shall authorize the issuance of a license to each qualified applicant who has passed an examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license shall state the areas of practice (barbering, hairdressing, cosmetology, or any combination) which the practitioner is qualified to perform.

(c) The board may by regulation create areas of limited professional licensing in the field of cosmetology, except that the board may not restrict or otherwise regulate the practice of manicure or pedicure. Any limitation must be stated on the license.

(d) A person holding a current valid license from a board of barbering, hairdressing, or cosmetology in another state or country is entitled to a license under this chapter without examination. An application shall include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training and working experience which the board finds to meet the minimum requirements of the state;

(3) payment of a credential investigation fee. (§ 1 ch 159 SLA 1980)

Sec. 08.13.110. School license. The board shall adopt regulations for the licensing of schools of barbering, hairdressing, and cosmetology. The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner. (§ 1 ch 159 SLA 1980)

Sec. 08.13.120. Shop license. The board shall adopt regulations for the licensing of shops. A shop owner will be licensed to operate a shop without examination, but unless the shop owner is a practitioner the shop owner may not conduct business without employing a manager who is a practitioner. This section does not apply to a shop located in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people. (§ 1 ch 159 SLA 1980)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.13.130. Display of license or permit. Practitioners shall display their license in a conspicuous location in their place of business. Each shop owner is responsible for the display of the licenses of employees. Practitioners who practice outside of a place of business shall carry their license with them to be shown to persons upon whom work is performed. A person holding a student permit or temporary permit shall have that permit available for inspection when engaged in practice. (§ 1 ch 159 SLA 1980)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.13.140. Lapsed license. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid. (§ 1 ch 159 SLA 1980)

Sec. 08.13.150. Grounds for refusal, suspension or revocation of a license or permit. The board may refuse, suspend, or revoke a license, student permit, or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board. (§ 1 ch 159 SLA 1980)

Collateral references. — Cancellation or suspension irrespective of licensee's personal fault, validity of statute or rule making specified conduct or condition the ground for. 3 ALR2d 107.

Bias of members of license revocation board. 97 ALR2d 1210.

Sec. 08.13.160. Application of license requirements. (a) A person holding a valid license to practice barbering under former AS 08.12, is licensed under this chapter, and may continue to practice barbering under the conditions imposed by former AS 08.12 and the regulations issued under former AS 08.12 until the license expires.

(b) A person holding a valid license under former AS 08.28 may continue to practice under the conditions imposed under former AS 08.28 and the regulations issued under former AS 08.28 until the license expires.

(c) A person holding a valid license issued under former AS 08.12 or former AS 08.28 shall be entitled upon its expiration to a license to practice under this chapter in the field of practice for which the person was originally licensed, without meeting requirements for new licensure.

(d) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, or cosmetology in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person. (§ 1 ch 159 SLA 1980)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

AS 08.12, referred to in this section, was repealed by § 5, ch. 159, SLA 1981. AS 08.28, also referred to in this section, was repealed by § 3, ch. 59, SLA 1966, § 3, ch. 46, SLA 1968, § 7, ch. 94, SLA 1978 and § 5, ch. 159, SLA 1980.

Sec. 08.13.170. Temporary permits. (a) A person not licensed under this chapter who wishes to practice and teach barbering, hairdressing, or cosmetology temporarily and primarily for educational purposes who is otherwise qualified to practice barbering, hairdressing, or cosmetology as determined by the board shall first obtain a temporary permit.

(b) The temporary permit shall specify

(1) the purpose for which it is granted;

(2) the period during which the holder of the temporary permit may practice;

(3) the place or places the holder of the temporary permit may practice. (§ 1 ch 159 SLA 1980)

Sec. 08.13.180. Student permits. A person attending a licensed school of barbering, hairdressing, or cosmetology, and a person apprenticed to a practitioner in a shop approved by the board shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new permit as determined by the board. (§ 1 ch 159 SLA 1980)

Sec. 08.13.185. Fees. The following fees are imposed under this chapter: AS

(1) schools:	
initial two-year license fee	$700
biennial renewal	400
(2) school owner:	
initial two-year license fee	$ 70
biennial renewal	60
(3) instructor:	
initial two-year license fee	$ 70
biennial renewal	60
(4) shop owner:	
initial two-year license fee	$ 45
biennial renewal	40
(5) practitioner of barbering:	
initial two-year license fee	$ 55
biennial renewal	40
(6) practitioner of hairdressing:	
initial two-year license fee	$ 55
biennial renewal	40
(7) practitioner of cosmetology:	
initial two-year license fee	$ 45
biennial renewal	30
(8) temporary permit	$ 30
(9) student permit	$ 20
(10) examination fee	$ 25
(11) investigation fee	$ 25
(12) delinquent fee for late renewal	$ 20

(§ 1 ch 159 SLA 1980)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/26/86

REQUEST

Bill/Resolution No. : CSHB 305(FIN)
Title : Barbers & Hairdressers

Sponsor : Sund
Requestor : House Finance Committee
Date of Request : 2/26/86

FISCAL DETAIL

Agency Affected : Commerce
BRU : Occupational Licensing

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Since the bill has been amended to provide for two exams instead of four, no additional funds are needed.

Prepared by : Al Adams, Chair AA Phone : 465-3706
Division : House Finance Committee Date : 2/26/86

Approved by Commissioner : _____ Date : _____
Agency : _____

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

SECTIONAL ANALYSIS: CSHB 305

Section 1) Extends the Board of Barbers and Hairdressers to June 30, 1989.

Section 2) States that the Department of Commerce and Economic Development will keep a record of license activities.

Section 3) Adds two new sections to prohibit the practice of barbering, hairdressing or cosmetology outside a licensed shop or school and to require that teachers have an instructor's license.

Section 4) Specifies that all persons applying for licensure to have completed courses in a school that offers a curiculum approved by the Board. This section is expanded to include requirements for licensure for teachers.

Section 5) Changes the applicant qualification requirements for licensure from 1,500 hours apprenticeship in not less than nine months to 2000 hours apprenticeship in not less than twelve months.

Section 6) States that licenses from other countries are not qualified for licensure in Alaska, although licenses from other states are qualified, and changes license application requirements to include proof of tests.

Section 7) Changes current language to specify a "practitioner" as well as a student or apprentice must display a license or permit in the place of business and removes the requirement that a practitioner who practices outside a place of business carry their license.

Section 8) Expands the list of exemptions to include health care professionals and persons demonstrating products.

Section 9) Is expanded to require the Board to adopt regulations to allow practice in situations outside a shop or school.

Section 10) Repeals current specifications on temporary permits and reinstates that the Board will issue a temporary permit to an applicant until an

Alaska license can be issued.

Section 11) Changes the requirement that an apprentice study with a licensed instructor, rather than a practitioner, to be elligible for a permit.

Section 12) Allows for supervision by the Department of Environmental Conservation instead of the Department of Health and Social Services.

Sections 13, 14, 15, and 16)
Defines apprentice, barbering, cosmetology, and instructor.

Section 17) States that a person can renew their license without meeting new license requirements.

Section 18) Effective date.

CHAIRMAN'S INFORMATION: SCS CSHB 305(L&C)

1) BILL TITLE: "An act relating to barbers, hairdressers, and cosmetologists; and providing for an effective date."

a) Introduced: Sund

b) Co-sponsors:

2) INTENT: This measure extends the Board of Barbers and Hairdressers until June 30, 1989, and makes additional amendments to their statutes. The L&C SCS removed those portions in the House bill which concerned the licensure of estheticians.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C SCS and the title change.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4214 SLAB HB 314 - HB 356

1094

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smoly
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB
314

Letter of Intent for SCS CSHB 314(Fin)

It is the intent of the Senate Finance Committee that duplicative reporting requirements for REA financed electric cooperatives be eliminated. Because of the similarity of the information required in REA quarterly reports, and that required by the APUC in it's annual report, the commission should allow submittal of REA forms for the annual reporting requirements of electric cooperatives.

SCS CSHB 314(fin): Sectional Analysis

Section 1) Substitutes "municipality" for "city or borough, whether home rule or otherwise" to reflect changes made in the Municipal Code adopted last year, and limits the amount of the fee that a municipality may charge to the actual cost.

Section 2) Requires the commission to issue a statement of reasons for rejecting a tariff filing, and imposes a time limit of 45 days on the commission's authority to reject a filing that is not consistent with the chapter or the regulations of the commission.

Section 3) Adds a new section to require the commission to adopt regulations that permit a simplified rate filing procedure for electric cooperatives.

Section 4) Requires the commission to consider the financial covenants contained in mortgages and other debt instruments of cooperative utilities when setting the rates they may charge.

Section 5) Subjects wholesale power agreements between public utilities to advance approval by the commission. After a wholesale power agreement is in effect, the commission may not invalidate the agreement; however, if the rates are not just and reasonable, the commission may order the parties to negotiate an amendment to the contract.

Section 6 Extends the termination date of the APUC for 3 years (1987).

Section 7) Applicability section

Section 8) Applicability of wholesale power agreement section

Section 9) Immediate effective date.

Fred:

The amendment being offered by Sharon Macklin would have the following effect:

1) The language which appears on Page 2, lines 26 thru page 3, line 1, pertains to both electric and telephone cooperatives. In essence, it requires the commission to set rates adequate to meet the financial covenants of all (telco and electric) cooperative utilities.

2) The sentence following that qualifies the obligation imposed upon the commission to honor those agreements. In effect it allows the commission to disapprove the mortgage or debt instrument, in the event they find it to be excessive.

3) The amendment which may be offered by Sen Kerttula on the floor would have the effect of allowing the telco's debt instruments to be approved without further consideration by the commission.

   By inserting the word "electric" on page 3, line 1, the APUC would only be able to disapprove the debt instruments of electric coops, and the debt instruments of telco's, even if excessive, would be safe from commission review.

Letter of Intent for SCS CSHB 314(Fin)

It is the intent of the Senate Finance Committee that duplicative reporting requirements for REA financed electric cooperatives be eliminated. Because of the similarity of the information required in REA quarterly reports, and that required by the APUC in it's annual report, the commission should allow submittal of REA forms for the annual reporting requirements of electric cooperatives.

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

May 12, 1986

Senator Fred Zharoff
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff:

AREA was the special interest group that first proposed language requiring the APUC to respect the financial covenants of mortgages entered into by cooperative utilities.

The APUC objected to the language on the grounds they would have no authority to prevent unjust rate increases which might occur due to mortgage agreements.

The language in the Senate Finance CS for HB314 is a compromise agreed to by your association and the APUC.

The proposed amendment by Sharon Macklin of MTA would make telephone cooperatives subject only to the language proposed by ARECA, but not to the compromise agreed to by the APUC.

I have spoken with the commission about this amendment. Like our association, they are opposed to it.

The telephone cooperatives should either be subject to the whole provision or exempted from it.

Thank you for the opportunity to make our comments on this issue.

Respectfully,

Kenneth S. Johnson

Kenneth S. Johnson,
Director of Information

KSJ/sb

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

318

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 11/27/85

REQUEST

Bill/Resolution No. : CSSS HB318 (L&C)
Title : "An Act relating to ... injured state employees"

Sponsor : Izzymanski
Requestor : House Finance
Date of Request : 5/06/85

FISCAL DETAIL

Agency Affected : Labor
BRU : Workers' Compensation

Components : Workers' Compensation

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Jacque McClintock
Division : Workers' Compensation
Phone : 465-2790
Date : 11/27/85

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 11/27/85

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

FISCAL NOTE

Offered: 5/1/85
Referred: Finance

Original sponsors: Szymanski, Collins, and Rieger

BY THE LABOR AND COMMERCE COMMITTEE

IN THE HOUSE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to rights of injured state employees."

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

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties may not negotiate terms contrary to the reemployment rights for injured state employees under AS 39.25.158.

* Sec. 2. AS 39.25 is amended by adding new sections to read:

Sec. 39.25.157. POSITION DESCRIPTIONS. The division of personnel, in consultation with the appropriate department or agency, shall require the preparation of and shall maintain a position description for each position in the classified and partially exempt services. The position description shall describe the essential functions of the position and the actual skills and abilities required to perform the tasks assigned to the position. A general requirement for physical abilities may not be imposed on a job classification unless each position within the class requires the use of the physical ability.

Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES. (a) An injured employee is eligible for reemployment rights under this section if the employee requests to return to work for the state within 90 days after receipt of a release from a physician indicating that the employee is able to return to full or modified work.

(b) After an employee requests to return to work, the rehabilitation administrator of the division of workers' compensation or the

director of vocational rehabilitation in the Department of Education shall review the request and certify that the employee is able to return to work under (c), (d), (e), or (f) of this section, or defer certification until the employee completes retraining under (f) of this section.

(c) If the rehabilitation administrator or the director of vocational rehabilitation certifies that the employee is able to perform the tasks assigned to the employee's former position, the agency shall reemploy the employee within 30 days after receipt of the certification unless the position no longer exists. If a permanent, probationary or provisional employee is currently employed in the position, the agency shall cause a vacancy under the layoff provisions of AS 39.25.150(13).

(d) If the employee is not eligible for reemployment under (c) of this section but is able to perform the essential functions of the position, then the agency shall reemploy the employee in the position after making a reasonable accommodation to the physical and mental limitations of the employee unless the position no longer exists. Reasonable accommodation may include imposing work restrictions on the tasks performed by the employee, making job or site modifications necessary to permit the employee to perform the tasks of the position, removing institutional and architectural barriers, and providing additional support services.

(e) If the employee is not eligible for reemployment under (c) or (d) of this section and if the agency has a vacant position for which the employee is qualified that is comparable in wage to the position the employee previously held, then the agency shall offer the employee the position. If the employee is unable to perform the essential functions of a comparable position within the agency, then

the employee is entitled to reemployment in a comparable position for which the employee is qualified with another agency if the position is vacant and the employee is able to perform the essential functions of that position.

(f) If the agency and other agencies in the state are unable to reemploy the employee in a position at a wage comparable to the employee's previous wage, the employee may request reemployment at a lower wage or accept retraining under AS 23.30.041. After completing the training the employee may request reemployment in a position for which the employee has been retrained in the agency. If the agency cannot offer reemployment, the employee may request reemployment in a position for which the employee has been retrained with another agency.

(g) An agency may refuse to reemploy or continue the employment of a former employee if reasonable accommodation imposes an undue hardship on the operation of the agency's program or if, after reasonable efforts at accommodation, the injured employee cannot perform the essential functions of the position in a manner that would not endanger the health or safety of

(1) the employee because the job imposes an imminent and substantial degree of risk to the employee; or

(2) others to a greater extent than if a nonhandicapped person performed the job.

(h) Factors an agency may consider in determining undue hardship under (g) of this section include the current number of employees in the section or office, number and type of facilities, size of budget, nature and cost of the accommodation needed, and the type, composition, and structure of the work force.

(i) Notwithstanding any other provision of law, if an injured

employee requests reemployment under (e) or (f) of this section and if the employee is able to perform the essential functions of the position, the state may not hire another person for that position except an employee in layoff status for that job class.

(j) A collective bargaining agreement under AS 23.40.070 - 23.40.260 may not include terms contrary to this section.

(k) In this section

(1) "agency" includes a department, division, office, agency, board, commission, authority, or other organizational unit of the executive, legislative, and judicial branches of state government including the University of Alaska;

(2) "injured employee" or "employee" means a permanent, probationary, or provisional employee of an agency whose injury is a compensable injury or condition under AS 23.30.

* Sec. 3. Nothing in this Act modifies or terminates the terms of a collective bargaining agreement in existence on the effective date of this Act.

Cramer
4/9 86

Original sponsors: Szymanski, Collins, and Rieger

BY THE LABOR AND COMMERCE COMMITTEE

IN THE HOUSE

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to rights of injured state employees."

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

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties may not negotiate terms contrary to the reemployment rights for injured state employees under AS 39.25.158.

* Sec. 2. AS 39.25 is amended by adding new sections to read:

Sec. 39.25.157. POSITION DESCRIPTIONS. The division of personnel, in consultation with the appropriate department or agency, shall require the preparation of and shall maintain a position description for each position in the classified service. The position description shall describe the essential functions of the position and the actual skills and abilities required to perform the tasks assigned to the position. A general requirement for physical abilities may not be imposed on a job classification unless each position within the class requires the use of the physical ability.

Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES. (a) An injured employee is eligible for reemployment rights under this section if the employee requests to return to work for the state within 30 days after receipt of a release from a physician indicating that the employee is able to return to full or modified work.

(b) After an employee requests to return to work, the rehabilitation administrator of the division of workers' compensation or the

director of vocational rehabilitation in the Department of Education shall review the request and certify that the employee is able to return to work under (c), (d), (e), or (f) of this section, or defer certification until the employee completes retraining under (f) of this section.

(c) If the rehabilitation administrator or the director of vocational rehabilitation certifies that the employee is able to perform the tasks assigned to the employee's former position, the agency shall reemploy the employee within 30 days after receipt of the certification unless the position no longer exists. If a permanent, probationary or provisional employee is currently employed in the position, the agency shall cause a vacancy under the layoff provisions of AS 39.25.150(13).

(d) If the employee is not eligible for reemployment under (c) of this section but is able to perform the essential functions of the position, then the agency shall reemploy the employee in the position after making a reasonable accommodation to the physical and mental limitations of the employee unless the position no longer exists. Reasonable accommodation may include imposing work restrictions on the tasks performed by the employee, making job or site modifications necessary to permit the employee to perform the tasks of the position, removing institutional and architectural barriers, and providing additional support services.

(e) If the employee is not eligible for reemployment under (c) or (d) of this section and if the agency has a vacant position for which the employee is qualified that is comparable in wage to the position the employee previously held, then the agency shall offer the employee the position. If the employee is unable to perform the essential functions of a comparable position within the agency, then

the employee is entitled to reemployment in a comparable position for which the employee is qualified with another agency if the position is vacant and the employee is able to perform the essential functions of that position.

(f) If the agency and other agencies in the state are unable to reemploy the employee in a position at a wage comparable to the employee's previous wage, the employee may request reemployment at a lower wage or accept retraining under AS 23.30.041. After completing the training the employee may request reemployment in a position for which the employee has been retrained in the agency. If the agency cannot offer reemployment, the employee may request reemployment in a position for which the employee has been retrained with another agency.

(g) An agency may refuse to reemploy or continue the employment of a former employee if reasonable accommodation imposes an undue hardship on the operation of the agency's program or if, after reasonable efforts at accommodation, the injured employee cannot perform the essential functions of the position in a manner that would not endanger the health or safety of

(1) the employee because the job imposes an imminent and substantial degree of risk to the employee; or

(2) others to a greater extent than if a nonhandicapped person performed the job.

(h) Factors an agency may consider in determining undue hardship under (g) of this section include the current number of employees in the section or office, number and type of facilities, size of budget, nature and cost of the accommodation needed, and the type, composition, and structure of the work force.

(i) Notwithstanding any other provision of law, if an injured

employee requests reemployment under (e) or (f) of this section and if the employee is able to perform the essential functions of the position, the state may not hire another person for that position except an employee in layoff status for that job class.

(j) A collective bargaining agreement under AS 23.40.070 - 23.40.260 may not include terms contrary to this section.

(k) In this section

(1) "agency" includes a department, division, office, agency, board, commission, authority, or other organizational unit of the executive branch of state government;

(2) "injured employee" or "employee" means a permanent, probationary, or provisional employee of an agency in the classified service whose injury is a compensable injury or condition under AS 23.30.

* Sec. 3. Nothing in this Act modifies or terminates the terms of a collective bargaining agreement in existence on the effective date of this Act.

Bill No. 2nd Sponsor Substitute for House Bill No. 318

Title "An Act relating to rights of injured State employees."

Date April 23, 1985

Contact: Joy L. McClintock 465-2790

The Department of Labor supports passage of the 2d Sponsor Substitute for HB 318, providing rehire rights for injured state employees.

The latest sponsor substitute adds several key features which strengthen the provisions of the bill and responds to the Department's concerns over potential conflicts between the earlier provisions of the bill and the workers' compensation rehabilitation provisions of AS 23.30.041.

APPROVED:

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

Bill No. Committee Substitute for Sponsor Substitute for House Bill No. 318 (L&C)

Date February 12, 1986

Title "An Act relating to rights of injured state employees."

Contact: Jacque L. McClintock 465-2790

The Department of Labor supports CSSSHB 318 which provides rehire rights for injured state employees.

Under the provisions of this bill, the state is required to reemploy an injured state employee in the former job position if the employee is medically able to perform the duties of the position or, if not medically able, to rehire the employee in a modified or comparable position. This bill applies to all state employees who have sustained an occupational injury or illness and who wish to return to work for the state.

This bill will afford return to work protection for injured state employees, and should, overall, reduce the state's costs of workers' compensation by returning injured and disabled employees to suitable gainful employment.

APPROVED:

Jim Robison

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

SECTIONAL ANALYSIS -- HB 318

(CS for Sponsor Substitute for HB 318, dated 5/1/86)

Section 1. Adds a new section to AS 23.40 that states that terms contrary to the provisions of this legislation may not be negotiated. Added at the request of the division of personnel.

Section 2.

Subsection 39.25.157. Requires the division of personnel, in consultation with the appropriate department or agency, to develop and maintain a detailed position description for each position within the classified and partially exempt services.

Also disallows the imposition of general physical ability requirements on a job class unless each position within the class requires the use of the physical ability.

Subsection 39.25.158.

(a) within 90 days after a physician's release to return to full or modified work, an injured employee must request to return to work for the state to be eligible for reemployment rights under this section.

(b) once an employee requests to return to work, the employee will be certified by the division of workers' compensation or the director of vocational rehabilitation. The certification will determine the employee's reemployment rights under this section. Certification may be delayed until after the employee completes retraining under (f).

(c) requires that a state agency offer an injured employee the employee's former position within 30 days, if the employee is certified able to perform the tasks assigned to the position and the position still exists. If the position is filled, the current employee shall be laid off under provisions of the personnel regulations that allow for layoffs without any reflection on an employee's work performance.

(d) requires agencies to make efforts of reasonable accommodation to the physical and mental limitations of an injured employee who is not able to perform all of the tasks assigned to the employee's former position, but who is able to perform the essential functions of the position.

Following federal language, the section defines reasonable accommodation.

(e) if, after reasonable accommodation, the employee is still unable to perform the essential functions of the employee's former position, then the agency is required to offer the employee a vacant position comparable in wage to the position the employee previously held.

If the employee is unable to perform the essential functions of a comparable position within the agency, then the employee is entitled to reemployment in a comparable position in another agency, provided that (1) the employee is qualified for the position and able to perform the essential functions of the position and (2) the position is vacant.

(f) if the employee cannot be reemployed in a comparable position by an agency of the state, then the employee may request reemployment at a lower wage or accept retraining under AS 23.30.041. After completing retraining, the employee may request reemployment in a state position for which the employee has been retrained.

(g) establishes guidelines for refusal by an agency to reemploy or continue the employment of a former employee.

(h) defines factors to be considered when determining if accommodation of an injured employee would constitute undue hardship to an agency. Factors to be considered include the number of employees in the section or office, number and type of facilities, size of budget, nature and cost of the accommodation needed, and the type, composition, and structure of the work force.

(i) requires that an injured employee requesting reemployment who is able to perform the essential functions of the position be the only person certified for that position, excepting any employees in layoff status for that job class.

(j) precludes collective bargaining agreements from including terms contrary to this section.

(k) definitions:

"agency" includes a department, division, office, agency, board, commission, authority, or other organizational unit of the executive, legislative, and judicial branches of state government including the University of Alaska.

"injured employee" or "employee" means a permanent, probationary, or provisional employee of an agency whose injury is a compensable injury or condition under AS 23.30 (Alaska Workers' Compensation Act).

Section 3. States that nothing in this act modifies or terminates the terms of a collective bargaining agreement in existence at the effective date of the act.

CHAIRMAN'S INFORMATION: SCS CSSSHB 318(L&C)

1) BILL TITLE: "An act relating to the rights of injured state employees."

a) Introduced: Szymanski, Collins, Reiger

b) Co-sponsors:

2) INTENT: This measure concerns reemployment rights of injured state employees and would require the rehire of an injured state employee if the employee was medically able to perform the duties of his former employment. If the employee is not medically able to perform the duties of his former employment, the state would have to rehire the employee in a comparable or modified position.

L&C CS requires the injured employee to request to return to work within 30 days after receipt of the physicians release, rather than the 90 day period in the House version. The SCS also limits the applicability of the bill to state employees in the classified service.

FISCAL NOTE: 0 (should reduce the state's cost of workers comp by returning an injured employee to gainful and suitable employment)

3) ADDITIONAL REFERRALS: Sen Finance and Sen Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to move for the adoption of the SCS.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 11, 1984

MEMORANDUM

TO: Representative Mike Szymanski

FROM: Sharman Haley
Legislative Analyst

RE: Priority Rehire For Disabled State Employees
Research Request 35-025

You have asked about instituting a policy of preferential rehire for State employees who are forced to leave their jobs due to work-related disabilities. Short summaries of rehire policies in Washington, Oregon, and Idaho as well as the U.S. Postal Service and the Municipality of Anchorage are provided below. A discussion of policy alternatives for amending Alaska law along similar lines follows.

WASHINGTON

An employee of the State of Washington who becomes disabled cannot be terminated for at least sixty days. Supervisors have broad discretion to extend leave without pay to the injured employee and fill the position temporarily until the employee is able to resume his or her duties. If the injured employee is out longer than sixty days and is terminated from his or her position, the employee is eligible to be placed on the Reduction In Force (RIF) list for that job class when he or she is ready to return to work. Persons on the RIF list have the right of first hire when vacancies in that job class appear.

If the disabled employee is not able to resume the duties of his or her former job class and seeks reemployment in an alternate job class, the employee must go through the normal application and testing procedures to be certified to the register for the alternate job class. Once certified, the disabled employee is entitled to hiring preference over applicants on the open competitive register. If the alternate job class constitutes a promotion, the disabled employee has second hire priority after those on the RIF list. If the alternate job class is a demotion or lateral transfer, reemployment preference over open competitive candidates is at the discretion of the hiring authority.

BACK UP INFORMATION

Under Washington law, a person whose disability keeps them out of work for more than 120 days is referred to a vocational rehabilitation counselor for evaluation and vocational rehabilitation planning. A person who is permanently disabled may qualify for the state's equal employment opportunity program for the handicapped. Washington State civil service rules allow handicapped persons to test for any job class for which they meet the minimum qualifications, whether or not that register is open for recruitment. State agencies have the option of using the list of qualified handicapped workers, in preference to the regular register when filling vacancies.

Incentive for state agencies (or any employer) to hire workers with occupational injuries is provided by the Preferred Worker Progam, which excludes the worker from the computation of workers' compensation premiums for a period of three years. The benefits due the worker in the event of an injury during the three-year period are covered by the state's Second Injury Fund.

OREGON

Of the states contacted, Oregon has the stongest laws for rehiring injured employees. Oregon civil rights law provides that an injured employee has the right to reinstatement on demand in his or her former position, or in any other job, if a position is available and the worker able to perform the duties of the job. In the state system, responsibility for rehiring the injured employee falls on each agency. Oregon statutes also require "reasonable accommodation" for the special needs of handicapped workers. In the state personnel system, this may include some restructuring of the job.

IDAHO

Idano personnel rules provide that when an employee is absent due to injury or illness, the job is held open for the employee and may not be declared vacant for at least six months. If the worker has not returned to work within six months and is terminated, for an additional 12 months the worker is eligible to be placed on the lay-off register for that agency if the doctor has cleared the employee for return to work. If the employee is not able to resume the same job duties, the agency has some discretion to modify work for the employee, but there is no program or policy to further accommodate workers who must change job classes.

U.S. POSTAL SERVICE

The U.S. Postal Service goes beyond the requirements of federal law to return injured employees to work. Under federal law, an injured federal employee who is able to return to work within one year has the right to return to the same or an equivalent position in the same agency. If it takes longer than a year to return to work, the employee has the right to priority placement in the same or equivalent position in that or another federal agency. The returning federal employee is credited with wage step increases and other benefits based on length of service for the entire time he or she was out on disability compensation.

A partially or temporarily disabled postal employee is on leave status until the doctor certifies that the employee is able to return to work. The worker is either returned to his or her former job, with some modification of duties if needed, or transferred to an alternate job. In planning a placement, the post office considers the risk of reinjury and the potential compensation costs as well as the skills and abilities of the worker. Only if this assessment indicates that the worker will not be returned to federal service is the employee terminated.

The responsibility for finding or creating a job falls on the local postmaster. To encourage the placement of partially disabled workers, the salary of a partially disabled employee is not paid out of the operating unit's budget, nor are the hours worked by a partially disabled worker counted in computing the operating unit's productivity rating. Thus the operating units are able to show a higher productivity, for which they are rewarded, by utilizing partially disabled workers.

ANCHORAGE

The Municipality of Anchorage has implemented a modified work program for municipal employees injured on the job. The stated purposes of the program are to minimize long-term costs to the municipality and to return the employee to good health and productive employment at the earliest opportunity.

Under the modified work program, an injured worker who is able to resume partial duties will be placed in modified work for up to three months while the worker is in transition back to full duties. If rehabilitation requires a complete change in employment, participation in the modified work program may exceed three months. The worker is paid his or her full regular salary during the period of modified work. If the worker's permanent job placement is at a lower salary than his or her old job, two-thirds of the difference is paid to the employee through the city's workers compensation account. Workers whose disability precludes them from placement in a permanent position receive a worker's compensation settlement.

While providing modified work is the responsibility of each municipal agency, a job placement coordinator for the municipality as a whole oversees the development of modified jobs and placements. According to Harry Sjoberg, Risk Manager for the municipality, the city's experience with the program has shown significant reductions in compensation claims and changes in the attitudes of supervisors and injured employees alike. Prior to institution of the modified work program, the prevailing pattern was that supervisors were not inclined to rehire an employee at anything less than 100 percent productivity. Employee morale suffered from prolonged periods off work. Mr. Sjoberg said that now less work time is lost, supervisors show more concern for the circumstances of their injured employees, and rehabilitation is quicker.

ALASKA

Under the Alaska personnel rules, leave without pay due to a disability is at the discretion of the supervisor, but in any case may not exceed the employees length of service or 24 months, whichever is shorter. The supervisor may cancel leave without pay upon notice to the absent employee. If the employee does not report for duty on the specified date, he or she may be terminated immediately.

A disabled classified employee terminated "in good standing" has rehire rights for two years from the date of termination. This means that they will be placed on the transfers and rehires list for that job class, which agencies may use in preference to the regular register when seeking applicants to fill vacancies. A few departments such as Health and Social Services have internal policies requiring agency heads to use the transfer and rehire list first, but most departments leave this to the discretion of the supervisor.

Injured State workers who are unable to resume the duties of their former job have few advantages in seeking other State jobs. They must go through the same process as anyone else of finding job classes for which they qualify, waiting for an open recruitment period for that class, taking applicable tests, getting on the job register, and successfully competing with other applicants. If the worker is fortunate enough to still be on leave and thus retain permanent employee status, he or she may be eligible for noncompetitive appointment at the discretion of the hiring authority.

State law provides that workers absent from work more than 90 days due to an on-the-job injury have a right to vocational rehabilitation evaluation. This includes an assessment of skills and abilities, aid in planning for training and rehabilitation, and job placement assistance.

If the worker qualifies as severely handicapped and is a client of the Division of Vocational Rehabilitation, the worker may be referred to a State job and hired noncompetitively if the hiring authority chooses.

State workers whose occupational injuries disable them from resuming their former job duties qualify for a disability pension under the Public Employees Retirement System. The pension is terminated in one year, however, unless the recipient submits evidence that he or she meets the qualifications for federal Social Security disability income (SSI). Federal standards for SSI are stringent; the worker must be unable to hold any gainful employment, not merely his or her former job.

Policy alternatives to facilitate reemployment of injured State workers in Alaska, patterned after some of the preferential rehire programs in other jurisdictions, are listed below:

POLICY OPTIONS

1. Employees could be guaranteed the right to disability leave.

2. Injured workers returning to work could be placed on the lay-off list, which assures them priority placement within their former job class.

3. Injured workers unable to resume the duties of their former job class could be allowed to test for any other job class for which they meet the minimum qualifications, whether or not recruitment is open.

4. Hiring preference in alternate job classes for which the worker qualifies could be granted by making the worker eligible for the lay-off, promotion, or transfer and rehire lists. Eligibility for the lay-off list would guarantee the worker first priority placement, while the promotion and the transfer and rehire lists would give the worker preference only at the option of the hiring authority.

5. A modified work program could provide injured workers job duties tailored to their capabilities during a period of transition back to full duties or to a new job.

6. State agencies could be given incentives to rehire disabled State workers, such as omitting the disabled worker from the calculation of their worker's compensation assessment.

7. State employees injured in the course of their employment could be guaranteed State jobs when doctors certify that the employees

are able to return to work. The employeee would be reemployed in their original job class if they were able to perform the duties, in an alternate job class for which they qualify, in an alternate job class for which they may be retrained, or in a modified job tailored to their individual capabilities.

8. The injured worker could also be extended the right to receive pay no less than the pay he or she received prior to injury, regardless of the final job placement.

These policy changes could be effected by amending AS 39.25.150 to direct the Department of Administration to provide for these policies in the personnel rules. Alternatively, reemployment could be mandated for all employers in the state under the workers' compensation or civil rights laws. Copies of the Oregon law and the Postal Service policy manual, both of which are regarded by vorational rehabilitation professionals as model policies, are attached.

Because the State is a self-insurer and is liable for workers' compensation benefits as well as for the disability pension payments, it may be in the State's financial interests as well as the interests of the injured worker to implement a preferential rehire policy and return the worker to a job as quickly as possible. Approximately 1,200 injured State employees file worker's compensation claims per year, of which about 200 to 250 include a claim for wage loss due to being out of work more than three days. Compensation is also paid for loss of earning capacity if the injured worker's prospective employment pays less than his or her former job. Compensation for wage loss is generally calculated at two-thirds of the lost wages, but because workers' compensation is tax exempt, the take home compensation is worth more than two-thirds of net wages lost.

* * * * *

I am still expecting some additional information from other states to come in the mail. If upon reviewing the material I find that it provides any significant information on this issue that I have not adequately covered here, I will forward it on to you with a supplemental memo. Meanwhile, I hope that this memorandum provides you with the information that you need.

If you have any futher questions please call me.

SH

659.410 Discrimination against workers applying for workers' compensation benefits prohibited. It is an unlawful employment practice for an employer to discriminate against a workman with respect to hire or tenure or any term or condition of employment because the workman has applied for benefits or invoked or utilized the procedures provided for in ORS 656.001 to 656.794 and 656.802 to 656.824, or of 659.400 to 659.435 or has given testimony under the provisions of such sections. [1973 c.660 §4]

659.415 Reinstatement of worker receiving compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, provided that the position is available and the worker is not disabled from performing the duties of such position. If the former position is not available, the worker shall be reinstated in any other position which is available and suitable. A certificate by a duly licensed physician that the physician approves the worker's return to the worker's regular employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employes.

(3) Any violation of this section is an unlawful employment practice. [1973 c.660 §5; 1979 c.813 §3; 1981 c.874 §14]

659.420 Employment of injured worker in other available and suitable work; certificate of physician; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employes.

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 §6; 1979 c.813 §4]

659.425 Discrimination against mentally or physically impaired persons in employment or public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) For the purpose of ORS 659.400 to 659.435, it is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because:

(a) An individual has a physical or mental impairment which, with reasonable accommodation by the employer, does not prevent the performance of the work involved;

(b) An individual has a record of a physical or mental impairment; or

(c) An individual is regarded as having a physical or mental impairment.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a handicapped person, or to classify or refer for employment any individual because that individual is a handicapped person.

(3) It is an unlawful employment practice for a labor organization, because an individual is a handicapped person, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(4) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30.675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a handicapped person.

(5) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position, or of a person's inability to acquire, rent or maintain property. [1973 c.660 §7; 1979 c.640 §3]

659.430 Discrimination against handicapped persons in real property transactions prohibited; advertising discriminatory preference prohibited; assisting discriminatory practices prohibited. (1) No person because the purchaser, lessee or renter is a handicapped person shall:

U.S. POSTAL SERVICE

LWOP for an initial period of up to 1 year from the date OWCP compensation began.

.92 Extensions. If the employee is unable to return to work at the end of the 1 year period on LWOP, the LWOP may be extended for successive additional periods of up to 6 months. Extensions are granted only if it appears that the employee is likely to return to work within the period of the extension.

.93 Separations. If it is not likely that the employee will be able to return to work at the end of one year of LWOP or during the authorized extended period, the employee may be separated. Before any employee who is on the rolls of the OWCP can be separated, the postal official must submit a comprehensive report to the General Manager, Employee Relations (Region), with appropriate recommendations and retain the employee on the rolls of the Postal Service pending a decision.

.94 Deciding Appropriate Action. In considering the action to take in matters involving extended leave, the installation head sends Form 2573, *Request for OWCP Claim Status,* in duplicate, to the appropriate OWCP district office; and, upon receiving a completed Form 2573 from OWCP, does one of the following:

a. Extends LWOP for an additional period, at the end of which an additional determination must be made.

b. Authorizes a fitness-for-duty examination by a medical officer as provided in 547.31, .32, and .33 if OWCP does not respond within a maximum of 60 days or if OWCP's response does not explain the situation; or

c. Request permission to terminate LWOP as required in .93; and

d. Terminates LWOP after receiving permission from the General Manager, Employee Relations (Region) as follows:

(*1*) If the employee has 5 or more years of creditable civilian service, inform the employee of retirement rights. Allow the employee 14 calendar days to file a retirement application under the Civil Service Retirement Act.

(*2*) If the employee does not file a retirement application within the 14 day period, terminate LWOP and take action to separate the employee as described in 365 and 568.

(*3*) If the employee has less than 5 years creditable civilian service, terminate LWOP and take action to separate the employee as described in 365.

546 Reemployment of Employees Injured On Duty

546.1 Law

.11 General. The USPS has legal responsibility to employees with job-related disabilities under 5 U.S.C. 8151 and the Office of Personnel Management's (OPM) regulations, as outlined below

.12 Disability Fully Overcome Within 1 Year

.121 Obligation. When the injury or disability is fully overcome within one year after the commencement of compensation payments from OWCP, or after compensable disability recurs, the USPS must give an employee the right to resume employment in the former or equivalent position.

.122 Rights and Benefits. Upon reemployment, all rights and benefits which an employee would have had or acquired in the former position, had there been no injury or disability, must be restored.

.13 Disability Fully Overcome More Than 1 Year

.131 Obligation. When the injury or disability is fully overcome more than one year after compensation began, the USPS must give an employee priority consideration for reemployment into the former position or an equivalent one.

.132 Reemployment List. The names of all former employees who fully recover from their compensable disabilities more than one year after compensation begins must be entered on a reemployment list in two groups. *Group one* will include all such former employees who are entitled to 10 point veteran preference. *Group two* will include all other such former employees. Persons in *group one* will be considered for employment before persons in *group two,* and persons in *group two* will be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.

.133 Rights and Benefits. The same as 546.122.

.14 Disability Partially Overcome

.141 Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerances (see 546.321). In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

a. To the extent that there is adequate work available within the employee's work limitation tolerances; within the employee's craft; in the work facility to which the employee is regularly assigned; and during the hours when the employee regularly works; that work shall constitute the limited duty to which the employee is assigned.

b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility.

c. If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts shall be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

d. An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort will

be made to assign the employee to work within the employee's craft, within the employee's regular schedule, and as near as possible to the regular work facility to which normally assigned.

.142 Former Employees. When a former employee has partially recovered from a compensable injury or disability, the USPS must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which qualified, including a lower grade position than that held when compensation began.

.15 Employee Appeal Rights. An employee who believes the proper consideration for reemployment was not received may appeal to the Merit Systems Protection Board, under 5 CFR, 353.

546.2 Collective Bargaining Agreements

Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement.

.21 Contractual Considerations

.211 Scope. Collective bargaining agreement provisions for filling job vacancies and promotions, and procedures relating to retreat rights due to reassignment, will be complied with before an offer of employment is made to a former postal employee on the OWCP rolls for more than 1 year.

.212 Reemployment. A former employee will be offered reemployment in a residual vacancy (a vacancy which has been posted for bid or application and for which there are no successful bidders or applicants), or may work as an unassigned regular or as a part-time flexible. Regional Directors, Employee and Labor Relations (APMG, Employee Relations, for Headquarters and Administrative Support Facilities (ASFs) may waive minimum qualification requirements (including written examinations) in individual cases for former employees injured on duty who are being considered for reemployment when there is evidence (including that submitted by the medical officer) that the employee can be expected to perform satisfactorily in the position within ninety days after assignment.

.22 Types of Appointments

.221 Former career employees will be reemployed as career full-time or part-time employees.

.222 Former substitute rural carriers will be reemployed as substitute rural carriers or in any other position for which they qualify.

.223 Former casual and temporary employees will be reemployed as casual or temporary employees. Upon satisfactory demonstration of ability to meet job requirements during two 90-day casual appointments or one 180-day temporary appointment, the employee's status may be noncompetitively converted to a career appointment (NOA 501).

546.3 OWCP Referrals

.31 General. OWCP will make referrals of current and former postal employees who may be candidates for reemployment.

.32 Work Limitation Tolerances. The individual's physician of record, or other physician selected by the individual or OWCP, will furnish OWCP with a definitive medical summary, clearly documenting the medical limitations that will have to be accommodated. The OWCP District Medical Director evaluates the work limitation tolerances, submitted by the physician of record, and upon concurrence, refers them to the USPS for consideration.

.33 USPS Medical Review

.321 Reemployment Physical Examination

a. The medical officer will evaluate fully all medical records referred to the USPS from the OWCP district offices.

b. A complete physical examination, paid for by the USPS, will be required by the appointing officer. The result of the physical examination will be documented on Form 2485, *Certificate of Medical Examination.*

c. The medical officer will make a statement of concurrence with the OWCP documented medical limitations, or further restrict the former employee's work limit tolerances. The medical officer can in no way liberalize the medical limitations tendered by the OWCP district offices.

.322 Special Considerations

a. An individual referred for reemployment consideration by OWCP may have some degree of concurrent disability, not caused by or related to the original job injury or disability. The medical officer should examine for any concurrent medical condition that might prevent the individual from performing the duties of the position for which the individual is being considered.

b. The medical officer will carefully evaluate all concurrent disabilities and include their potential impact in the recommendation for reemployment to the appointing official.

c. All former employees, now permanently, partially disabled, have some type of residual handicap. The medical officer, conducting the physical examination, will be responsible for assigning the correct handicap code as defined in Handbook P-11, *Personnel Operations,* Chapter 6.

546.4 Restoration Rights

.41 OPM Regulations. OPM has responsibility for the implementing regulations of 5 USC 3151. These regulations are codified in 5 CFR Part 353. 5 USC 8151(b) provides that an individual, injured or disabled on duty, who resumes employment with the USPS is to be credited with the time during which compensation

was received for purposes of certain rights and benefits based upon length of service.

.42 Rights and Benefits upon Partial Recovery

.421 Seniority. Individuals, reemployed into bargaining unit positions will be credited with seniority in accordance with the collective bargaining agreement covering the position to which reemployed.

.422 Probationary Period. Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, will not be required to serve a new probationary period.

.423 Leave Credit. Former employees who were eligible to accrue leave under ELM 510 will be credited with the total time compensation was received from OWCP for purposes of computing leave rate accrual upon reemployment.

.424 Retirement. Former employees who were covered by the Civil Service Retirement Act (see ELM 560) will be credited with the time spent on OWCP compensation in computing retirement credit.

.425 Salary Determination. The following salary restoration criteria must be met (*Note:* The term "Grade/Step," as used below, means "Grade/Salary" for individuals in a non-step salary schedule):

a. Reemployment to the Former Grade/Step. These individuals reemployed into a position with the same grade/step as held at the time of injury or disability will receive the current salary for that grade/step from the appropriate salary schedule.

b. Reemployment to a Higher Grade. Those individuals reemployed to a position with a grade higher than that of the position held at the time of injury or disability will be placed in the higher grade at the current salary for the grade/step held at the time of injury or disability. If that salary is between steps in the higher grade, the individual's salary will be increased to the next higher step.

c. Reemployment to a Lower Grade/Step.

(1) Salary Below Maximum of Lower Grade. The individual will be placed in any higher step in the lower grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(2) Salary Above Maximum of Lower Grade. In those cases where the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the lower grade position, the employee will be afforded a saved rate at the higher grade/step salary. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

d. Reemployment to a Position in a Different Salary Schedule. When an individual is reemployed to a position in a salary schedule different from the schedule under which paid at the time of injury or disability, once reemployed, the individual will be treated under the rules applicable to the salary schedule to which reemployed:

(1) The individual will be reemployed at the grade appropriate for the position to which reemployed.

(2) The individual will be placed in any higher step in the new grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(3) If reemployment is to a nonstep schedule, the individual will be placed at a salary equal to the current salary for the grade/step of the position held at the time of injury or disability.

(4) If the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the new grade, the individual will be given a saved rate. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

e. Former Position Under Different Salary Schedule. Where the position held at the time of injury or disability is no longer under the same salary schedule, the current salary for the former grade/step will be determined by:

(1) Regional Compensation Division, for field, district, and regional positions.

(2) Office of Compensation, Headquarters, for Headquarters and Headquarters-related positions.

f. Step Increases. Upon reemployment, permanently, partially disabled individuals begin a new waiting period for step increases.

.43 Rights and Benefits Upon Full Recovery. See 546.122.

546.5 Retirement Considerations

.51 Status. Pursuant to the Civil Service Retirement Act, a former employee who applied for and received Civil Service disability retirement status will cease to be an annuitant upon reemployment and restoration of that individual's wage earning capacity.

.52 Reinstatement of Eligiblity

.521 If an annuitant, reemployed under the procedures in this section, is later found unable to successfully perform in the new position due to the original compensable injury or disability, and is again separated, the employee will be entitled to the restoration of disability retirement status under the Civil Service Retirement Act.

.522 If an employee becomes disabled for the position due to a new injury or disability after entry into that position, the employee would have a right to apply for a new Civil Service disability retirement status.

.53 Refunded Retirement Deductions. A former employee who withdrew retirement deductions based on previous employment, may redeposit the amount refunded, plus interest, after reemployment to a position from which retirement deductions are withheld.

.54 Notification. Upon reemployment of a disability annuitant (or in advance, if possible), the appointing official must notify the Office of Personnel Management, Compensation Group, Room 3305, Attention: Annuitant

Services Division, Washington, DC 20415. The notification must include the individual's name, social security number, date of birth, Civil Service Annuity claim number (CSA-Civil Service Account), date of reemployment, Form 2485, Certificate of Medical Examination and whether retirement deductions will be made from the salary for the position to which reemployed.

546.6 Relocation Considerations

.61 Scope. In some cases, former employees receiving OWCP compensation may have relocated to other geographic areas. Every effort must be made to reemploy these individuals within their current area of residence by treating them as if they had been employed at that office at the time of injury. Any offer to reemploy in a different location will be considered only after all reasonable attempts have been made to rehire within the area of the former employee's present domicile.

.62 Expense. Any relocation and travel expenses will be the responsibility of the former employee. However, under certain mitigating circumstances the SAPMG for E&LR, or the SAPMG's designee, may authorize relocation and travel expenses consistent with the provisions of Handbook M-9, *Travel.*

546.7 Reemployment Procedures

.71 Offer of Appointment

.711 Evaluation. Upon receipt and evaluation of the OWCP referral containing documented medical limitations, and evaluation of the medical officer's recommendations, the appointing official will determine if a reemployment offer can be made.

.712 Interview. During the preemployment interview, the appointing officer will ensure that the individual receives the following information:

a. In-depth analysis of medical limitations and the individual's responsibility to work within the prescribed work limitation tolerances.

b. If applicable the status of injury compensation and disability retirement benefits and future eligibility.

c. A full explanation of all restoration rights and benefits (see 546.4).

d. Full particulars regarding the position, including title, duties, grade, salary, location of work assignment, and all other information required in a preemployment interview. (See Handbook P-11, 264.8 and 265.)

e. Instructions for completion and submission of any required employment forms.

.713 Appeal

a. Those employees who fully recover in less than one year from the date on which OWCP compensation began, may appeal to the Merit Systems Protection Board (MSPB) if they believe a proposed offer of reemployment does not meet the requirements of Office of Personnel Management regulations 5 CFR Part 353. The letter of appeal must be submitted within 20 days after the date of the offer or 20 days after the date of reemployment, whichever is later.

b. Those employees or former employees whose full recovery extends beyond one year, or whose partial recovery falls either within or beyond one year of compensation, may appeal to the Merit Systems Protection Board only when they have requested restoration through formal application to the installation head and restoration has been refused them. An appeal to the denial of restoration must be filed with MSPB within 20 days from the day the denial letter is received. Upon restoration, however, the employees are not given the right to appeal the nature of the restoration.

.72 Refusal of Reemployment Offer. When a former employee refuses an offer of suitable employment within the OWCP defined medical limitations, the appointing officer must do the following:

a. Offer the individual an opportunity to sign a declination of employment.

b. Advise the individual that the effect of such refusal may result in the termination or reduction of compensation benefits by the Department of Labor.

c. Notify the OWCP district office by telephone of the declination and reasons given.

d. Within 2 working days, forward a full written summary of the former employee's interview, including the signed declination, and medical evaluations or other pertinent information to the OWCP district office. OWCP has the responsibility to notify the Retirement and Insurance Division, Office of Personnel Management, when disability retirement status is to be evaluated.

.73 Refusal to Reemploy. The appointing official may not be able to accommodate the former employee for medical reasons or other considerations. If the former employee will not be reemployed, the appointing officer must:

a. Notify the employee in writing of that fact, with a copy to the OWCP; and

b. Include a paragraph informing the individual of the right to appeal to the Merit Systems Protection Board.

.74 Processing Personnel Actions. The reemployment of former employees injured or disabled on duty requires uniform information on Form 50-B, *Request for Personnel Action (Processing Copy for New Hires Only),* before forwarding to the Employee and Labor Relations Information Center. (See 612.5 of Handbook P-11.)

547 Return to Duty

547.1 Therapy Obligations

The installation head must ensure that an employee reports for scheduled therapy treatment. The employee

must be advised that failure to keep appointments with a physician or hospital is a form of absenteeism. Control office/control point personnel will report failures to keep appointments to the OWCP district office.

547.2 Medical Reports

.21 Progress reports received from the attending physician may show the employee is capable of some work during convalescence or after medical treatment has been completed.

.22 If not, this information is requested by the control office/control point from the attending physician or the OWCP district office by use of Form CA-17.

.23 If the attending physician submits a medical report, Form CA-17, indicating that the employee is medically capable of performing some of the normal duties for a limited number of hours, or other work of a different nature than the employee's former assignment, the installation head must make every reasonable effort to place the employee in an approriate assignment.

547.3 Fitness-For-Duty Determination

.31 Determining Fitness. The fact that an injured or ill employee is scheduled for a series of treatments or appointments with a physician or hospital does not, by itself, establish that the employee is not fit-for-duty in the interim. Control personnel will recommend, upon medical justification, to the installation head that any employee being treated by a physician or hospital be required to report to a USPS medical unit (or contract equivalent) for a fitness-for-duty examination. Only an installation head is authorized to approve a fitness-for duty examination.

.32 Examination Report. This physical examination may include the parts of the anatomy being treated, provided the examination in no way disturbs or interferes with the treatment regimen. The results of this examination will be brought to the attention of the OWCP district office for consideration.

.33 Physician Report Questioned. If the medical officer questions the medical procedures and/or determination of the employee's attending physician, no administrative action may be taken to change the employee's compensation or employment status until the medical issue is settled.

.34 Resolving Determination. The following procedures apply only to fitness-for-duty determinations incident to an on-the-job injury or illness. Fitness-for-duty determinations for other purposes are not covered by this instruction.

a. The physician or hospital must, for each visit of the employee, make a professional statement, using Form CA-17, showing the employee either:

(1) Fit-for-duty; or

(2) Fit for limited duty, and the work tolerance limitations due to the injury; or

(3) Not fit for duty with an expected return-to-duty date.

b. If the physician or hospital is unable to predict an employee's fitness for duty on either a short-term or long-term basis, the control office/control point supervisor may request information from the OWCP by sending Form 2573, Request—OWCP Claim Status, in duplicate, to the OWCP district office. If OWCP does not respond within a maximum of 60 days, or if the OWCP response does not explain the situation, a fitness-for-duty examination may be recommended to the installation head as provided in 547.31, .32, and .33. However, a fitness-for-duty examination can be initiated at any time to determine the duty status of the injured employee.

c. If the results of the fitness-for-duty examination disagree with the findings of the attending physician, the matter, along with justification for the USPS position, is referred by the control office/control point supervisor to the OWCP Deputy Commissioner for resolution.

d. A fitness-for-duty determination is not limited to the employee's regular duties, but should be based on whether the employing installation has any temporary alternative duties available which the employee may safely perform.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

319

Alaska Health Project
Providing information about hazardous materials on the job and in the community.
417 West Eighth Avenue, Anchorage, Alaska 99501 (907) 276-2864

SUMMARY and EVALUATION of

Alaska Health Project/ Department of Labor Seminars

HOW TO IMPLEMENT THE NEW RIGHT TO KNOW LAW IN YOUR BUSINESS

January 4, 1985

Authors:
Mark Catlin and David Wigglesworth, Alaska Health Project
Max Andrews, Alaska Department of Labor

The Alaska right to know law requires employers, as of July 1, 1984, to collect information on hazardous substances used on their job sites and train their workers on these hazards. Both the Alaska Health Project and the Department of Labor received numerous requests from Alaskan businesses for assistance in implementing right to know programs during the spring and early summer of 1984. In response to these requests, the Alaska Health Project and Department of Labor decided to conduct a joint seminar series in the summer and fall of 1984. The Alaska chapter of the American Society of Safety Engineers and Collins and Associates cosponsored the seminars.

Five half-day seminars were scheduled, four in Anchorage and one

Back-up Information

in Fairbanks. Two additional seminars were added after the original five were filled because of continuing requests from businesses (see seminar outline, Appendix A). Max Andrews and Stan Godsoe from the Department of Labor and Mark Catlin, David Wigglesworth and Lawrence Weiss from the Alaska Health Project developed the seminar program. Max Andrews, David Wigglesworth and Mark Catlin taught the seminars (Stan Godsoe taught at one seminar when Max Andrews was unavailable).

In all, 94 persons attended the seven seminars (see Table 1). Most of those attending were managers in the private and public sector (see Table 2).

After each seminar, participants were asked to complete an evaluation form (see summary of evaluations in Appendix B). These evaluations were very positive, with 90 % rating the seminar as excellent or good and 96% rating the quality of instruction as excellent or good. Many of the participants specifically liked having instructors from both the Department of Labor and the Alaska Health Project. Participants also said they appreciated the informal nature of the seminars, the ample opportunity to ask questions, the case studies and the written material prepared for the seminar.

During these seminars, participants discussed their problems with implementing the right to know law. Common problems mentioned were: delays in obtaining material safety data sheets from distributers and the Department of Labor; lack of final regulations; need for more specific criteria for acceptable training; and the need for more information about chemical hazards.

Overall, the attitude of the participants was positive toward the right to know law. Many saw the need for and advantages to such programs. Several commented that compliance with the law would be fairly easy for their companies and required only "common sense".

This joint seminar series was successful in reaching many employers in the state, and assisting them to begin or improve their right to know programs. Even so, the Department of Labor and the Alaska Health Project continue to recieve requests for assistance with the right to know law. We anticipate the need for additional seminars during 1985. In addition, we also suggest exploring the need for a follow up series of seminars covering chemical hazards, air sampling, and hazard control methods.

APPENDIX A: SEMINAR OUTLINE

Alaska Health Project

417 West Eighth Avenue — P. O. Box 10-1037, Anchorage, Alaska 99510 — (907) 276-2864

How To Implement the New Right To Know Law
In Your Business
Denali Tower, Nikko Gardens
July 30, 1984

8:00 a.m. - 12 noon

Anchorage, Alaska

Time	Topic/Speaker	Materials
8:00 - 8:30	Registration	
8:30 - 8:40	Historical Beginnings/Current Perspective Max Andrews, Mark Catlin, David Wigglesworth	Tab #1
8:40 - 8:50	Need for Right-To-Know: Does it Work? Mark Catlin	Tab #1
8:50 - 9:50	Alaskan Right-To-Know Law - A Review Max Andrews, David Wigglesworth	Tab #2
9:50 - 10:00	Break	
10:00 - 11:25	Alaskan Right-To-Know Legislations - How to Comply and How To Communicate the Information Max Andrews, Mark Catlin, David Wigglesworth	Tab #3
11:25 - 11:35	Break	
11:35 - 11:50	Limitations and Uses of Material Safety Data Sheets (MSDSs) Mark Catlin	Tab #4
11:50 - 12:00	Resources for Right-To-Know Issues David Wigglesworth	Tab #5

Table 1: Seminar Attendence

Seminar date	Attendence	Location
July 17	9	Anchorage
July 30	15	Anchorage
August 9	25	Anchorage
August 31	20	Anchorage
September 7	11	Anchorage
September 17	8	Fairbanks
December 11	6	Anchorage
TOTALS: 7 seminars	94 attended	

Table 2: Affiliation of seminar participants

Management, private	66%
Management, public	18%
Labor union	6%
Nonprofit organizations	4%
Other	6%
TOTAL	100%

APPENDIX B: SUMMARY

How To Implement The New Right To Know Seminar In Your Business

Participant Evaluation

1. Overall, how would you rate this seminar?

   Excellent 22%
   Good 68%
   Fair 9%
   Poor 1%

2. How much did you learn that you didn't know before?

   Much 51%
   Some 41%
   Little 8%
   Nothing 0%

3. How was the class instruction?

   Excellent 26%
   Good 70%
   Fair 3%
   Poor 1%

4. Did you feel that the seminar was

   Too long 12% ?
   Too short 18% ?
   Just right 70% ?

5. Did you have enough time to ask questions?

   Yes 90%
   No 10%

6. What did you like most about the seminar?

   Joint Dept. of Labor/AHP speakers; informal structure; time to ask questions; case studies; seminar notebook

7. What did you like least about the seminar?

   Need more information on training; need more information on chemical hazards.

Alaska Foreign Trade, Inc.

February 10, 1986

FEB 13 1986

Senator Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: H.B. 319

Dear Senator:

I am writing to you in regard to H.B. 319 and my support for it. When the 'Right to Know' law was passed I was pleased to see our legislature act in a responsible manner toward worker and public saftey. However at the time it seemed somewhat odd that physical agents were not specifically included. Now with these proposed amendments to the law I believe we are moving more closely to what I believe is necessary in the workplace to protect both the workers and business.

Small business has too much regulation, God only knows. But the longterm health and saftey of employees is very important to the longterm profitability of even the smallest of businesses. More complete information for both the business and the worker is good. All too often we in business get so involed in the day to day work that it's hard to keep aware of potential on the job hazards. This bill will force business to rethink their saftey efforts at work, and specifically the exposure of workers to potentially harmful physical agents.

Please support this bill and urge others on your committee to push for its approval as well.

Sincerely,

Richard E. Sewell
President

c.c: Governor Bill Sheffield

[redacted]rage, Alaska 99510 • U.S.A.
[redacted]: (907) 562-7004

February 7, 1986

FEB 13 1986

Senator Zharoff
Chairman, Senate Labor &
Commerce Committee
Pouch V
Juneau, AK 99811

Dear Senator Zharoff:

I am writing to let you know that I support HB319, an act relating to physical agents in the workplace, which I believe is currently before your committee for consideration. In my opinion, it ties in perfectly with the existing Right-To-Know Law.

Thank you.

Sincerely,

Leslie M. Goss

Leslie M. Goss
2500 Douglas Drive
Anchorage, AK 99517

cc: Governor Sheffield
Representative Pourchot

EXCELL

February 10, 1986

Senator Fred Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Zharoff,

I am an Alaskan business owner who believes strongly in informing workers about workplace hazards. Existing Worker Right-to-Know legislation has resulted in healthy dialogue between the worker and the employer. The result has been fewer worker injuries and illnesses.

I urge you to support HB 319, that adds physical agents to the workplace hazards covered under the Right-to-Know law.

My understanding is that this bill merely adds ten fact sheets to the information that I, as a business owner, am required by law to provide my employees. If providing information can save a life or circumvent an injury, I am all for it!

Respectfully,

Alan Gaddie

Co-owner/Manager

3441 H. 88TH #16

100 WEST INTERNATIONAL AIRPORT ROAD, SUITE B-1 • ANCHORAGE, ALASKA 99502 • (907) 561-2215

WETCO

WETCO INCORPORATED

FEB 18 1986

February 11, 1986

Senator Zharoff
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff:

As a company that handles a number of chemical compounds and employs many people in manufacturing operations, we are familiar with the many occupational health hazards in the workplace. As an employer, and as concerned citizens, we make a point of being aware of our responsibility and legislation affecting that responsibility.

We feel that the state worker right-to-know law is a good piece of legislation and we further support the proposed amendments to the law currently being considered in both the House and Senate. We urge you to support both HB 319 and SB 253.

Sincerely,

David D. Thorp
Operations Supervisor

DDT/kaw

cc: Representative Pat Pourchot
Senator Joe Josephson
Governor Sheffield

1614 Post Road Anchorage, Alaska 99501 (907) 276-4115

Alaska Laborers Training School

13500 OLD SEWARD HIGHWAY • (907) 345-3853
ANCHORAGE, ALASKA 99515

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MANO PREY
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LEGAL
JOE THOMAS
RETIREMENT
TRAINING DIRECTOR
LESLIE N. LAUINGER

AFFILIATED WITH:
LABORERS-AGC
EDUCATION & TRAINING
FUND

February 20, 1986

Senator Zharoff
State Capitol
PO Box V
Juneau, Alaska 99811

Dear Senator:

I would like to support HB 319 which would amend the right to know law to include 10 "physical agents" along with the existing several hundred hazardous and toxic substances of which employers must inform employees.

It should not cost any more to accomplish this goal.

I believe hearings would help to identity different feelings on this issue and gather additional information.

I believe this bill would further the intention of the previously passed right to know legislation. We often "assume" people know things and find out too late that they do not. Informing people of hazards before they are confronted seems a minor inconvenience.

Sincerely,

Leslie N. Lauinger

Leslie N. Lauinger
Training Director

LNL/cz

February 18, 1986

Senator Fred Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99508

Dear Senator Zharoff,

As you are chairman of the Senate Labor and Commerce committee, I hope that you are planning to schedule HB 319, the Physical Agent Amendments to the Worker Right-to-Know law, for hearing soon. These amendments are crucial in filling gaps in the information provided to workers under existing Right-to-Know law. It may prevent catastrophe in the workplace.

As someone who has worked with asbestos, I am acutely aware of the need for workers to be provided information about workplace hazards. The resources gained in circumventing loss time will more than compensate for resources spent in producing ten fact sheets required by the bill. As information about chemical hazards is already required by law, I see no reason why physical hazards should not be included.

Sincerely,

Dan Middaugh

Alaska Center for the Environment
~~1069 W. 6th Avenue~~ 411 W 4th Ave, Suite 1A
Anchorage, Alaska 99501 274-3621

February 19, 1986

Senator Fred Zharoff
Alaska State Legislature
P.O. V (MS 3100)
Juneau, AK 99811

HB 319

Dear Senator Zharoff:

Traditionally, the Alaska Center for the Environment has spoken out for legislation that minimizes the risk of exposure to hazardous agents. We supported the original Worker Right-to-know bill, that provides workers with information about hazardous chemicals in the workplace.

However, we think that the existing law does not go far enough in protecting workers from workplace hazards. Physical agents such as noise and microwave radiation have a real effect on worker's health in this state. Technicians at the Clear tracking station have had their lives changed profoundly by exposure to microwave radiation.

Please schedule this important bill for hearing.

Sincerely,
Cliff Landesman

Cliff Landesman, Hazardous Waste Specialist, ACE

cc: Alaska Health Project
Rep. Pourchot

Alaska Health Project

Providing information about hazardous materials on the job and in the community.
417 West Eighth Avenue, Anchorage, Alaska 99501 (907) 276-2864

January 29, 1986

Senator Fred F. Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Zharoff:

Enclosed please find a fact sheet regarding proposed amendments to the current Right to Know law (SB 253 and HB 319). Also included is a summary of responses to seminars addressing implementation of the existing Right-to-Know legislation.

The Alaska Health Project considers the generally positive response to these seminars evidence that the physical agent amendments will be easy to implement. We urge you to schedule this bill for hearing.

Respectfully,

Bill Slayton

Bill Slayton
AHP Intern

Enclosure

cc: Senator Joe P. Josephson
Representative Pat Pourchot
Michael Thill, Legislative Aid
Joyce Thoreson, Legislative Aid

Legislative Alert

FACT SHEET: THE PHYSICAL AGENT AMENDMENTS

HB 319 AND SB 253

BUILD ON EXISTING RIGHT TO KNOW LAW

Three years ago, the Alaska legislature adopted the Worker Right-to-Know Law (CBSB 79) giving workers the right to request and receive from their employers information about workplace hazardous chemicals. The bill received broad-based support from labor, health, business, and environmental groups.

Two bills introduced last year, HB 319 (Pourchot) and SB 253 (Josephson), seek to amend the existing Right-to-Know Law to include physical agents. Physical agents, such as noise and ionizing radiation, similar to chemical agents, are potentially harmful to the health of workers. Health problems such as hearing loss and cancer can be attributed to exposure to some physical agents.

LOGICAL EXTENSION

The physical agent amendments are logical extensions of the existing Right-to-Know Law, building on pre-existing regulatory structures. HB 319 passed the house (34-4) last year. Both bills now reside in the Senate Labor and Commerce Committee. There are no fiscal notes attatched to either bill.

NOT DIFFICULT TO IMPLEMENT

The bill makes the Department of Labor responsible for listing, gathering information, and educating employers about potentially harmful physical agents. This amounts to writing and notifying employers of eight additional workplace hazards. Since the department is already carrying out these responsibilities for chemical hazards, the addition of eight fact sheets should not require any major manpower changes.

The bill makes employers reponsible for educating employees about how to work with physical agents safely. As they are already required to train employees about chemical hazards, this additional training should be easy to implement. Employee training will include information about the location, properties, and chronic effects of physical agents, handling procedures, and how to use safety equipment. The empoloyer is required to have updated information on hand about potential hazards of physical agents that are a risk in the workplace. Posters and information about physical agents will be provided by the Department of Labor.

PHYSICAL AGENTS

Physical agents covered by this bill are those listed by the respected American Conference of Industrial Hygienists in Threshhold Limit Values for Physical Agents. Potentially harmful physical agents include:

NOISE can cause damage to delicate tissues of the ear. Occupations at risk include construction workers, machine operators, and airport employees. Exposure to excess noise has been linked to:

* Permanent hearing loss and deafness.
* Stress and high blood pressure.

IONIZING RADIATION can be harmful as it can cause genetic damage to workers tissues. Occupations at risk include laboratory workers and x-ray operators. Exposure has been linked to:

* Burns, rashes, and skin disease.
* Cancer.
* Birth defects.

LASERS are intense beams of light that can cause burns and blindness. Objects that scatter the lasers can cause inadvertant exposure.

HEAT can be harmful when more heat is absorbed into the body than can be dissipated. Occupations at risk include food service workers, roofers, and deep bed miners. Prolonged exposure to heat has been linked to:

* High blood pressure and heart disease.
* Sexual impotence.
* Birth defects.

RADIOFREQUENCY AND MICROWAVE RADIATION are non-ionizing radiation produced by radio and television broadcast that produce heat. Occupations at risk include radio and television workers, radar workers, cooks, users of radiofrequency heaters, physical therapists, and electrical workers. Exposure has been linked to:

* Depression.
* High blood pressure and heart disease.
* Birth defects.

ULTRAVIOLET RADIATION is high energy non-ionizing radiation that can cause burns. Occupations at risk include welders, solderers, and laborers. Exposure has been linked to:

* Severe burns.
* Blindness.
* Skin cancer.



What can you do?

** Contact your legislator and ask him or her to support this bill. You can write, call, or send a Public Opinion Message. If you are unsure who represents your district, call the Legislative Information Office nearest you.

** Write a letter to sponsoring legislators requesting that this issue be considered a top priority.

** Ask your friends and colleagues to do the same.

** Call the Alaska Health Project (276-2864) for information about the current status of the bill.



How do you do it?

1) During session, write all legislators or committees at:

NAME
ALASKA STATE LEGISLATURE
POUCH V (MS 3100)
JUNEAU, ALASKA 99811

2) To call a legislator, contact the Legislative Information Office nearest you. There is an Alaska State Legislature Directory (1985-1986), available through Legislative Information Offices, which lists Juneau phone numbers for all legislators.

3) Send a Public Opinion Message (POM) by contacting your nearest Legislative Information Office. This is a free service that can be used by any constituent to wire a message to any individual member of the legislature or to all members of a committee. Always state who should receive the POM and the specific bill number. Be prepared to give your name, address, and phone number. You can request a POM by telephone.

The Anchorage Legislative Information Office is located on 6th Avenue between K and L Streets. The telephone number is 278-3668. Check your phone book for other regional offices.

Bill No. Committee Substitute for House Bill No. 319(L&C) Date April 12, 1985

Title "An Act relating to physical agents." Contact: Richard Arab
465-4856
Eileen Plate
465-2700

Under existing law, employers are required to provide information and training to employees on certain toxic and hazardous substances. This bill seeks to expand the "Right-to-Know" law to include physical agents.

Physical agents are defined as those listed in the "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment" as published by the American Conference of Governmental Industrial Hygienists. The latest edition of this publication lists the following physical agents:

- Heat Stress
- Ionizing Radiation
- Lasers
- Noise
- Impulse or Impact Noise
- RF/Microwave Radiation
- Ultraviolet Radiation
- Airborne Upper Sonic and Ultrasonic Acoustic Radiation
- Cold Stress
- Hand-Arm (Segmental) Vibration

Exposure to physical agents can result in permanent disabilities, such as deafness. Often employers and employees are not aware of the harmful effects of a particular physical hazard present in the workplace, and the training and information requirements provided in this bill would assist in filling this void. This would, in turn, effect implementation of protective measures by the employer to safeguard employees, as well as provide employees with an understanding of the importance of following safe and healthful work practices.

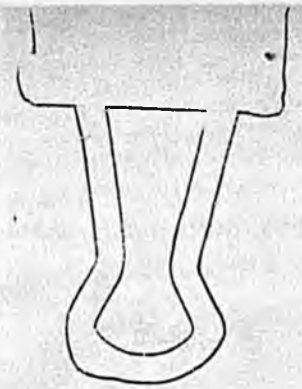
As part of its Occupational Safety and Health program, the Department of Labor enforces regulations to protect employees from certain physical hazards (ionizing radiation, lasers, noise, RF/microwave radiation, and ultraviolet radiation). The information and training requirement of this bill would, therefore, enhance the Department's efforts to protect Alaska's workers.

The Department of Labor supports Committee Substitute for House Bill No. 319. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor



Rep. Pat Pourchot

SUMMARY CSHB 319 (L&C)
WORKER RIGHT-TO-KNOW LAW AMENDMENTS
TO INCLUDE PHYSICAL AGENTS

HB 319 amends the "worker right-to-know" statutes to include "physical agents" with other toxic and hazardous substances about which employers must inform their employees.

The existing statute (AS 18.60) directs the Department of Labor to prepare for employers information data sheets on hazardous and toxic materials to which employees may be exposed in the workplace. Information which is compiled by the Department is transmitted to the workers by employers and includes: description of the substantiated effects of the substance, known threshold levels where effects occur, activities and situations where the substances are encountered and practices, technology and preventative measures which are available to the workers which will reduce or eliminate the negative impacts of the substance. Safety training for new employees is also required.

The same notice and training requirements for hazardous and toxic substances would be applied to "physical agents" under CSHB 319. "Physical agents" are only those identified by the American Conference of Governmental Industrial Hygenists (ACGIH) and include:

Ionizing radiation (x-ray)
Heat and cold stress
Impulsive and impact noise
Radiofrequency, microwave, ultraviolet, and infrared radiation
Lasers
Hand-arm (segmented) vibration

With enactment of this bill industrial accidents could be reduced in number and severity. For example, accidents such as the microwave exposure at Clear Air Force Station may be avoided if workers are better informed of the substances to which they may be exposed and are aware of preventative and safety precautions. Many occupations are not readily associated with exposure to dangerous levels of physical agents. Welders and pipe fitters, for example, are often exposed to hazardous exposures of ionizing radiation (x-rays) when examining welds and joints.

It should be emphasized that the bill requires only the dissemination of information and safety training by employers. It does not require that employers or employees implement any safety practices or measures.

The fiscal note for the bill is $0. The Department of Labor essentially will be editing existing information from national organizations relating to health and safety in the workplace, including the ACGIH, the Center for Disease Control, and the Occupational Safety and Health Administration (OSHA).

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 319 (L&C): Sectional Analysis

Section 1) Expands the duties of the Department of Labor concerning occupational health and safety regulation and expands the "worker's right to know" law by including physical agents. The department would be required to publish an annual list of physical agents, maintain a current set of OSHA form 20's or equivalent information for each physical agent, and other information relevant to physical agents.

Department would also be required, upon request, to develope employee safety education programs, and obtain information on physical agents.

Section 2) Employer would be required to conduct a safety education program before an employee performs a new work task and is exposed to physical agents for which he has not already been trained. Also defines the employee safety instruction program.

Section 3) Employer is required to make available on the request of an employee, information on the physical agents to which the employee may be exposed. If the employer does not have a copy of the information requested, he shall request a copy within 3 state government working days after the request has been made.

Section 4) Concerns requirements for the posting of information on physical agents by employers.

Department shall print posters and provide information on each physical agent which the employee may be exposed to.

Section 5) defines "being exposed" to a physical agent

Section 6) defines "physical agent" as defined by the department thru regs; department shall initially define the term to include those agents listed in the 84/85 edition of the "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment". Department shall amend the definition to include physical agents listed in future editions, but not include an agent, the exposure to which does not pose a health hazard.

Section 7) definitions

Section 8) Department may continue using existing posters until the next printing.

CHAIRMAN'S INFORMATION: CSHB 319(L&C)

1) BILL TITLE: "An act relating to physical agents"

a) Introduced: Pourchot, Gruenberg, Koponen

b) Co-sponsors:

2) INTENT: This measure expands the "worker right to know law" by including "physical agents" among the list of those hazards which employers must inform employees of. The department of Labor will be required to provide posters and information fact sheets to employers for the education of their employees. Additionally, safety training will be required before new employees become exposed to physical agents in the work place.

FISCAL NOTE: 0

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CS HB319 (L&C)

Title: "An Act relating to physical agents"

Sponsor: Pourchot, et. al.

Requestor: House H & SS

Date of Request: 4/12/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Occupational Safety & Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 4/12/85

Approved by Commissioner: Jim Robison Date: 4/12/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance

[redacted]

FISCAL NOTE -get

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 319
Title: "An Act relating to physical agents"
Sponsor: Pourchot, et. al.
Requestor: House Labor & Commerce
Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Safety & Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date: 3/28/85

Approved by Commissioner: Jim Robison Date: 3/28/85
Agency: Labor

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

7/1/84

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

356

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

HB 356 Summary

Measure would allow the "assignment" of group life insurance policies which provides a means of reducing federal estate taxes and simplifying the estate planning process.

If a person other than the insured is assigned a policy, the proceeds do not pass through the insured's estate, and thus are not subject to federal estate tax. Currently, 48 states have passed similar legislation, and the IRS has concurred as long as state's statutorily authorize "assignment" of group life policies. Without this authorization, the IRS requires payment of estate taxes on the policy before the proceeds go to the heir.

Bill Summary

MEMORANDUM State of Alaska

TO: Don Koch

RECEIVED
DIV. OF INSURANCE
SEP 30 11 51 AM '80
ALASKA DEPT. OF
COMMERCE & ECONOMIC
DEVELOPMENT

DATE: September 25, 1980

FILE NO:

TELEPHONE NO:

FROM: Jim Jordan

SUBJECT: Assignment - Group Life

I recently had several more inquiries regarding the assignment of group life benefits. However, this time, I have found the insurer's reason for stating that group life benefits are not assignable in Alaska.

The situation described was one in which a two person partnership was looking for a group life contract to provide coverage for themselves as well as their employees. In addition, the two partners wished to assign their group life benefits and to name the assignee as beneficiary (the other partner) in order to obtain the favorable federal estate tax treatment as well as to fund a buy-sell arrangement. The insurer involved would not issue a group life contract allowing for assignment because, by their interpretation, in so doing they would not be contracting with a duly formed group pursuant to AS21.48.020.

AS21.48.020 states, in part, "...The lives of a group of individuals may be insured under a policy issued to an employer....to insure employees of the employer for the benefit of persons other than the employer...." (emphasis added). The insurer's contention is that if assignment were included, then this would benefit the employer and by so doing, violate the AS21.48.020 definition of a duly constituted group. One theory for this type of definition relates to the employer's purpose of providing group life coverage. That theory is the employer's purpose in providing for part or all of the cost of group life insurance is to provide for the employee's family upon death. In this specific case, the insurer deemed the partnership (the employer) would benefit by the assignment upon death of either or both of the partners as opposed to their families (as dependents of employees). However, in this specific instance, this is a very close call situation made by the insurer. The family of a deceased partner surely would benefit by receiving prompt cash for that partner's share of the business. Also, the surviving partner and his family would benefit by not having to liquidate other personal assets in order to satisfy the buy-sell arrangement.

It still appears to me that group life may be assigned pursuant to AS21.42.270 so long as such an assignment does not cause a situation which would violate AS21.48.020. This holds true, in general, for all employees. The only time a problem enters in, is when the employee and the employer are one in the same person, as in the case of a partnership. I believe that AS21.48.020 could be interpreted, in the case of a partnership, so that assignment would be allowed. I would not be surprised if some insurers have not made that interpretation and are allowing for assignment in such instances as the above example. Even where jurisdictions expressly allow for assignment, many group insurers do not allow it because of the additionally complex administration involved. Otherwise, some economies of scale would be lost thus threatening the lower cost, group approach.

Back-up Information

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

February 11, 1986

The Honorable Fred Zharoff
Chairman
Senate Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Zharoff:

Re: HB 356 - Assignment of Group
Life Insurance

A number of questions concerning references to an Attorney General's Opinion were raised at the Senate Labor and Commerce hearing on HB 356 held on February 10, 1986. The suggestions of Mr. Jordan never resulted in a formal request for an Attorney General's Opinion. There were some casual discussions with the director at that time and the Attorney General's Office. The general drift of discussions at that time was, that in view of the potential impact from federal estate tax situations, the preferred method of dealing with the issue would be specific legislation to clarify the extent of assignment possible. The thinking was that interpretations would be subject to question where clear statutory language would probably not be so subject. I'm sorry that I did not anticipate the questions generated by the memo and accompany it with an explanation.

Very truly yours,

Donald P. Koch
Chief of Market Surveillance

DPK/me022OK
021186a

08-H11LH

Historically this has not been a very "hot" issue because of the small group life benefits offered in most schedules. However, this issue has come more to the forefront in the last few years due to the combination of larger amounts of group life offered to groups of lessor size. So, the market now has large amounts of group life coverage which can be issued to small employers who many times are partners interested in low cost ways to fund buy-sell arrangements. The partners can see a way to help provide for two needs - to fund a buy-sell arrangement and at the same time provide an employee benefit which, in theory, will help in retention of employees.

I think at this time we need an attorney general's opinion concerning this situation. If the opinion parallels my interpretation of AS21.48.020 in this circumstance, then we can state positively that assignment is allowable. If not, I think a legislated solution is in order. In either event, this will stop insurer's from using the code and the division's interpretation as excuses for not allowing group life assignment. For many insurers, I'm sure this is the most expedient and painless response to their marketing staff when confronted on this issue.

In any event, opposition to this interpretation or legislated solution will come from the individual product agent. They will see this as an infringement upon their private domain. This is so because there is no doubt that individual life policies can be assigned. However, I think competition would be good for this markerplace. Also, if partners are unable to assign group life benefits, they may reduce or even forgo entirely a group life program for their employees in order to have the capital for premiums for individual life policies to fund a buy-sell arrangement.

I would appreciate your thoughts on this issue both in general and in this specific circumstance. I think the time has come to address this issue with the attorney general.

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4968

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

January 24, 1986

PRESS RELEASE

RE: HB 356, "Assignment of Group Life Insurance Policies"

Reduced federal taxes for Alaskans could result from legislation scheduled for a House floor vote today, according to Max Gruenberg, Anchorage Democrat and prime sponsor of HB 356, "Assignment of Group Life Insurance Policies."

The bill authorizes assignment of group life insurance policies by an insured person to another party.

"Forty-eight other states already have group life policies assignable by statute. By joining the other states, we correct an inequitable federal tax situation which discriminates against Alaskans," said Gruenberg.

"According to the IRS, for tax purposes you need specific statutory authorization to assign your group life policy to someone else. Without the authorization, IRS requires payment of estate taxes on the policy before the proceeds go to the heir."

"The reduction in federal tax income is insignificant, but the bill makes estate planning simpler and fairer for Alaskans," said Gruenberg.

Rep Gruenberg Press Release

CHAIRMAN'S INFORMATION:

1) BILL TITLE: "An act relating to assignment of group life policies of insurance."

a) Introduced: Rep Gruenberg

b) Co-sponsors: Taylor and Pettyjohn

2) INTENT: Measure authorizes "assignment" of group life insurance policies by an insured person to another party. The "assignment" creates a method for circumventing federal estate taxes and simplifies estate planning. 48 states currently have such statutory provisions.

FISCAL NOTE: 0

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Judiciary, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

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

Jeanie Henry

House Labor & Commerce Committee 10/25/85, 10:00 a.m.

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Gruenberg

FROM: Dave Donley

RE: April 24, 1985

DATE: HB 356, "Assignment of Group Life Policies of Insurance"

Under current estate tax law, if an insured owns a life insurance policy, upon the insured's death the proceeds of that policy will pass through his estate and be subject to estate tax prior to receipt by the named beneficiary.

If a person other than the insured owns a policy, the proceeds do not pass through the insured's estate and thus are not subject to estate tax.

At common law, it is questionable whether group life policies can be assigned, and the IRS has held that without statutory authorization assignments are not effective for tax purposes. Accordingly, some 18 states have made group life policies assignable by statute.

Considering that 48 states have already passed similar laws, enactment of HB 356 by the state of Alaska would result in an insignificant reduction in federal revenues. The advantages in estate planning for Alaskans to be provided by this legislation are substantial and fair. Failure to pass this legislation will result in continuance of an inequitable federal tax situation that discriminates against Alaskans.

LAW OFFICES
DAVIS & GOERIG
A PROFESSIONAL CORPORATION
405 WEST 36TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99503

TRIGG T. DAVIS
GEORGE E. GOERIG, JR.

TELEPHONE 561-4420
AREA CODE 907

February 25, 1985

Richard S. Thwaites, Jr.
Chairman of the Alaska Bar Association
Probate Law Section
1031 West 4th Ave., Suite 500
Anchorage, AK 99501

Re: Proposed Statutes Regarding Assignment of Group Term Life Insurance Policies

Dear Dick:

Enclosed is a proposed statute relating to the assignability of group life insurance policies. This statute shall affirmly establish the right of an individual to transfer his ownership of any group life insurance policy to any individual he wishes. Although at the present time there is no law in effect which specifically prohibits such an assignment, the United States Treasury Department may contest such a person's right unless the state of residency has a statute authorizing such an assignment. The Alaska Bar Association taxation law section supports inactment of this proposed statute.

Very truly yours,

George E. Goerig, Jr.
Attorney At Law

GEG/dvs

Enclosure

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

20 February, 1986

MEMORANDUM:

TO: Senator Eliason, Vice Chairman
Senator Bennett
Senator Ray
Senator Sackett

FROM: Senator Zharoff, Chairman
Senate Labor and Commerce Committee

The Senate Labor and Commerce Committee announces a committee hearing to be held on Friday, February 21st, at 3:30pm in the Beltz Room. On the agenda will be CSHB55(fin)am, originally scheduled for Wednesday's meeting.

CSHB55(Fin)am: "An act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

Wall St. Journal 4/20/86

50 CENTS

Unsafe Harbor

Alaska Pipeline Firm Is Accused of Polluting Sea Water Since 1977

Alyeska Documents Support Claims of Lax Procedures At Water-Treating Plant

Company Insists It Complies

By Andy Pasztor and Robert E. Taylor
Staff Reporters of The Wall Street Journal

First, federal inspector Dianne Soderlund noticed a layer of brownish scum on water ready to be discharged into Valdez harbor from the trans-Alaska oil pipeline's water-treatment plant. Later, when she spotted an oil slick at the same location, suspicion turned to alarm.

"It appears," she concluded, "there are significant operational problems at the cility." The plant is supposed to screen oil and toxic pollutants from huge quantities of ballast water poured into the harbor by tankers as they queue up at the pipeline terminal to load crude oil at the feet of majestic, snow-shrouded peaks.

But evidence is piling up that the plant hasn't been doing its job effectively and that sludge containing toxic pollutants isn't properly removed from water that the plant discharges back into the harbor.

Larger Questions

The preliminary warning from Ms. Soderlund to the Environmental Protection Agency came 17 months ago. Since then, a flurry of federal and state investigations has shaken public confidence in the pipeline's management and forced it to make costly improvements. The revelations also raise larger questions: Can state and federal officials adequately monitor pollution from such large, complex facilities? And why did it take them so long to act in this case?

Investigators have uncovered a history of questionable plant actions since the 1977 opening of the pipeline's huge southern terminal in Valdez, Alaska, which currently supplies roughly 15% of total U.S. oil needs. And the scrutiny is far from over. Still under investigation are the reasons why some pollution-control devices designed for the plant were never installed and others were disconnected or modified without notification to the EPA.

State probers are looking into further allegations of such criminal violations as submission of fraudulent environmental test results and false testimony to government regulators about potential hazards. Internal company documents show that some pipeline officials years ago suspected that the plant posed potential environmental hazards, but federal and state regulators contend that management failed to take steps to resolve the deficiencies until it was ordered to do so in the past few months.

Improprieties Denied

Alyeska Pipeline Service Co., which operates the pipeline for eight major oil companies, says that it has complied with all anti-pollution laws and that all allegations of record-tampering, improper discharges and other improprieties are unfounded. It calls the pipeline terminal's ballast-water treatment plant "probably the best and most modern" facility of its kind in the industry, arguing that the criticism is fanned by misunderstanding of plant operations.

The focus of all this attention is a sprawling complex of giant tanks and miles of piping designed to remove and dispose of harmful pollutants contained in the roughly 13 million gallons of ballast water discharged by tankers daily. Empty tankers take on ballast water for added stability on the voyage to Valdez, then pump it out to take on crude oil destined for the lower 48 states.

An EPA administrative order issued last summer accuses Alyeska of violating the treatment plant's water-discharge permit by systematically recirculating potentially harmful sludge. A second compliance order was issued in conjunction with Alaska's Department of Environmental Conservation. Government officials contend that transfers of oily water and sludge from tank to tank within the plant allowed high levels of potentially harmful pollutants to build up in the system over the years and flow unnoticed into the bay.

'Serious Threat'

Ihor Lysyj, the main consultant hired by the EPA, recently reported to the agency that the plant's deficiencies allow "uncontrolled quantities" of toxic pollutants to enter the harbor. He also informally told the agency that such pollution presents an "imminent and serious threat to the environment."

Mr. Lysyj, one of the country's leading experts on ballast-water treatment, estimates that the plant currently spews 1,600 pounds of pollution into the harbor every day, including "extremely toxic and hazardous substances." Assuming that that rate has remained steady since the pipeline began operations more than eight years ago, he calculates, the plant may have released enough potentially hazardous sludge to cover completely about four football fields three feet deep.

The EPA's consultant compares Alyeska's sludge-handling procedures to "vacuuming your house, dumping all the collected dust back on the carpet and then starting the whole process over again." Federal and state regulators are conducting tests to determine how much of the sludge ends up in the rich fishing grounds of Prince William Sound and whether there has been any damage to marine life.

Although pipeline executives deny vio-

Please Turn to Page 13, Column 1

Unsafe Harbor: Pollution of Ocean By Alaska Pipeline Firm Is Charged

Continued From First Page

lating any laws, they clearly are on the defensive. Under pressure from state and EPA officials, Alyeska appears to be spending millions of dollars to revise operating procedures, install new pollution controls and upgrade laboratory equipment at the treatment plant. The company also has promised to take additional steps that may be necessary to comply with what are likely to be more-stringent requirements for a new federal permit for continued operations at Valdez.

But local fishermen and some environmental groups complain that the state and EPA officials still haven't gone far enough. "The regulators did a very poor job over the years by failing to devote the necessary attention and expertise to supervise plant operations," contends Robert Blake, the president of the Cordova District Fishermen United and one of Alyeska's sharpest critics.

Budget Pressures

Some state and federal enforcement officials concede that budget pressures, staff shortages and the press of other business contributed to the problem. Harold Geren, the regional chief of the EPA's water-pollution-control programs, recalls hearing concerns from his staff about the adequacy of the treatment plant as far back as 1981. But work on permits for pulp mills, offshore oil rigs and other facilities, Mr. Geren says, diverted attention from Alyeska. "We've been hard-pressed keeping permits issued promptly," he says.

The original design called for the plant to remove sludge from the system and burn it in a large incinerator. But Alyeska never constructed the incinerator and says it wasn't legally required to do so. A spokesman says the company decided it was unnecessary because the amount of sludge produced in the beginning was less than anticipated. Alyeska has said it segregated and stored only 450 cubic yards of the stuff since operations began in 1977. Also, under standard procedure, some is channeled into outgoing crude oil.

State and federal officials argue that much more sludge than that should have been removed. They say its recovery was impaired by operating and equipment changes, many of which Alyeska made without the notification that EPA officials say is required. For instance, the company substituted small, paddlewheel skimmers for the large, sweeping arms designed to skim oily scum off the surface of one set of tanks; and it stopped using equipment designed to scrape sludge off the bottom of the same tanks and to heat water to separate it from oil.

Effectiveness Unimpaired?

Alyeska has told federal investigators that such changes didn't reduce the plant's effectiveness. But pipeline officials refuse to answer questions from The Wall Street Journal or discuss specifics until their discussions with the EPA are completed. Company officials previously said many of the changes were intended to reduce costly maintenance problems. The company says it has fully complied with its water permit by generally curbing the plant's releases of oil, grease and three other oil and pollutants specifically limited by the permit.

Investigators counter that the plant must be operated as efficiently as possible to remove all pollutants—regardless of whether they are explicitly mentioned in the permit. "There isn't any question that the practices we found are unacceptable, and they are violations of federal permit requirements," asserts Jamie Sikorski, former head of the EPA's clean-water compliance office for the region.

William Lamoreaux, a state environmental official who helped draft the plant's original operating permit, agrees. He says that a sludge pit, originally intended for temporary storage of wastes awaiting incineration, had been converted so that waste material was routinely pumped directly back into the ballast-water treatment tanks. Such recirculation of sludges was "never approved or contemplated by anyone involved at the beginning," Mr. Lamoreaux asserts.

For its part, Alyeska told the EPA in 1982 that toxic pollutants not specifically limited by the permit were found "in concentrations so low as to pose no possibility of significant or deleterious effects" on the port.

Earlier Documents

Nevertheless, company concerns about the amount of sludge generated by the plant—and what to do with it—have surfaced in internal Alyeska documents written at least as far back as 1978. In that year, the terminal's then superintendent, F.C. Jones, wrote a letter to engineers at Exxon Corp., one of the eight owners of the pipeline, complaining that the treatment plant "does not provide any facility to remove solids" and asking for their help in solving the problem. The letter went on to say that while some of the materials "exit in the water effluent," the plant's "high recirculation rate of solids is currently interfering in" the system's overall operation.

State and federal investigators are examining the letter, which was obtained separately by The Wall Street Journal along with other Alyeska documents on the plant. Exxon officials say they don't know what their company did in response to the letter. Alyeska documents say that an Exxon official studied the plant, found that the sludge disposal would cost at least $1.5 million annually and urged instead that more oily waste be diverted into crude oil destined for outgoing tankers.

In December 1978, an internal memo from plant operators estimated that "solids have accumulated at a rate of 1 to 2 tons per day (dry basis)," which, if accurate, would be far more than Alyeska has claimed to have separated and stored. State and federal regulators say that the company appears to be leaning toward building an incinerator at the treatment plant to dispose of stored sludge.

State officials also are investigating the adequacy of the pipeline's contingency plans for an oil spill. The EPA and congressional investigators are looking into allegations that Alyeska improperly used the treatment plant to dispose of some chemical wastes that didn't come from ballast water. And the state's attorney general has collected documents relating to Alyeska's earlier statements about sludge-handling and to the question of whether some plant workers may have been improperly exposed to harmful chemicals over the years.

Broker's Role

Some of the documents that investigators are using were obtained by Charles Hamel, an independent oil-transportation broker from Alexandria, Va. He has spearheaded criticism of Alyeska's management after contending that he suffered losses on some oil shipped through the pipeline that allegedly contained excess water. His allegations indirectly led to questions about the pollution-control practices at the plant, alerted Alaskan newspapers about the plant's apparent problems and prompted the EPA and the state to step up their investigations.

Investigators also have testimony from several former Alyeska employees claiming that their bosses encouraged or told them to tamper with pollution tests, report incorrect data and engage in other improper activities at the plant.

In sworn testimony to the Alaska Public Utilities Commission, Erlene J. Blake, a former plant laboratory technician, last year alleged it was "standard operating procedure at times" to "alter" such records. She told utility regulators that she was instructed to provide false reports to the EPA when the volume of treated water flowing into the bay exceeded maximum federal limits.

James Woodle, a former marine superintendent at the terminal, told the utility commission that "problem areas were masked and records modified" to suggest normal conditions at the treatment plant. Mr. Woodle also testified that plant operators were under instruction to disregard required safeguards if necessary in order to deal with unusually heavy incoming ballast flows. The operating principle, he said, was, "Just empty the tanks and make room."

Mr. Woodle is suing Alyeska, alleging that he was unfairly forced to leave the company before the investigations started. The company won't comment on the pending litigation.

Bill Ross, Alaska's top environmental official, several months ago confirmed that state officials, "working in concert with" the EPA, are conducting interviews and combing through Alyeska files to determine "whether any criminal violations may have occurred."

Many questions about the "sludge problem" at Valdez remain unanswered. But even the preliminary conclusions reached so far worry many scientists. David Shaw, a professor at the University of Alaska's Institute of Marine Sciences, who has studied Valdez harbor for Alyeska since the late 1970s, says of the increasing pollution on the sea bottom there: "I'm concerned it could be the tip of a serious problem."

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

20 February, 1986

MEMORANDUM:

TO: Senator Eliason, Vice Chairman
Senator Bennett
Senator Ray
Senator Sackett

FROM: Senator Zharoff, Chairman
Senate Labor and Commerce Committee

The Senate Labor and Commerce Committee announces a committee hearing to be held on Friday, February 21st, at 3:30pm in the Beltz Room. On the agenda will be CSHB55(fin)am, originally scheduled for Wednesday's meeting.

CSHB55(Fin)am: "An act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST | **FISCAL DETAIL**

Bill/Resolution No. : SCS CSHB 28 (Fin)
Title : Special appropriation from PF undistributed income to PF principal

Agency Affected : Department of Revenue
BRU : _____

Sponsor : Duncan
Requestor : _____
Date of Request : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

The Department of Revenue estimates that $1,017,400,000 will be deposited into the principal of the Permanent Fund from the Undistributed Income Account on July 1, 1986.

Prepared by : Jan Faiks, Co-chairman — Phone : 465-4523
Division : Senate Finance Committee — Date : 2/19/86

Approved by Commissioner : _____ Date : _____
Agency : _____

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

9/25/85

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

20 February, 1986

MEMORANDUM:

TO: Senator Eliason, Vice Chairman
Senator Bennett
Senator Ray
Senator Sackett

FROM: Senator Zharoff, Chairman
Senate Labor and Commerce Committee

The Senate Labor and Commerce Committee announces a joint hearing with the Senate Judiciary Committee to be held on Wednesday, February 26th, at 3:00p.m. in the Senate Finance Chambers. The agenda for the meeting will be a presentation on insurance.

HB 356: "AN ACT RELATING TO THE ASSIGNMENT OF GROUP LIFE POLICIES OF INSURANCE."

THIS MEASURE WOULD ALLOW THE "ASSIGNMENT" OF GROUP LIFE INSURANCE POLICIES, PROVIDING A MEANS OF REDUCING FEDERAL ESTATE TAXES, AND SIMPLIFYING THE ESTATE PLANNING PROCESS.

IF A PERSON OTHER THAN THE INSURED IS ASSIGNED A POLICY, THE PROCEEDS DO NOT PASS THRU THE INSURED'S ESTATE, AND THUS ARE NOT SUBJECT TO FEDERAL ESTATE TAX.

CURRENTLY, 48 STATES HAVE PASSED SIMILAR LEGISLATION. WITHOUT STATUTORY AUTHORIZATION, THE IRS REQUIRES PAYMENT OF ESTATE TAXES ON THE POLICY <u>BEFORE THE PROCEEDS GO TO THE HEIR</u>. I URGE SUPPORT FROM THE BODY.

Introduced: 4/8/85
Referred: Labor & Commerce
and Judiciary

IN THE HOUSE

BY GRUENBERG, TAYLOR AND PETTYJOHN

HOUSE BILL NO. 356

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to assignment of group life policies of insurance."

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

* Section 1. AS 21.42.270 is amended to read:

Sec. 21.42.270. ASSIGNMENT OF POLICIES. A policy may be assignable or nonassignable, depending upon its terms. Subject to its terms relating to its assignability, a life, group life or disability policy, whether issued before or after July 1, 1966, under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. The assignment entitles the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming an interest in the policy which is in conflict with the assignment.

C C
4/26

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 356
Title: An assignment of group life policies of insurance
Sponsor: Gruenburg et al.
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John George, Director Phone: 465-2515
Division: Insurance Date: 4/05/85

Approved by Commissioner: Loren A. Lounsbury Date: 4/25/85
Agency: Commerce and Economic Development

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

2219WB42585a

Fiscal Note

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4215 SLAB HB 392 - HB 430

1095

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

392

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 4, 1985

The Honorable Don Clocksin
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Clocksin:

You have asked for our preliminary view as to the effect of adoption of HB 392, as amended, on those projects for which money has been previously appropriated. Where the state has already entered into a lease-financing agreements prior to the effective date of the legislation, as in the case of the Alaska Vocational and Technical Education Center, the bill would not, in our view, have any application. In contrast, where the state has not entered into a lease-financing agreement, the bill would condition the authority to do so upon specific review and approval by the legislature. With specific reference to the proposed Seward prison facility, the state has not as yet entered into a lease-financing agreement, and HB 392, as amended on the floor, would therefore require specific legislative approval.

We attach a draft letter of intent which clarifies the question of retroactive application of HB 392.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jonathan B. Rubini
Jonathan B. Rubini
Assistant Attorney General

JBR:bap

Attachment

cc: The Honorable Mike Szymanski
Representative

Ray Gillespie
Legislative Liaison
Office of the Governor

03-C5LH

DRAFT LETTER OF INTENT

It is the intent of the Legislature that the requirement of specific legislative approval of lease-financing agreements apply to only those projects or office facilities for which the state has not previously entered into a lease-financing agreement. Projects for which the state has entered into lease-financing agreement are not affected by this legislation.

LETTER OF INTENT

House Bill 392

It is the intent of the Legislature that the requirement of specific legislative approval of lease-financing agreements apply to only those projects or office facilities for which the state has not previously entered into a lease-financing agreement. Projects for which the state has entered into lease-financing agreements are not affected by this legislation.

Further, it is the intent of the Legislature that the Department of Administration examine the opportunities for centralizing of government office space in Alaska communities which express an interest in consolidating office space. The Department should work closely with these communities to define options for office space consolidation. A report on the possibilities of office space centralization, including an evaluation of costs, should be submitted to the Legislature by January 15th, 1986.

The purpose of this analysis is to identify opportunities for cost savings to the state through more efficient use of office space. A related benefit would be to make government offices more accessible to constituents by centralizing many different offices which may be scattered throughout a community. Where appropriate, consideration should be given to inclusion of federal and/or local government office space in central facility.

Approved
3-7-3

BILL HISTORY HB 392

HOUSE CALENDAR: MAY 4 1985- SATURDAY

BILL	HB0392
PAGE	01001
DATE	04/19/85
CHAMBER	HOUSE
TEXT	HOUSE BILL NO. 392 by the Rules Committee by request of the Governor, entitled:

"An Act relating to the acquisition and development of state office and prison facilities; and providing for an effective date."

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

A zero fiscal note with an analysis was attached and appears in House Journal Supplement No. 52.

The Governor's transmittal letter, dated April 19, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that relates to financing for the acquisition and development of public facilities.

During my recent address to the joint session of the legislature, I stated that the Anchorage Office Complex would not proceed unless the project is approved by the legislature. As you know, the money for developing the Anchorage Office Complex is intended to be provided through the sale of certificates of participation in rental payments, i.e., lease-financing agreements. My commitment to seek legislative approval was offered in recognition of the substantial legislative interest in a project as substantial and as costly as the proposed Anchorage Office Complex.

It is important for the Legislature to understand the long-term implications of this legislation. I believe it is good public policy to find creative ways to finance buildings when such financing saves us money in the future. We have an obligation to our citizens to take advantage of these savings whenever we can.

The desirability of legislative review of the Anchorage Office Complex raises the more general question of how to assure adequate legislative involvement when the state seeks to enter into lease-financing agreements. As we enter an era of declining state revenues, I believe that it is all the more critical to explore all available opportunities to provide needed public facilities in the most cost-efficient method. In some instances, lease-financing transactions offer an extremely attractive vehicle to finance the development of public buildings. While I believe that the authority to enter into long-term leases under AS 37.05.280 provides a statutory basis for lease-financ... I am equally cognizant of the need to assure that the legislature is accorded an opportunity to review these projects before their actual development. Section 1 of

this bill amends AS 37.05.280 to provide that legislative approval must be obtained before the Department of Administration may enter into a lease-financing agreement. I must observe that the proposed amendment to AS 37.05.280 poses difficult separation-of-powers considerations. Traditionally, a requirement of specific project approval is not a proper exercise of legislative powers. Yet where lease-financing arrangements are at issue, the practical fact is that the decision to enter into such an agreement may, as a practical matter, place a far-reaching economic burden on the state. In these circumstances, I recognize that providing legislative review only through the annual appropriation process is somewhat limited. In short, because I believe lease-financing transactions do have a substantial impact on the state's fiscal affairs over a period of fiscal years, I welcome the legislature's participation in the process of project review.

I believe that this bill offers the legislature a strong role in review and approval of proposed lease-financings. I urge your prompt review and passage of this legislation.

Sincerely,
/s/
Bill Sheffield
Governor"

HB0392
01232
05/02/85
HOUSE

The Finance Committee has considered HOUSE BILL NO. 392 (acquisition and development of state office and prison facilities; effective date) and reports it back as follows: Adams (Chairman), Ringstad, Szymanski, Cotten, Uehling and Larson recommend do pass. Duncan, Rieger, Pourchot and Frank have no recommendation.

HB 392 was referred to the Rules Committee for placement on the calendar.

State Offices & Prison Facilities -

HOUSE BILL NO. 392, by the Rules Committee by Request of the Governor. Relates to acquisition and development of state office and prison facilities (see * SB 293, page 645, identical, also Governor's letter). (below)

Introduced April 19 and referred to Finance.

* **SENATE BILL NO. 293, by the Rules Committee by request of the Governor. Authorizes the state to enter into lease-financing agreements, including lease-purchase arrangements for the financing of state office and prison facilities. Effective immediately. Identical to HB 392.**

Introduced April 19 and referred to State Affairs, Judiciary and Finance.

In his message transmitting the bill to the Senate for consideration, Governor Sheffield stated:

> Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that relates to financing for the acquisition and development of public facilities.
>
> During my recent address to the joint session of the legislature, I stated that the Anchorage Office Complex would not proceed unless the project is approved by the legislature. As you know, the money for developing the Anchorage Office Complex is intended to be provided through the sale of certificates of participation in rental payments, i.e., lease-financing agreements. My commitment to seek legislative approval was offered in recognition of the substantial legislative interest in a project as substantial and as costly as the proposed Anchorage Office Complex.
>
> It is important for the Legislature to understand the long-term implications of this legislation. I believe it is good public policy to find creative ways to finance buildings when such financing saves us money in the future. We have an obligation to our citizens to take advantage of these savings whenever we can.
>
> The desirability of legislative review of the Anchorage Office Complex raises the more general question of how to assure adequate legislative involvement when the state seeks to enter into lease-financing agreements. As we enter an era of declining state revenues, I believe that it is all the more critical to explore all available opportunities to provide needed public facilities in the most cost-efficient method. In some instances, lease-financing transactions offer an extremely attractive vehicle to finance the development of public buildings. While I believe that the authority to enter into long-term leases under AS 37.05.280 provides a statutory basis for lease-financing, I am equally cognizant of the need to assure that the legislature is accorded an opportunity to review these projects before their actual development. Section 1 of this bill amends AS 37.05.280 to provide that legislative approval must be obtained before the Department of Administration may enter into a lease-financing agreement.
>
> I must observe that the proposed amendment to AS 37.05.280 poses difficult separation-of-powers considerations. Traditionally, a requirement of specific project approval is not a proper exercise of legislative powers. Yet where lease-financing arrangements are at issue, the practical fact is that the decision to enter into such an agreement may, as a practical matter, place a far-reaching economic burden on the state. In these circumstances, I recognize that providing legislative review only through the annual appropriation process is somewhat limited. In short, because I believe lease-financing transactions do have a substantial impact on the state's fiscal affairs over a period of fiscal years, I welcome the legislature's participation in the process of project review.
>
> I believe that this bill offers the legislature a strong role in review and approval of proposed lease-financings. I urge your prompt review and passage of this legislation.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HB 392am

Department may enter into lease financing agreements which provide:

a) lease financing agreement must provide that payments are subject to annual appropriation

b) notice to the legislature; this notice must include annual anticiapted lease obligations, and total anticipated construction or acquisition costs.

c) Office or project must be specifically approved by the legislature thru law, other than appropriation.

Current Law: Contract or lease must be approved by the legislature thru concurrent resolution

House letter of Intent pertains to consolidation of office space

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P.O. BOX 63
NAKNEK, ALASKA 99633
(907) 246-[illegible].95

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943

CO-CHAIRMAN
RESOURCES COMMITTEE

MEMBER
TRANSPORTATION
COMMITTEE

House of Representatives

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
IL'AMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

TO: Senator Fred Zharoff

FROM: Representative Adelheid Herrmann

DATE: June 10, 1985

SUBJECT: Legislative Intent of House Bill 392

As you are no doubt aware, House Bill 392 passed the House and is currently in the Senate Labor and Commerce Committee awaiting action next session.

Please find attached a copy of the letter of intent which was adopted with this bill which has particular relevence for District 26. More specifically, the City of Dillingham is interested in the possibility of consolidating State and/or federal office space in a single complex. At this point, the idea is only tenative but some preliminary information is available. I have also enclosed a copy of a House Research Agency Report which identifies the current State and federal office space requirements.

I wanted to draw your attention to this bill in the hope that the provisions contained in the letter of intent regarding office space consolidation are given favorable consideration and possibly made stronger by inclusion in the bill itself.

TAYLOR, THOMPSON, UEHLING, WALLIS

NAYS: 0
EXCUSED: 0
ABSENT: 0

AND SO, HB 392AM PASSED THE HOUSE ON RECONSIDERATION.
REPRESENTATIVE CLOCKSIN MOVED THAT THE ROLL CALL ON THE PASSAGE OF THE BILL BE CONSIDERED THE ROLL CALL ON THE EFFECTIVE DATE CLAUSE. THERE BEING NO OBJECTION, IT WAS SO ORDERED.
REPRESENTATIVE CLOCKSIN MOVED THAT THE HOUSE ADOPT THE FOLLOWING LETTER OF INTENT.
REPRESENTATIVE MARTIN OBJECTED.

"LETTER OF INTENT
FOR
HOUSE BILL NO. 392 AMENDED

IT IS THE INTENT OF THE ~~LEGISLATURE~~ THAT THE REQUIREMENT OF SPECIFIC LEGISLATIVE APPROVAL OF LEASE-FINANCING AGREEMENTS APPLY TO ONLY THOSE PROJECTS OR OFFICE FACILITIES FOR WHICH THE STATE HAS NOT PREVIOUSLY ENTERED INTO A LEASE-FINANCING AGREEMENT. PROJECTS FOR WHICH THE STATE HAS ENTERED INTO

LEASE-FINANCING AGREEMENTS ARE NOT AFFECTED BY THIS LEGISLATION.
FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT OF ADMINISTRATION EXAMINE THE OPPORTUNITIES FOR CENTRALIZING OF GOVERNMENT OFFICE SPACE IN ALASKA COMMUNITIES WHICH EXPRESS AN INTEREST IN CONSOLIDATING OFFICE SPACE. THE DEPARTMENT SHOULD WORK CLOSELY WITH THESE COMMUNITIES TO DEFINE OPTIONS FOR OFFICE SPACE CONSOLIDATION. A REPORT ON THE POSSIBILITIES OF OFFICE SPACE CENTRALIZATION, INCLUDING AN EVALUATION OF COSTS, SHOULD BE SUBMITTED TO THE LEGISLATURE BY JANUARY 15, 1986.
END OF DOCUMENT

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3591

April 19, 1985

MEMORANDUM

TO: Representative Adelheid Herrmann

ATTN: Eric Myers

FROM: Eric Laschever
Legislative Analyst

RE: Dillingham Government Employees and Office Costs
Research Request 85-301

At your request, I have prepared the following information regarding the number of State and federal employees based in Dillingham and the costs of leasing space for these individuals.

I was able to identify a total of 64 to 71 employees, 31,268 square feet of space and $17,938.49 per month in lease expenses.

State Employees and Office Costs

Table 1 summarizes the number of State employees, the amount of office space and office space costs by agency. The table is based on information provided by the Department of Administration, the Division of Legislative Finance and the Dillingham phone book. According to these sources, there are 40 State employees located in Dillingham, not including summer seasonal staff for the Department of Fish and Game. State workers occupy approximately 17,573 square feet of office and shop space. The Departments of Administration, Fish and Game, Health and Social Services, Public Safety and Transportation occupy State-owned facilities. The State is still making ASHA payments on the facility occupied by the Departments of Health and Social Services and Labor. These payments were $10,733.41 in FY 84, the most recent year for which I could find data. Five departments lease space, paying $16,186.49 per month or $194,237 per year. The University of Alaska has nine employees in Dillingham. They occupy 4,370 square feet of space. The University owns the facility which is located on land for which it has a $1.00 100-year lease from the city.

Table 1

State Employees and Office Space

Department	Number of Employees	Square Feet	Monthly Costs
Administration, Division of Communication	1	256	State-Owned
Commerce	1	238	$ 449.82
Community and Regional Affairs	3	1,030	1,957.00
Environmental Conservation	1	351	662.40
Fish & Game	10[a]	4,000	State-Owned
Health and Social Services	3 - 5	331	State-Owned
Labor	2	600	State-Owned
Law	3	1,154	2,480.09
Legislative Affairs	2	800	1,600.00
Public Safety	2	2,000	State-Owned
Transportation	7	3,200	State-Owned
District Court System	3.5	3,633	$ 8,937.18
Universtiy of Alaska	9	4,370	State-Owned
TOTAL	47.5 - 49.5	21,943	$16,186.49

[a]Includes Department of Natural Resources Park Ranger.

Source: Personal Communications with State Agencies.

Prepared by the House Research Agency, April 1985.

* * * *

Federal Employees and Office Costs

I was able to identify five federal agencies which have offices in Dillingham. Table 2 lists the number of employees, amount of space and lease costs for these agencies. The people whom I interviewed at the hospital and air field said that it was unlikely that they would be able to relocate away from their current locations. The Corps of Engineers occupies a federally owned building. The remaining two agencies occupy 2,963 square feet of leased space.

Table 2

Federal Employees and Office Space

Program	Number of Employees	Square Feet	Monthly Costs
Corps of Engineers	2-7	3,500	Federal Govt. owns building
Togiak National Wildlife Refuge	5	975	$1,852
Post Office	6	4,850	NA
Public Health	NA	Stationed at Hospital	
Federal Aviation Administration	4	Stationed at Airfield	
TOTAL	17-22	9,325	$1,852

Source: Dillingham Phone Book, Personal communication with staff.

Prepared by the House Research Agency, April 1985.

* * * *

I hope this information if useful. If you need additional information, please do not hesitate to contact our agency.

EL

LETTER OF INTENT

House Bill 392

It is the intent of the Legislature that the requirement of specific legislative approval of lease-financing agreements apply to only those projects or office facilities for which the state has not previously entered into a lease-financing agreement. Projects for which the state has entered into lease-financing agreements are not affected by this legislation.

Further, it is the intent of the Legislature that the Department of Administration examine the opportunities for centralizing of government office space in Alaska communities which express an interest in consolidating office space. The Department should work closely with these communities to define options for office space consolidation. A report on the possibilities of office space centralization, including an evaluation of costs, should be submitted to the Legislature by January 15th, 1986.

The purpose of this analysis is to identify opportunities for cost savings to the state through more efficient use of office space. A related benefit would be to make government offices more accessible to constituents by centralizing many different offices which may be scattered throughout a community. Where appropriate, consideration should be given to inclusion of federal and/or local government office space in central facility.

Dan Clocherine

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that relates to financing for the acquisition and development of public facilities.

During my recent address to the joint session of the legislature, I stated that the Anchorage Office Complex would not proceed unless the project is approved by the legislature. As you know, the money for developing the Anchorage Office Complex is intended to be provided through the sale of certificates of participation in rental payments, i.e., lease-financing agreements. My commitment to seek legislative approval was offered in recognition of the substantial legislative interest in a project as substantial and as costly as the proposed Anchorage Office Complex.

It is important for the Legislature to understand the long-term implications of this legislation. I believe it is good public policy to find creative ways to finance buildings when such financing saves us money in the future. We have an obligation to our citizens to take advantage of these savings whenever we can.

The desirability of legislative review of the Anchorage Office Complex raises the more general question of how to assure adequate legislative involvement when the state seeks to enter into lease-financing agreements. As we enter an era of declining state revenues, I believe that it is all the more critical to explore all available opportunities to provide needed public facilities in the most cost-efficient method. In some instances, lease-financing transactions offer an extremely attractive vehicle to finance the development of public buildings. While I believe that the authority to enter into long-term leases under AS 37.05.280

cognizant of the need to assure that the legislature is accorded an opportunity to review these projects before their actual development. Section 1 of this bill amends AS 37.05.280 to provide that legislative approval must be obtained before the Department of Administration may enter into a lease-financing agreement.

I must observe that the proposed amendment to AS 37.05.280 poses difficult separation-of-powers considerations. Traditionally, a requirement of specific project approval is not a proper exercise of legislative powers. Yet where lease-financing arrangements are at issue, the practical fact is that the decision to enter into such an agreement may, as a practical matter, place a far-reaching economic burden on the state. In these circumstances, I recognize that providing legislative review only through the annual appropriation process is somewhat limited. In short, because I believe lease-financing transactions do have a substantial impact on the state's fiscal affairs over a period of fiscal years, I welcome the legislature's participation in the process of project review.

I believe that this bill offers the legislature a strong role in review and approval of proposed lease-financings. I urge your prompt review and passage of this legislation.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

CC
Sup 52

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 392
Title: Relating to various state facilities
Sponsor: Rules/Governor
Requestor:
Date of Request: 4-18-85

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Leasing & Facilities

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0
POSITIONS:	0	0	0	0	0	0
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill provides for prior project notification to the legislature if the department intends to use lease-purchase agreements. At that time, the agency must provide details as to anticipated annual lease costs, total project or acquisition costs. A separate law must be passed to approve the project. At that time a separate fiscal note would indicate the full fiscal impact for that particular project.

Prepared By: Anselm Staack A. Staack Phone: 465-2200
Division: Deputy Comm./Administrative Mgmt. Date: 4-18-85

Approved by Commissioner: Lisa Rudd Date: 4/18/85
Agency: Department of Administration

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

Rev. 7/1/84

Department of Commerce & Economic Development / POSITION PAPER

SB 392: "An Act relating to periodic payments for future damages in certain civil actions; amending Alaska Rules of Civil Procedure 49 and 58; and providing for an effective date."

This bill is focused on a tort reform concerning periodic payments for future damages in certain civil actions. The position of the department on these issues is neutral.

This bill has an impact on the Division of Insurance. The division would be required to adopt regulations under this legislation to determine which insurers, self insurers, plans, or arrangements are financially qualified to provide security under the section dealing with security for payment of annuity and to designate those entities as qualified insurers. This requires a fiscal impact and places the division in the position of making regulatory judgments concerning entities that it does not regulate. The entire expense can be avoided as well as the conflict by using a slightly different approach to Sec. 09.30.480, which changes the fiscal impact to $0.

On Page 6, replace lines 13 - 18 with the following:

Sec. 09.30.480. ELIGIBLE SECURITIES FOR PAYMENT OF ANNUITY. A governmental entity with taxing authority, or an insurer authorized under AS 21.09 by the Director of Insuance to sell annuities, is qualified to provide the security required under AS 09.30.430.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/28/86

John L. George, Director of Insurance

Date: 2/28/86

lt0247K

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

430

Department of Commerce & Economic Development / POSITION PAPER

CSHB 430 (HESS) "An Act regulating audiologists, hearing aid dealers and the dispensing of hearing aids.

The Department of Commerce and Economic Development, Division of Occupational Licensing, supports the regulation of audiologists, hearing aid dealers, and the dispensing of hearing aids.

Although the division is aware of only 12 audiologists and approximately 10 legitimate hearing aid dealers, complaints filed with Consumer Protection in the Department of Law, the Communicable Disease Control Section of the Department of Health & Social Services and the Office of the Ombudsman document that Alaskan consumers have been financially harmed by many fly-by-night individuals.

The elderly population is the most vulnerable to abuse by fly-by-night individuals. Therefore, in the interest of public protection, the department feels that regulation of audiologists and hearing aid dealers may be one instance where the need for licensure outweighs the small number of practitioners.

Nancy Dunn, Director 465-2534
Division of Occupational Licensing

Date: 5/1/86

Lorer H. Lounsbury, Commissioner
Department of Commerce and
Economic Development

Date: 5/1/86

2920W5196b

POSITION PAPER

CSHB 430 (Fin) Sectional Analysis

Section 1) Legislative Findings and Purpose Section

Section 2) Adds audiologists and hearing aid dealers to the centralized licensing chapter.

Section 3) Adds audiologists and hearing aid dealers to those provided with services by the department, without requiring a board or commission.

Section 4) Adds audiologists and hearing aid dealers to the list of those subject to regulation, investigation, and enforcement procedures required by the department.

Section 5) Redefines license and occuptaion to include trades or professions listed in the amended centralized licensing chapter that are not covered by a board or commission.

Section 6) Adds audiologists to the professional designation requirements.

Section 7) Adds the following sections to the chapter:

08.11.010: provides for qualifications for the licensing of professional audiologists

08.11.020: addresses temporary license to practice audiology

08.11.030: provides for duration and renewal of licenses

08.11.040: provides for display of current license

08.11.050: empowers the department to set fees for licensing;

08.11.070: allows audiologists to fit and sell hearing aids. Requires audiologists to comply with applicable provisions of consumer protection language of the bill.

08.11.080: defines grounds for disciplinary actions against audiologists;

08.11.090: lists disciplinary sanctions

08.11.100: lists prohibited acts

08.11.120: provides for exemptions under this chapter; prevents those individuals who may be exempt, but who are not audiologists, from representing themselves as audiologists;

08.11.200: Definition section

Section 8) Adds a new chapter to AS 08 concnerning hearing aid dealers

08.55.010: licens[illegible]ualifications

08.55.020: duration and renewal of license;

08.55.030: requires bonding of hearing aid dealers

08.55.040: empowers the department to set fees;

08.55.050: requires a hearing aid dealer, when entering into a contract with a consumer for the purchase or lease of a hearing aid, to provide the consumer with an instruction brochure; the dealers registration number, specifications, make model, and serial number of the hearing aid; a clear statement of the contract; written information on complaint rights; and the address of the department.

Also requires that any used or reconditioned hearing aid be clearly labeled as such, and specify what guarantee may be offered;

08.55.060: Requires a medical evaluation prior to the sale or lease of a hearing aid; allows the consumer, if 18 or older, to waive the medical evaluation by signing a statement; provides language for the evaluation waiver statement form; requires the hearing aid dealer to retain statement or medical evaluation for 4 years after the sale of a hearing aid.

08.55.070: provides for method of mailing hearing aids to consumer.

08.55.080: Allows consumer to file a complaint within 3 years of purchase date.

08.55.100: requires hearing aid dealers to keep audiometers calibrated to national standards.

08.55.110: outlines cancellation requirements for purchase or lease of hearing aids;

08.55.120: restricts type of hearing testing allowed by hearing aid dealers; requires all dealers to specify, in their advertising, what type of hearing testing they are allowed to perform.

08.55.130: grounds for disciplinary sanctions

08.55.140: lists disciplinary sanctions department may impose.

08.55.150: lists prohibited acts;

08.55.160: makes violations of prohibited acts a class B misdemeanor;

08.55.170: requires a hearing aid dealer to provide the department with an address of their regular place of business.

08.55.180: Admin Procedures act applies to this chapter;

08.55.200: definitions section

Section 9) adds audiologists to the definition of health care provider under AS 09.55.560

Section 10) adds audiologists to the definition of health care provider under AS 21. 88.900

Section 11) adds audiologists to AS 44.62.330(a) application of procedure by boards, commissions, and officers.

Section 12) Adds 08.55 to the unlawful acts and practices section of Trade and Commerce Statutes

Section 13) Adds "dealing in hearing aids" to the definition section of Trade and Commerce Statutes

Section 14) Adds audiologists and hearing aid dealers ot 47.17.090(9) as practitioners of the healing arts.

CHAIRMAN'S INFORMATION: SCS CSHB 430(L&C)

1) BILL TITLE: "An act regulating audiologists, hearing aid dealers, and the dispensing of hearing aids."

   a) Introduced: Rep Navarre

   b) Co-sponsors:

2) INTENT: This measure provides for the regulation of audiologists, hearing aid dealers, and the dispensing of hearing aids. This bill is a public protection measure seeking to protect the elderly who have been abused by "fly by night" hearing aid dealers.

FISCAL NOTE: 10.3

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public Witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from committee?
   d) Close public hearings?

6) COMMITTEE ACTION?

   a) amendments?
   b) CS adoption? Need to adopt the L&C SCS.

WORK DRAFT WORK DRAFT WORK DRAFT

Bannister
4/30/86

Original sponsors: Navarre, Gruenberg, Hurley, et al

IN THE HOUSE

SENATE CS FOR CS FOR HOUSE BILL NO. 430 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act regulating audiologists, hearing aid dealers and the dispensing of hearing aids."

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

* Section 1. LEGISLATIVE FINDINGS, PURPOSE. (a) The legislature finds that the practice of audiology and the dispensing of hearing aids affects the health, safety and welfare of the public and requires regulation and control by the state in the public interest.

(b) The purpose of this Act is to establish the procedures necessary to ensure that the public is protected from the incompetent, unprofessional, improper, and unauthorized practice of audiology and dispensing of hearing aids, and to assure the availability of the highest possible quality audiology and hearing aid services for the hearing impaired persons of the state.

* Sec. 2. AS 08.01.010 is amended by adding new paragraphs to read:

(24) regulation of audiologists under AS 08.11;

(25) regulation of hearing aid dealers under AS 08.55.

* Sec. 3. AS 08.01.050(a) is amended to read:

(a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board or as determined by the department

under AS 08.11 for audiologists or under AS 08.55 for hearing aid dealers;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board or as authorized by the department under AS 08.11 for audiologists or under AS 08.55 for hearing aid dealers;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2 except as otherwise provided in this title;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services that [WHICH] may be requested by the board;

(19) provide investigative services to the boards established under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, and AS 08.86, for the purpose of assisting those boards in matters of professional discipline and in responding to consumer complaints.

* Sec. 4. AS 08.01.087 is amended to read:

Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department may, upon its own motion, conduct investigations to determine whether a [ANY] person has violated a provision of this chapter or a regulation adopted under it, or a provision of [A CHAPTER IN] this title or regulation adopted under this title dealing with an occupation or board [ONE OF THE BOARDS] listed in AS 08.01.010 [OR A REGULATION ADOPTED BY ONE OF THOSE BOARDS], or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board [OR ANY OF THE LAWS PERTAINING TO OR REGULATIONS ADOPTED BY THE BOARDS] listed in AS 08.01.010, the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone or telegraph to all board members, if a board regulates the act or practice involved, [BY TELEPHONE OR TELEGRAPH OF A PROPOSED ORDER OR ACTION] unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice

is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or the commissioner's designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, [OR] an order issued under it, or with a provision of this title or regulation adopted under this title dealing with an occupation or board [OR ANY OF THE LAWS PERTAINING TO OR REGULATIONS ADOPTED BY THE BOARDS] listed in AS 08.01.010;

(3) examine or have examined the books and records of a [ANY] person whose business activities require licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner [AND HE] may require the [THAT] person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

* Sec. 5. AS 08.01.110 is amended to read:

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in AS 08.01.010;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means a [ANY] license, certificate, permit, or registration or similar evidence of authority issued for an occupation or by one of the boards listed in AS 08.01.010;

(5) "licensee" means a [ANY] person who holds a license;

(6) "occupation" means a trade or profession [ANY OF THE TRADES OR PROFESSIONS FOR WHICH LICENSURE IS REQUIRED BY ONE OF THE BOARDS] listed in AS 08.01.010.

* Sec. 6. AS 08.02.010(a) is amended to read:

(a) An audiologist licensed under AS 08.11, a [A] person licensed in the state as a chiropractor under AS 08.20, a dentist under AS 08.36, a medical practitioner or osteopath under AS 08.64, a registered nurse under AS 08.68, an optometrist under AS 08.72, a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall use as professional identification appropriate letters or a title after that person's name which represents that person's specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays personal professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and uses the letters "M.D." or the title "doctor" or "physician" or another [ANY OTHER] title that [WHICH] tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

* Sec. 7. AS 08 is amended by adding a new chapter to read:

CHAPTER 11. AUDIOLOGISTS.

Sec. 08.11.010. QUALIFICATIONS FOR AUDIOLOGIST LICENSE. The department shall issue a license to practice audiology to an individual who

(1) is 18 years of age or older;

(2) applies on a form provided by the department;

(3) pays the fee required under AS 08.11.050;

(4) furnishes evidence satisfactory to the department that the person

(A) has not engaged in conduct that is a ground for imposing disciplinary sanctions under AS 08.11.080;

(B) holds a master's degree or doctorate in audiology from an accredited educational institution approved by the department; and either has

(i) a Certificate of Clinical Competence in Audiology from the American Speech-Language-Hearing Association or the equivalent of the certificate; or

(ii) practiced audiology for two years as of January 1, 1986, or is in the process of completing the year of supervised clinical experience required for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association.

Sec. 08.11.020. TEMPORARY LICENSE TO PRACTICE AUDIOLOGY AS AN AUDIOLOGIST. (a) On receipt of the completed application the department shall issue a temporary license for the practice of audiology as an audiologist to an individual who is licensed to practice audiology in another state and has submitted to the department an application for a license under AS 08.11.010.

(b) The department may issue a temporary license to the following:

(1) a nonresident for the practice of audiology as an audiologist in the state for 30 days or less in a calendar year, if the individual is licensed to practice audiology in another state,

territory of the United States, foreign country, or province that has requirements for a license to practice audiology that are substantially equivalent to or higher than the requirements of AS 08.11.010;

(2) a nonresident for the practice of audiology as an audiologist in the state for 30 days or less in a calendar year, if the individual meets the qualifications and requirements for a license under AS 08.11.010, and resides in a state or territory of the United States or a foreign country or province that does not license individuals to practice audiology.

(c) The department may impose by regulation additional limitations that it determines appropriate on a temporary license issued under this section.

Sec. 08.11.030. DURATION AND RENEWAL OF LICENSE. (a) A license issued under this chapter is subject to renewal every four years on a date set by the department. The department shall renew the license of an individual licensed under this chapter who applies for renewal and pays the renewal fee.

(b) If an individual fails to renew a license under (a) of this section, the license lapses.

(c) The department may reinstate a lapsed license if the license has lapsed for less than two years and if the individual submits to the department an application for renewal and pays a delinquency fee in addition to the renewal fee.

(d) A suspended license is subject to expiration and must be renewed as provided in this section, but the renewal does not entitle the individual while the license remains suspended to practice audiology or to engage in other activity or conduct that violates the order or judgment that suspended the license.

Sec. 08.11.040. DISPLAY OF LICENSE. (a) An individual licensed

to practice audiology as an audiologist in the state shall display the license in a prominent place at each place of business of the individual.

(b) If an audiologist has more than one place of business, the department shall, on request and payment of a fee, issue a duplicate license for each place of business of the individual.

Sec. 08.11.050. FEES. The department shall set fees under AS 08.01.065 for each of the following:

(1) application;

(2) credential review;

(3) audiologist license;

(4) temporary license;

(5) renewal of license;

(6) delinquency;

(7) reinstatement;

(8) duplicate license.

Sec. 08.11.070. DEALING IN HEARING AIDS. An audiologist may deal in hearing aids as a hearing aid dealer without being licensed as a hearing aid dealer under AS 08.55, but shall comply with AS 08.55.-050, 08.55.070, 08.55.100, 08.55.110(a), 08.55.110(b)(3) and (c) - (h), and 08.55.130(7) - (13) when dealing in hearing aids.

Sec. 08.11.080. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS ON AN AUDIOLOGIST. After a hearing, the department may impose a disciplinary sanction on an audiologist when the department finds that the licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of practicing audiology;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the person's ability to continue to practice competently and safely;

(5) continued to practice audiology after becoming unfit due to

(A) professional incompetence;

(B) use of drugs or alcohol in a manner that affects the person's ability to practice audiology competently and safely;

(C) physical or mental disability;

(6) permitted another person to use the licensee's license;

(7) employed a person who does not have a valid current license to practice audiology to perform work covered by this chapter;

(8) failed to comply with a provision of this chapter or a regulation adopted under this chapter, or an order of the department.

Sec. 08.11.090. DISCIPLINARY SANCTIONS. (a) When it finds that an audiologist has committed an act listed in AS 08.11.080, the department may impose the following sanctions singly or in combination:

(1) permanently revoke a license to practice;

(2) suspend a license for a determinate period of time;

(3) censure a licensee;

(4) issue a letter of reprimand;

(5) place a licensee on probationary status and require the licensee to

(A) report regularly to the department on matters involving the basis of probation;

(B) limit practice to those areas prescribed;

(C) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the department to need improvement;

(6) impose limitations or conditions on the practice of a licensee.

(b) The department may withdraw a limitation, condition, or probationary status if it finds that the deficiency that required the sanction has been remedied.

(c) The department may summarily suspend a license before final hearing or during the appeals process if the department finds that the licensee poses a clear and immediate danger to the public welfare and safety if the licensee continues to practice. An individual whose license is suspended under this subsection is entitled to a hearing by the department no later than seven days after the effective date of the order. The individual may appeal the suspension after the hearing to the superior court.

(d) The department may reinstate a license that has been suspended or revoked if the department finds after a hearing that the individual is able to practice with reasonable skill and safety.

(e) One year after revocation of a license issued under this chapter, the individual whose license was revoked may reapply for the license. The department may require an examination for reinstatement.

Sec. 08.11.100. PROHIBITED ACTS. Unless a person is licensed under this chapter, the person may not

(1) practice audiology;

(2) use a title indicating or representing that the person practices as an audiologist;

(3) advertise that the person practices audiology.

Sec. 08.11.110. PENALTY. A person who violates AS 08.11.100 is

guilty of a class B misdemeanor.

Sec. 08.11.120. EXEMPTIONS. (a) This chapter does not apply to an individual who practices audiology consistent with the accepted standards and code of ethics of the individual's profession as part of the individual's duties as

(1) a physician licensed under AS 08.64;

(2) an employee of the federal government who is required to practice audiology during the employment, if

(A) the employer maintains appropriate supervision of the individual's practice of audiology;

(B) the individual practices audiology as part of the duties for which the individual is employed;

(C) the individual practices audiology in the facility where the individual is employed or under the supervision of the federal governmental unit where the individual is employed; and

(D) the individual does not render or offer to render audiology services to the public for compensation in addition to the salary the individual receives from the federal governmental unit;

(3) a student, intern, or resident pursuing a course of study in audiology at an accredited college or a clinical training facility approved by the department, if the activities of the student, intern, or resident constitute part of a supervised course of study and the student, intern, or resident is designated as an "audiology intern," "audiology trainee," or other title approved by the department that clearly indicates that the person is training to be an audiologist.

(b) Notwithstanding the provisions of this chapter,

(1) a nurse licensed under AS 08.68 may perform hearing

sensitivity evaluations;

(2) an individual licensed as a hearing aid dealer under AS 08.55 may deal in hearing aids;

(3) an individual holding a class A certificate issued by the Conference of Executives of American Schools of the Deaf may teach the hearing impaired;

(4) an individual may engage in the testing of hearing as part of a hearing conservation program that complies with the regulations of the Occupational Safety and Health Administration of the federal government if the individual is certified to do the testing by a state or federal agency acceptable to the Occupational Safety and Health Administration.

(c) An individual who is not an audiologist, but who is exempt under this section may not use a title or description stating or implying that the person is an audiologist.

(d) An individual exempt under (a)(2) of this section may consult with and disseminate research findings and scientific information to accredited academic institutions or governmental agencies, and offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(f) An individual who is not licensed under this chapter but who teaches the practice of audiology in an audiology training program at a college or university may use the title "audiologist" but may not practice audiology.

Sec. 08.11.130. PROCEDURES. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter.

Sec. 08.11.200. DEFINITIONS. In this chapter, unless the context indicates otherwise,

(1) "audiologist" means an individual who is licensed under

AS 08.11.010 to practice audiology in the state;

(2) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(3) "department" means the Department of Commerce and Economic Development;

(4) "hearing aid" has the meaning given in AS 08.55.200;

(5) "practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, habilitation, rehabilitation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and the recommendation, evaluation, fitting, and sale of hearing aids, including the fitting of ear molds.

* Sec. 8. AS 08 is amended by adding a new chapter to read:

CHAPTER 55. HEARING AID DEALERS.

Sec. 08.55.010. QUALIFICATIONS FOR LICENSE. (a) The department shall issue a license to act as a hearing aid dealer to an individual who

(1) is 18 years of age or older;

(2) applies on a form provided by the department;

(3) has a high school diploma or the equivalent;

(4) has a business license issued under AS 43.70.020;

(5) furnishes evidence satisfactory to the department that the individual has not engaged in conduct that is a ground for imposing disciplinary sanctions under AS 08.55.130;

(6) submits with the application a statement disclosing whether the applicant

(A) has, during the five-year period immediately

preceding the date of the application been convicted of a felony, or had a final judgment entered against the applicant in a civil action, if the felony or civil action involved fraud, embezzlement, or misappropriation of property;

(B) is subject to an injunctive order that is currently in effect from a pending proceeding or action brought by a public agency;

(C) is a defendant in a pending criminal or civil action relating to fraud, embezzlement, misappropriation of property, or the antitrust or trade regulation laws of the United States or a state;

(D) has, during the five-year period immediately preceding the date of the application, been reorganized, had a debt adjustment, or has been adjudicated a bankrupt under bankruptcy proceedings due to insolvency or was a principal executive officer or general partner of a business that has been reorganized, had a debt adjustment, or has been adjudicated a bankrupt due to insolvency during the five-year period;

(7) furnishes a description of each item in (6) of this subsection that the applicant disclosed as being applicable to the applicant.

(b) An individual who is a physician or an audiologist may deal in hearing aids without being licensed under this chapter, but shall comply with AS 08.55.050, 08.55.070, 08.55.100, 08.55.110(a), 08.55.-110(b)(3) and (c) - (h), and 08.55.130(7) - (13) when dealing in hearing aids.

(c) If an individual licensed under this chapter has more than one place of business, the department shall, on request and payment of a fee, issue a duplicate license for each place of business of the

individual.

Sec. 08.55.020. DURATION AND RENEWAL OF LICENSE. (a) A license to act as a hearing aid dealer is valid for one year and is subject to renewal.

(b) On or before the expiration of one year after the issuance of a license under this chapter, a licensee may apply for renewal of the license, and the department shall renew the license if the licensee pays the renewal fee, has a current business license to act as a hearing aid dealer under AS 43.70.020, and provides evidence satisfactory to the department that the individual has not engaged in conduct that is a ground for imposing disciplinary sanctions under AS 08.55.130.

(c) If a licensee fails to renew a license under (b) of this section, the license lapses.

(d) The department may reinstate a lapsed license under (b) of this section if the license has not lapsed for more than two years and if the person pays a delinquency fee in addition to the renewal fee.

Sec. 08.55.030. BOND REQUIRED. (a) An applicant for a license under AS 08.55.010 shall at the time of applying for the license file with the department a surety bond in the amount of $5,000 running to the state and conditioned on the applicant's promise to pay all

(1) taxes and contributions due the state and political subdivisions of the state;

(2) amounts that may be adjudged against the applicant by reason of negligently or improperly dealing in hearing aids or breaching a contract when dealing in hearing aids.

(b) In lieu of the surety bond the applicant may file with the department a cash deposit or other negotiable security acceptable to the department in the amount specified for the bond.

(c) The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the department. A person may not commence an action on the bond later than three years after cancellation of the bond.

Sec. 08.55.040. FEES. The department shall set fees under AS 08.01.065 for each of the following:

(1) application;

(2) hearing aid dealer license;

(3) renewal of license;

(4) renewal delinquency;

(5) duplicate license.

Sec. 08.55.050. ITEMS TO BE PROVIDED BY HEARING AID DEALER. (a) A hearing aid dealer shall give the following items to a consumer at the time the consumer contracts with the hearing aid dealer to buy or lease a hearing aid:

(1) an instructional brochure that contains operating instructions, purchase privileges, and performance data for the hearing aid;

(2) a statement of the dealer's registration number;

(3) a statement of the manufacturer's specifications, make, model, and serial number for the hearing aid;

(4) a clear statement of the full terms of the contract; and

(5) a written statement indicating that the consumer may file a written complaint about a hearing aid or a hearing aid dealer with the department and giving the mailing address and location address of the department.

(b) Before the sale of a used hearing aid, the hearing aid dealer shall clearly mark the receipt and the container for the

hearing aid as "used" or "reconditioned," whichever is applicable, and with the terms of a guarantee that the dealer provides.

Sec. 08.55.060. PRIOR MEDICAL EVALUATION. (a) A hearing aid dealer who is not a physician may not sell or lease a hearing aid unless the prospective user of the hearing aid presents to the hearing aid dealer a written statement signed by a physician stating that the physician has evaluated the prospective user's hearing and that the prospective user is a candidate for a hearing aid.

(b) The exam on which the physician bases the statement required in (a) of this section must have occurred within the six months immediately preceding the date when the prospective user presents the statement to the hearing aid dispenser.

(c) If the prospective user is 18 years of age or older, the hearing aid dealer may afford the prospective user an opportunity to waive in writing the evaluation required by (a) of this section if the hearing aid dealer

(1) informs the prospective user that the exercise of the waiver is not in the best interest of the prospective user's health;

(2) does not actively encourage the prospective user to waive the evaluation; and

(3) affords the prospective user the opportunity to sign the following statement:

> I have been advised by (HEARING AID DEALER'S NAME) that it would be in my best interest if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing or leasing a hearing aid.
>
> _____
>
> (PROSPECTIVE USER'S SIGNATURE)

(d) The hearing aid dealer shall retain the evaluation statement of the physician, or the prospective user's signed waiver statement for four years after the date of the sale of the hearing aid.

Sec. 08.55.070. TRANSMITTAL OF HEARING AID BY MAIL. If a hearing aid dealer mails a hearing aid to a customer, the dealer shall send the hearing aid by certified mail.

Sec. 08.55.080. COMPLAINTS. (a) A person may file a complaint with the department about a hearing aid or a hearing aid dealer within three years from the date of the cause of the complaint.

(b) A hearing aid dealer shall prominently display in the business establishment of the dealer a sign indicating that a person may file a complaint with the department about a hearing aid or a hearing aid dealer and giving the mailing and location address of the department.

Sec. 08.55.100. CALIBRATION REQUIREMENTS. A hearing aid dealer shall maintain in conformity with the standards set by the American National Standard Institute the calibration of each audiometer used by the hearing aid dispenser, and shall keep a record of the results of the annual calibration of each audiometer used by the dealer.

Sec. 08.55.110. CANCELLATION OPTION. (a) In addition to the cancellation allowed under AS 45.02.350, a person who has purchased or leased a hearing aid from a hearing aid dealer may cancel the sale or lease as provided under (b) of this section or by giving written notice of the intention to cancel the sale or lease to the dealer not later than 30 days following the later of (1) the date the person receives the hearing aid, or (2) the date the hearing aid dealer provides the person with the notice under (c) of this section. The person may use the notice received under (c) of this section to cancel the sale or lease by signing the form where indicated.

(b) In addition to the other rights and remedies the purchaser or lessee of a hearing aid may have, the purchaser or lessee of a hearing aid has the right to cancel the sale or lease by giving written notice of the cancellation to the hearing aid dealer if

(1) the hearing aid dealer is not a physician or an audiologist, and within 60 days from the receipt by the purchaser or lessee of the hearing aid or the notice to be provided under (c) of this section, whichever receipt is later, a physician or an audiologist advises the person in writing to cancel the sale or lease and specifies in writing the medical or audiological reason for the advice; or

(2) the hearing aid dealer, if not a physician or audiologist, has violated a provision of this chapter in the sale or lease of the hearing aid to the person;

(3) the hearing aid dealer who is a physician or audiologist has violated (a) or (c) - (h) of this section or AS 08.55.050, 08.55.070, 08.55.100, or 08.55.130(7) - (13) in the sale or lease of the hearing aid to the person.

(c) A hearing aid dealer shall give a person who has purchased or leased a hearing aid from the dealer notice of the right to cancel the purchase or lease that is substantially identical to the following form with all of the information filled in except the signature and date lines for the purchaser or lessee:

NOTICE OF RIGHT TO CANCEL

_____

Name of Hearing Aid Dealer

_____

Address of Hearing Aid Dealer

_____

Date of Sale or Lease

You may cancel this transaction within 30 days from the date you receive the hearing aid or this notice, whichever is later.

You may also cancel this transaction within 60 days from the date you receive the hearing aid or this notice, whichever is later, if the hearing aid dealer is not a licensed physician or a licensed audiologist and if a licensed physician or a licensed audiologist advises you in writing to cancel this transaction.

If you cancel this transaction, the property you traded in, the payments you made under the sale or lease (less certain costs allowed by state law) and any negotiable instrument executed by you will be returned within 20 days following receipt by the hearing aid dealer of your cancellation notice, and the hearing aid dealer will cancel any security interest arising out of the sale or lease.

If you cancel, you must make available to the hearing aid dealer, in as good a condition as when received, less normal wear and tear, the goods delivered to you under this sale or lease, unless the dealer notifies you to keep the goods or to hold them until the dealer collects them.

If the goods have been damaged, the hearing aid dealer may deduct from any refund due you the reasonable costs incurred in repairing the goods to make them suitable for resale. If the goods have been damaged beyond repair, you are liable for the full purchase

price, even if you are just leasing the goods.

If you make the goods available for the hearing aid dealer to collect after your cancellation, and within 20 days of receiving your cancellation the hearing aid dealer does not collect them from you or provide you with instructions for returning the goods by mail, you may retain or dispose of the goods without further obligation to the hearing aid dealer. If you fail to make the goods available for the hearing aid dealer to collect after your cancellation, then the sale or lease is not cancelled and you remain liable for performance of the obligations of the sale or lease.

To cancel this transaction, mail (by certified mail, return receipt requested) or deliver a signed and dated copy of this notice or another written notice to (name of hearing aid dealer), at (address of hearing aid dealer's place of business) and (hearing aid dealer's telephone number) no later than midnight of (Date).

I hereby cancel this transaction.

(Date) _____

_____

(Purchaser's or Lessee's signature)

I have read and understand the terms of cancellation of this purchase/lease.

_____

Purchaser's or Lessee's signature

_____

Date

(d) If a purchaser or lessee of a hearing aid cancels the purchase or lease under (a) or (b) of this section, the hearing aid dealer shall within 20 days of receipt of a notice of the cancellation

(1) refund to the purchaser or lessee all deposits, including the downpayment, less (A) 10 percent of the total purchase price for each 30 days that the purchaser or lessee had the hearing aid, to pay for the reasonable rental value of the hearing aid; (B) the reasonable price of ear molds or custom casings prepared for the purchaser or lessee; and (C) the reasonable costs actually incurred by the hearing aid dealer to make goods that were traded in by the purchaser or lessee ready for sale; the hearing aid dealer may retain the money allowed under this paragraph only up to the amount of a downpayment made by the purchaser or lessee;

(2) return to the purchaser or lessee all goods traded in to the hearing aid dealer as part of the sale or lease;

(3) return to the purchaser or lessee a negotiable instrument signed by the purchaser or lessee; and

(4) cancel a security interest taken by the hearing aid dealer for the purchase or lease.

(e) If the hearing aid returned by the purchaser or lessee has been damaged, the hearing aid dealer may deduct from any refund due the purchaser or lessee the reasonable costs incurred in repairs necessary to make the hearing aid suitable for resale. If the hearing aid is damaged beyond repair, the purchaser or lessee is liable for the full purchase price.

(f) The purchaser or lessee may retain or dispose of the hearing aid if within 20 days of receipt of the notice of cancellation, the hearing aid dealer fails

(1) to collect the hearing aid from the purchaser or lessee; or

(2) to provide the purchaser or lessee with instructions for returning the hearing aid by mail.

(g) If a purchaser or lessee of a hearing aid fails to make the hearing aid available for the hearing aid dealer to collect, the purchaser or lessee remains liable for the purchase or lease.

(h) To give written notice under this section, a person shall deliver the notice to the hearing aid dealer in person or to the place of business of the dealer, or mail the notice to the place of business of the dealer by certified mail, return receipt requested.

Sec. 08.55.120. TESTING OF HEARING. (a) A hearing aid dealer may take threshold measurements to determine the need for a hearing aid, but may not perform diagnostic procedures to determine the cause of a hearing impairment or charge a fee for a hearing measurement.

(b) A hearing aid dealer shall include in every printed advertisement for the services of the dealer the following statement bordered in black:

Alaska law permits a hearing aid dealer who is not a licensed physician or a licensed audiologist to test hearing only for the purpose of selling or leasing hearing aids; the tests given by a hearing aid dealer are not to be used to diagnose the cause of a hearing impairment.

Sec. 08.55.130. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS. After a hearing, the department may impose a disciplinary sanction on an individual licensed under this chapter when the department finds that the person

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the individual's ability to continue to practice competently and safely;

(5) failed to comply with a provision of this chapter or a regulation adopted under this chapter, or an order of the department;

(6) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) addiction to or severe dependency on alcohol or another drug that impairs the individual's ability to practice safely;

(C) physical or mental disability;

(7) employed a person who did not have a valid current license to deal in hearing aids to perform work covered by this chapter;

(8) failed or refused to honor a representation, promise, agreement or warranty made by the person while dealing in hearing aids;

(9) advertised a model, type, or kind of hearing aid for sale that the person does not sell;

(10) failed to maintain a business address and telephone number at which the individual could normally be reached during regular business hours;

(11) included in a contract or receipt for the purchase or lease of a hearing aid a confession of judgment or a waiver of a right

of the consumer under this chapter;

(12) used undue influence, coercion, or other wilful act or representation to interfere with the exercise by the consumer of the rights provided in this chapter;

(13) negotiated, transferred, sold, or assigned a note or other evidence of indebtedness to a finance company or other third party within two months of delivering a hearing aid to a purchaser or lessee of the hearing aid by mail or in person;

(14) permitted another person to use the licensee's license;

(15) dealt in hearing aids while suffering from a serious disease that was contagious or infectious.

Sec. 08.55.140. DISCIPLINARY SANCTIONS. (a) When it finds that a licensee has committed an act listed in AS 08.55.130, the department may impose the following sanctions singly or in combination:

(1) permanently revoke a license to practice;

(2) suspend a license for a determinate period of time;

(3) censure a licensee;

(4) issue a letter of reprimand;

(5) place a licensee on probationary status and require the licensee to

(A) report regularly to the department on matters involving the basis of probation;

(B) limit practice to those areas prescribed;

(C) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the department to need improvement;

(6) impose limitations or conditions on the practice of a licensee.

(b) The department may withdraw a limitation, condition, or

probationary status if it finds that the deficiency that required the sanction has been remedied.

(c) The department may summarily suspend a license before final hearing or during the appeals process if the department finds that the licensee poses a clear and immediate danger to the public welfare and safety if the licensee continues to practice. A person whose license is suspended under this subsection is entitled to a hearing by the department no later than seven days after the effective date of the order. The person may appeal the suspension after the hearing to the superior court.

(d) The department may reinstate a license that has been suspended or revoked if the department finds after a hearing that the applicant is able to deal in hearing aids with reasonable skill and safety.

Sec. 08.55.150. PROHIBITED ACTS. (a) Unless a person is licensed under this chapter or AS 08.11, the person may not

(1) deal in hearing aids;

(2) use a title indicating or representing that the person deals in hearing aids or is licensed to deal in hearing aids;

(3) advertise that the person deals in hearing aids.

(b) A person may not

(1) sell, barter, or offer to sell or barter a license issued under this chapter;

(2) purchase or obtain by barter a license issued under this chapter with the intent to use it as evidence of the holder's qualification to deal in hearing aids;

(3) materially alter a license issued under this chapter with fraudulent intent;

(4) use or attempt to use as valid a license to deal in

hearing aids that has been purchased, fraudulently obtained, counterfeited, or materially altered.

Sec. 08.55.160. PENALTY. A person who violates AS 08.55.150 is guilty of a class B misdemeanor.

Sec. 08.55.170. NOTICE OF PLACE OF BUSINESS. A person who holds a license under this chapter shall notify the department in writing of the regular address of the place or places where the person deals or intends to deal in hearing aids.

Sec. 08.55.180. PROCEDURES. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter.

Sec. 08.55.200. DEFINITIONS. In this chapter

(1) "audiologist" means an individual licensed as an audiologist under AS 08.11;

(2) "dealing in hearing aids" means the sale or lease, or attempted sale or lease of hearing aids, and the recommendation, selection, fitting, or adaptation of hearing aids;

(3) "department" means the Department of Commerce and Economic Development;

(4) "hearing aid" means a prosthetic instrument or device designed for or represented as aiding, improving, or correcting defective human hearing and the parts, attachments, or accessories of the instrument or device; "hearing aid" does not include cochlear implants, middle-ear implants, vibro-tactile speech-reading aids, other aids for cued speech, or group or individual auditory training units and assistive devices;

(5) "hearing aid dealer" means an individual licensed under AS 08.55.010;

(6) "physician" means a person licensed as a physician under AS 08.64.

* Sec. 9. AS 09.55.560(1) is amended to read:

(1) "health care provider" means <u>an audiologist licensed under AS 08.11;</u> a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; a corporate entity covered under AS 21.88.050(b)(12); and an employee of a health care provider acting within the course and scope of employment;

* Sec. 10. AS 21.88.900(a)(9) is amended to read:

(9) "health care provider" means <u>an audiologist licensed under AS 08.11;</u> a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; a corporate entity covered under AS 21.88.050(b)(11); an employee of a health care provider acting within the course and scope of employment;

* Sec. 11. AS 44.62.330(a) is amended by adding new paragraphs to read:

(53) Department of Commerce and Economic Development concerning the licensing and regulation of audiologists (AS 08.11);

(54) Department of Commerce and Economic Development concerning the licensing and regulation of hearing aid dealers (AS 08.-55).

* Sec. 12. AS 45.50.471(b) is amended by adding a new paragraph to read:

(27) dealing in hearing aids and failing to comply with AS 08.55.

* Sec. 13. AS 45.50.561 is amended by adding new paragraphs to read:

(10) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(11) "hearing aid" has the meaning given in AS 08.55.200.

* Sec. 14. AS 47.17.070(9) is amended to read:

(9) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, optometrists, osteopaths, physical therapists, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, <u>audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55,</u> religious healing practitioners, and surgeons;

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/23/86

REQUEST

Bill/Resolution No.: CSHB 430 (HESS)
Title: Regulating Audiologists, Hearing Aid Dealers and dispensing of hearing aids;
Sponsor: House HESS
Requester:
Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components:

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE		1.8	1.1	1.3	2.0	1.6

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill charges the department with the responsibility of licensing audiologists and hearing aid dealers. Information received indicates that the number of practitioners affected by the bill are few--12 audiologists and 10 legitimate hearing aid dealers. Apparently, fly-by-night individuals have harmed Alaskan consumers as documented by complaints on file with Consumer Protection in the

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 4/23/86

Approved by Commissioner: Date:
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 430 (HESS)

Department of Law, the Office of the Ombudsman, and the Department of Health and Social Services, Communicable Disease Control Section. Licensing of Audiologists and Hearing Aid Dealers may be one instance where the need for licensure out-weighs the small number of practitioners.

An estimate of operating costs derived from comparing qualifications and numbers of practitioners with a similar existing license function indicate the costs to total $1.4 each year. Of the yearly costs, $.1 is expected to be new costs as a result of this legislation, for printing of application and statute booklets. The remainder consists largely of personal services costs which would be absorbed by the division through funding already included in the agency's operating budget. The fiscal note will be zero.

The following fee schedule was developed so that fees generated over the four-year renewal cycle would match, as closely as possible, costs over the same period. These fees are still estimates at this time.

Revenues were estimated on the following fee schedule:

Application/Credentials Review fee	$20
Temporary Permit fee	$25
Audiologists License/Renewal fee	$50 - quadrennially
Hearing Aid Dealers License/Renewal	$80 - annually

As a result of quadrennial licenses issued to Audiologists, revenues collected in FY 87 essentially covers a portion of the costs in FY 88 to FY 91. A detailed description follows:

FY 87:

		Distribution across quadrennial renewal:
12 Audiologists seeking licensure ($50 x 12) =	$ .6	
10 Hearing Aid Dealers ($80 x 10) =	.8	
22 Application/Credentials Review ($20 x 22) =	.4	
	$ 1.8	$ 1.8
		- 1.4 costs
		$ .4 balance

FY 88:

Assuming there will be two new applicants seeking Audiology Temporary Permits ($25 x 2)	$ .05	
2 new Hearing Aid Dealers:		
Application/Credentials Review Fee ($20 x 2)	.04	
Hearing Aid Dealers License ($80 x 2)	.2	
10 Hearing Aid Dealers renewing ($80 x 10)	.8	
	$ 1.1	$ .4
		+ 1.1
		$ 1.5
		- 1.4 costs
		$ .1 balance

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 430 (HESS)

FY 89:

Assuming there will be two new applicants seeking Audiology Temporary Permits ($25 x 2)	$ .05	
2 new Hearing Aid Dealers:		
Application/Credentials Review Fee ($20 x 2)	.04	
Hearing Aid Dealers License ($80 x 2)	.2	
12 Hearing Aid Dealers renewing ($80 x 12)	1.0	
	$ 1.3	$ .1 balance forward
		+ 1.3
		$ 1.4
		- 1.4 costs
		$ Ø balance

FY 90:

Assuming there will be two new applicants seeking Audiology Temporary Permits ($25 x 2)	$ .05	
2 new Hearing Aid Dealers:		
Application/Credentials Review Fee ($20 x 2)	.04	
Hearing Aid Dealers License ($80 x 2)	.2	
12 Audiologists renewing ($50 x 12)	.6	
14 Hearing Aid Dealers renewing ($80 x 14)	1.1	
	$ 2.0	$.Ø
		+ 2.0
		$ 2.0
		- 1.4 costs
		$ .6 balance

FY 91:

Assuming there will be one new applicant seeking licensure as an Audiologist ($50 x 1)	$ .05	
2 new Hearing Aid Dealers ($80 x 2)	.2	
3 paying Application/Credentials Review ($20 x 3)	.06	
16 Hearing Aid Dealers renewing ($80 x 16)	1.3	
	$ 1.6	$ .6
		+ 1.6
		$ 2.2
		- 1.4 costs
		$ .8 balance

NOTE:

The revision in this fiscal note from the previous version is in the total estimated annual costs to administer the function. The original estimate was based on $4.5 annually. As a result of adjusting costs in relation to the number of licensees, this revised fiscal note is based on $1.4 annual expenditures.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/3/86

REQUEST

Bill/Resolution No. : CSHB 430 (FIN)
Title : Regulating audiologists, hearing aid dealers & dispensing of hearing aids
Sponsor : House HESS
Requestor : House Finance Committee
Date of Request : 4/3/86

FISCAL DETAIL

Agency Affected : Commerce & Econ. Dev.
BRU : Occupational Licensing
Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		10.3	2.7	3.1	3.5	10.1

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

The $100 estimated as needed for printing of applications and statute booklets can be absorbed within the Department's FY 87 budget.

APA

Prepared by : Al Adams, Chair — Phone : 465-3706
Division : House Finance Committee — Date : 4/3/86

Approved by Commissioner : _____ Date : _____
Agency : _____

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

10/25/85

Protection in the Department of Law, the Office of the Ombudsman, and the Department of Health and Social Services, Communicable Disease Control Section. Licensing of Audiologists and hearing aid dealers may be one instance where the need for licensure out-weighs the small number of practitioners.

An estimate of operating costs derived from comparing qualifications and numbers of practitioners with a similar existing license function indicate the costs to total $4.5 each year. Of the yearly costs; $.1 is expected to be new costs as a result of this legislation, for printing of application and statute booklets. The remainder of $4.4 consists largely of personal services costs which would be absorbed by the division through funding already included in the agency's operating budget.

The following fee schedule was developed so that fees generated over the four-year renewal cycle would match, as closely as possible, costs over the same period.

Revenues were estimated on the following fee schedule:

Application Fee	$ 30	
Credentials Review Fee	20	
Temporary Permit Fee	100	
Audiologist:		
License & Renewal Fee	520	quadrennially ($130 annually)
Hearing Aid Dealers	200	annually

As a result of quadrennial licenses issued to Audiologists, revenues collected in FY 87 essentially covers a portion of the costs in FY 88 to FY 90. A detailed description follows:

FY 87:		Distribution across quadrennial renewal:	
12 Audiologists seeking licensure	$ 6.2		
10 Hearing Aid Dealers	2.0		
22 Application/Credentials Review	1.1		
	$ 9.3	$ 9.3	
		- 4.5	costs
		$ 4.8	balance
FY 88:			
Assuming there will be two new applicants seeking Audiology temporary permits	$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License fee	.4		
10 Hearing Aid Dealers renewing	2.0	$ 4.8	balance forward
	$ 2.7	2.7	
		$ 7.5	
		- 4.5	costs
		$ 3.0	balance

FY 89:

Assuming there will be two new applicants seeking Audiology temporary permits	$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
12 Hearing Aid Dealers	2.4	$ 3.0	balance forward
	$ 3.1	3.1	
		$ 6.1	
		- 4.5	costs
		$ 1.6	balance

FY 90:

Assuming there will be two new applicants seeking Audiology temporary permits	$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
14 Hearing Aid Dealers renewing	2.8	$ 1.6	balance forward
	$ 3.5	3.5	
		$ 5.1	
		- 4.5	costs
		$ .6	balance

FY 91 will be the start of a new quadrennial license period for Audiologists, and is the reason for revenues increasing from $3.5 in FY 90 to $10.1 in FY 91.

FY 91:

Assuming there will be one new applicant seeking licensure as an Audiologist	$ .5
2 new Hearing Aid Dealers, license fee	.4
Application & Credentials fee for 3 new applicants	.2
12 Audiologists renewing	6.2
14 Hearing Aid Dealers renewing	2.8
	$10.1

The FTC And The Hearing Aid Industry

by Rocky Stone

In the United States, the role of government in regulating industry and providing consumer protection has usually been contentious, time-consuming—and costly! Way back in June 1975, the Federal Trade Commission (FTC) initiated a proceeding for promulgation of a Trade Regulation Rule for the Hearing Aid Industry. Ten years later (August 1985), the FTC recommended against the proposed rule. What happened?

FTC conducted 58 days of hearings on the proposed rule. It heard 203 witnesses and compiled almost 60,000 pages of documents. The final Staff report to the Commission, along with the Proposed Trade Regulation Rule was published in two volumes during September 1978. The report contains the staff's analysis of the record which forms part of the basis for the Commission's final determination. In transmitting the report to the Commission, the Director, Bureau of Consumer Protection, observed, "While I am somewhat uncomfortable with the manner in which the staff has characterized some of the record evidence, I support their recommendation that a trade regulation rule is necessary and that the rule is supported by the record evidence.

"There appears to be sufficient record evidence to establish the conclusion that the over 14.5 million (1978 figure) hearing impaired individuals suffer a lack of information about hearing loss, hearing aids, and the variety of individuals and their respective qualifications who dispense and sell hearing aids. Hearing aids can benefit some, but not all of these hearing impaired individuals. In addition, periods of adjustment are almost always required. The record also reveals the prevalence of a variety of *deceptive* and *unfair* marketing techniques that take advantage of the existing consumer ignorance or vulnerability to mislead consumers into the belief that the hearing aid can offer greater benefits than may in fact be true. (Words like "deception" and "unfair" have long been the basis on which the FTC takes action against a particular company or industry. The problem is that such words can be interpreted differently and they can cover an awful lot of territory. When James C. Miller III was FTC Chairman, he asked Congress to limit the FTC's discretion by providing a legal definition of both terms as they pertain to the agency's jurisdiction over business practices. Miller felt that "unguided discretion creates great ambiguity about how the law will be applied.")

"The recommended rule attempts to remedy the documented problems by a comprehensive approach to the advertising and marketing of hearing aids. Of critical importance is the buyer's right to cancel. This portion of the rule requires retailers to provide each buyer with the opportunity to cancel the purchase within 30 days after delivery of the aid and receive a refund less certain allowable charges. The record clearly reveals that consumers can only assess the benefits the aid will offer by actual use. The trial period should thus allow consumers adequate opportunity to inspect the aid, adjust to its use (and limitations), and verify whether or not it will, in fact, offer them some benefit. The trial period should also provide disincentives that will inhibit sellers from engaging in deceptive techniques to market aids. If claims are not borne out through actual experience, sellers will have to refund the purchase price. In addition, any returned hearing aids will have to be sold as used rather than new aids."

1978—The Director, Bureau of Consumer Protection

"While I am somewhat uncomfortable with the manner in which the Staff has characterized some of the record evidence, I support their recommendation that a trade regulation rule is necessary and that the rule is supported by the record evidence.

For the next six years the FTC staff analyzed and reanalyzed the record, gathered additional post-hearing documents (another 4,000 pages) and sent two proposed rules to the Commissioners for consideration. During this time, staff and commissioners changed, political differences emerged, points of view shifted. The process was also characterized by recrimination, bitterness, invective and a general sense of guerrilla warfare. In 1979, Robert Petosky, a Carter appointee found the staff's case plagued by "bias" and sent it back for further review. In April 1983, George W. Douglas, a conservative Democrat from Texas appointed by Reagan, took charge of the case. He sat on it for more than a year and then in May 1984, sent it back to the staff without taking it to the full commission for debate. By 1984, the process had consumed more than 50,000 staff hours of time and probably cost about $700,000 according to FTC figures cited by the Washington Post.

The final act in the saga of the hearing aid rule was opened with Commissioner Douglas' request for a new survey of

Given the limitations of the study, it is hard to understand why the FTC staff should have been led to its sanguine view that the marketplace will do the job of protecting the hearing impaired consumer.

consumers to gather information on the industry, hearing aid users, and their perceptions of the product. The main focus was to be on the consumer trial period since several commissioners felt that events had overtaken the proposed rule. A Food and Drug Administration regulation placed new conditions on hearing aid sales (see *Shhh*, November/December 1984, page 8), many states had passed new legislation regarding consumer protection, and some hearing aid dispensers had adopted a voluntary 30-day trial period.

The issue was whether market forces could be relied on to insure that consumers have a chance to try a hearing aid before purchasing it. Thus, the survey aimed at comparing the reports of hearing impaired persons living in states having mandatory trial periods with those of persons living in states where no such requirement exists.

The principal finding of the survey, as reported to the Commission by the Bureau of Consumer Protection, was that "in states that required trial periods, only 62% of the respondents said a trial period was available. Yet, in states that did not have this requirement, 65% of hearing aid purchasers had access to a trial period. *Thus, market forces appear to have been as effective as legal requirements in promoting the proliferation of trial periods.*" (Emphasis SHHH.)

We could rest in confidence in the small discrepancy this three percentage point difference represents—except for the fact that the survey was not designed to support this kind of a comparison. The study was done by Market Facts, a highly regarded consumer and market research firm. Nonetheless, the sampling plan for the study had severe limitations for purposes of this comparison upon which the FTC staff rests its recommendation.

First, the survey was of persons who were part of a "panel" of consumers, i.e., had agreed to participation in periodic surveys by Market Facts for its diverse clients. The sample is not a true cross-section of the American public. There is a bias in the exclusion of persons who declined to join the panel for one reason or another. Moreover, to the extent participants in the panel were involved in Market Facts studies prior to the FTC survey, they tend to become more self-conscious about their behavior as consumers. Thus, it is highly probable that they are more attentive to the terms of their purchases, thereby yielding a degree of measured awareness about the trial period that is artificially inflated.

Second, the survey was conducted by mail. As a result it suffers the expected problem of people not responding. There are ways survey researchers deal with this problem, but there is no evidence that Market Facts or the FTC staff made such an effort.

Third, and most important, only five states and the District of Columbia have mandatory trial periods. Given the design of the sample, only 74 respondents were produced living in these jurisdictions. So small a number of cases greatly limits the comparisons that are valid with the experience of those living in areas where no required trial periods exist. Specifically, a difference of at least twelve percentage points between the two percentages would be needed to be able to conclude that the difference did not occur by chance. With a three percentage point difference found in the survey, there is no way the conclusion of the FTC staff can be supported with any statistical confidence. Given the limitations of the study, it is hard to understand why the FTC staff should have been led to its sanguine view that the marketplace will do the job of protecting the hearing impaired consumer.

Conclusion: Unfortunately, we are dealing in extremes. According to a number of people with different points of view, the 1978 report *was* biased. The staff seemed to be throwing the baby out with the bath water. The situation was not as bad as it was portrayed. Now the Market Facts survey indicates that everything is okay. It isn't. That's the other extreme. Our mail convinces us that the situation today, is neither as bad nor as good as the FTC has variously represented it. Good consumer education is probably the best consumer protection. But there is a large group of elderly hearing impaired persons who remain vulnerable and who will never be able, adequately to protect themselves. How we get the use of amplification to them in a fair context, is our challenge.

According to the White House Office of Consumer Affairs:

96% of unhappy customers never complain.

91% of those will not buy again from the business that offended them.

The average unhappy customer will tell at least nine others and 13% tell more than 20 people.

In a market as complicated, emotionally charged, yet in dire need of the product, hearing aid dispensers should not take too much satisfaction from the final decision of the FTC. People, not laws, will continue to determine the sales volume of hearing aids and the dispenser's image—rightly or wrongly—has yet a way to go.

. . . there is a large group of elderly hearing impaired persons who remain vulnerable and who will never be able, adequately to protect themselves. How we get the use of amplification to them in a fair context, is our challenge.

You will note the issue here was not the quality of hearing aids but how they are marketed. Hearing aids today do pretty much what they are supposed to do but they remain inadequate for many people. As Gerry Williams notes, "To expect

the tiny hearing aid microphone, located in or behind the ear, to pick up sound from the front of a classroom, from a distant stage or from a speaker standing 50 to 100 feet away is beyond the state of the art.

"The small microphone simply cannot be made with sufficient directionality to exclude all the reverberant sounds that compete with the desired sound. The shotgun microphones used at sports events to pick up and isolate distant sounds employ highly sophisticated technology, which allows them to zero in on the desired sound and exclude most others. The hearing-aid microphone, because of its size limitations, cannot be expected to produce a comparable performance.

"A person who has lost hearing in one ear will experience the same problem of selectively discriminating sounds. So merely amplifying a mixture of desired and undesired sounds will only increase the loudness of confused sound.

"The problem boils down to having the desired signal sufficiently louder than the background noise so that people can hear it." That's where assistive listening devices come in.

So, the issue here revolves around market practices.

Exactly five years ago we wrote: "We can agree with The National Hearing Aid Society (NHAS) that hearing aid dealers—like the rest of us (including audiologists)—are human. Some are more (or less) ethical than others. We, as consumers, need to know enough about the subject to avoid being victimized. Or, if we are victimized, we need to have adequate recourse to correct the situation.

"Assuming that we will always have some abuse in the current system, NHAS would be well advised not to defend dealers generically but to help remove those dealers who are proven unethical. They are the ones who give hearing aid dealers, as a group, a poor image.

"The same thing would be true of audiologists who dispense hearing aids. Being human, some will certainly abuse their trust. They should be dealt with promptly and effectively. Self-policing methods often are not successful. But if users of hearing aids begin to speak with one voice, all service providers in the field of hearing loss will find themselves under increased pressure to satisfy better a clientele which has heretofore been characterized as being 'vulnerable, easily intimidated, passive'—in short, people who don't make waves. That time may soon be past."

Not yet. But soon.

In a memorandum to the FTC, Deputy Director Amanda B. Pedersen, discusses trial periods being available to those who want them. She says, "The National Hearing Aid Society, whose members are estimated to sell 75% of the hearing aids sold in this country, requires its members to offer trial periods upon request under most circumstances."

THE CONSUMER SHOULD ASK for a 30-day trial period with money-back guarantee (less a previously agreed to charge). If a dealer won't give it to you—find one who will.

In discussing allegedly unfair sales practices including generating leads or gaining entry for home sales, Pedersen notes that "less than 1% of all respondents indicated that the seller had come to their home without calling first."

The consumer should not permit hearing aid salespersons into their homes without prior appointments. If there is a SHHH chapter in your area seek help if you are in doubt about how to handle your purchase of a hearing aid.

Nursing Home Study

The Health and Human Services Department is planning more study on nursing homes and community services for elderly people. About one elderly person in four needs nursing home care or special help at home. A report from the Population Reference Bureau found that there are 1.4 million elderly people in nursing homes and 5.2 million others who, while remaining at home, need help. That help comes mostly from friends and relatives (about four-fifths of it). But the Population Reference Bureau projects that by the year 2020, the number of people needing nursing home care and home-health assistance will nearly double, as the population gets older, and the number of people over 85 increases dramatically.

To make the problem worse, more women will be working and unavailable to take care of their parents at home, and there will be a lower ratio of younger people to older people. Alice Day, author of the study thinks that large numbers of elderly people could be kept at home at less cost if family members were given some relief from the problems of caring for them—such as government aid for home help, respite care, overnight care and temporary care. She adds that policy makers should tighten screening procedures to assure that the bulk of aid goes to those who most need it.

More emphasis should also be placed on preventive health care such as diet and exercise to avoid disabling conditions, setting up a system of "co-payments" to make the elderly share the costs of their care, and developing the new concept of "intermediate housing" which would provide affordable health services to elderly residents, including hearing health services.

Adapted from the article in
The Washington Post, Oct. 29, 1985

Senior Voice OPAG
P.O. Box 102240 • Anchorage, Alaska 99510 • (907) 277-0787

Rebecca J. Goodman
Associate editor, Senior Voice
P.O. Box 211604
Auke Bay, Alaska 99821

Pat Malone
Legislative aide
House of Representatives
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Malone:

I wish Older Persons Action Group could tell you exactly how many older consumers have been victimized by unscrupulous hearing aid dealers in Alaska. Unfortunately, no one knows for certain the extent of the problem. Not many "victims" find it easy to admit that they've been "taken" and not many are willing to admit that they have a hearirg problem.

However, what we do know about the problem is this: Nearly a dozen older consumers have contacted Older Persons Action Group offices in Anchorage over the past two years to complain that they lost money (in amounts ranging from $800 to $2,000) to hearing aid salespeople (both "established" businesses and door-to-door salesmen) for worthless aids or non-delivery of aids.

One older woman told us she'd lost more than $1,800 to hearing aid dealer Louis DeLegge of Anchorage, who skipped town with her money and failed to deliver the purchased aid. DeLegge was responsible for a majority of complaints OPAG received last year regarding hearing aid fraud, but DeLegge is by no means the only culprit involved in these scams. It's important to note that without consumer protections in place in Alaska, these abuses could easily happen again and again to consumers. For this reason, Older Persons Action Group supports Rep. Mike Navarre's efforts to bring about strong legislative measures to regulate hearing aid sales practices in the state.

Sincerely,

Rebecca J. Goodman
SENIOR VOICE/OPAG
ph. 364-3874

* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 02/13/86 TIME: 10:45
* FROM: JEAN MILLER
* SUBJECT: POM
* PRINT DATE: 02/13/86 TIME: 10:47
*

2

TO: REPRESENTATIVE NAVARRE ,

FROM: TERI REGAN
2211 B ARCA DRIVE
ANCHORAGE, AK 99508 PHONE: 279-9675

SUBJECT: HB 430 - LICENSING AUDIOLOGISTS AND HEARING AID DEALERS

HB 430 HAS BEEN TOO LONG IN COMING. PLEASE SUPPORT THIS BILL AS IT WILL HELP ASSURE THE HEARING IMPAIRED POPULATION OF THE AVAILABILITY OF QUALITY SERVICE. ALASKA'S HEARING IMPAIRED HAVE HISTORICALLY BEEN TAKEN ADVANTAGE OF. YOUR SUPPORT OF HB 430 WILL HELP RECTIFY THIS.

TO: REP. NAVARRE

FROM: NATHAN MORRIS, 5531 E. 40TH, ANCHORAGE, AK 99504, 333-5008

SUBJECT: HB 430, AUDIOLOGISTS AND HEARING AID DEALERS

I STRONGLY URGE YOU TO SUPPORT HB 430 A CONSUMER PROTECTION ACT REGARDING THE LICENSING OF AUDIOLOGISTS AND HEARING AID DEALER IN ALASKA. PARENTS OF HEARING IMPAIRED CHILDREN AND PARTICULARLY ALASKANS WHO SUFFER HEARING LOSSES DUE TO AGE HAVE TO LONG BEEN AT THE MERCY OF AN UNLICENSED INDUSTRY. THE CONCERN NEEDS TO BE PROFESSIONAL SERVICE NOT PROFIT MARGIN. THANK YOU FOR YOU SUPPORT.

TO: REP. NAVARRE

FROM: SANDY WELK, 234 E. 15TH, APT 606, ANCHORAGE, AK 99501, 272-7927

SUBJECT: HB 430, AUDIOLOGISTS AND HEARING AID DEALERS

PLEASE SUPPORT HB 430. ALASKA MUST JOIN THE REST OF THE LOWER 48 IN LICENSING AUDIOLOGIST AND HEARING AID DEALER. HISTORICALLY THE HEARING IMPAIRED HAVE BEEN TAKEN ADVANTAGE OF IN THE MARKET PLACE AND THIS IS AN OPPORTUNITY TO RECTIFY AN UNJUST SITUATION.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: GINGER DRAIS (H)279-0200
1134 "G" STREET APT.#B (W)279-9675
ANCHORAGE, ALASKA 99501

SUBJECT: HB 430 - AUDIOLOGISTS AND HEARING AID DEALERS

I URGE YOUR SUPPORT OF HB 430. PLEASE CONSIDER THE POSITIVE IMPACT IT WELL MAKE ON THE HEARING IMPAIRED PERSONS THROUGHOUT THE STATE.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: MARTHA L. STILES (H)345-5229
611 HIGH VIEW DRIVE (W)276-2255
ANCHORAGE, ALASKA 99515

SUBJECT: HB 511 - CERT. PROF. SECRETARIES AS STATE EMPLOYEES
HCR 40 - CERTIFIED PROFESSIONAL SECRETARIES

PLEASE SUPPORT HB 511 AND HCR 40 WHICH RECOGNIZES CPSS AND PLSS.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: EDWINA KLEMM, PLS, 310 K STREET, SUITE 603, ANCHORAGE, AK, 276-4026

SUBJECT: HB 511 AND HCR 40, CERT PROF SECRETARIES

I REQUEST YOUR SUPPORT OF HB 511 AND HCR 40 RECOGNIZING CPS'S AND PLS'S IN ALASKA.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: DONNA BOHNER, 2640 FOREST PARK DR., ANC 99517
PHONE. 272-1257 HM. 786-1141 WK.

SUBJECT: HB 511, HCR 40- CERTIFIED PROFESSIONAL SECRETARY

PLEASE SUPPORT HB 511 AND HCR 40 WHICH RECOGNIZES CPS'S AND PLS'S IN ALASKA. THEY CERTAINLY DESERVE IT, THEY ARE TOP LEVEL SECRETARIES

DELIVER TO: JPOM

ORIGINAL
SENT: 02/13/86 TIME. 11:01
FROM: HARRY MANDREGAN
SUBJECT: POM
PRINT DATE: 02/13/86 TIME: 11:01

8

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: JANE BRODIE (H)345-5020
12601 TOILSOME HILL DRIVE (W)279-9675
ANCHORAGE, ALASKA 99516

SUBJECT: HB 430 - AUDIOLOGISTS AND HEARING AID DEALERS

I STRONGLY URGE YOU TO BACK HB 430 WHICH WOULD SUPPORT LICENSED AUDIOLOGISTS AND HELP REGULATE LEGITIMATE HEARING AID DEALERS. ALASKA'S INCIDENT OF HEARING LAWS IS HIGHER THAN THE NATIONAL AVERAGE. IT IS IMPERATIVE OUR ALASKAN CITIZENS ARE ASSURED OF QUALITY SERVICE.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF ADMINISTRATION

POUCH C, M.S. 0209
JUNEAU, ALASKA 99811
PHONE: (907) 465-3250

OLDER ALASKANS COMMISSION

February 12, 1986

Representative Navarre
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Navarre:

The Older Alaskans Commission appreciates your sponsorship of House Bill No. 430 to regulate audiologists, hearing aid dealers and the dispensing of hearing aids. The Commission endorsed protective legislation for consumers of these products and professions last fall. This action was taken due to our personal knowledge of significant problems in this area.

We will inform older Alaskans of the importance of supporting the effort now represented by this bill. Do not hesitate to contact our executive director, Jon Wolfe for any assistance we may provide.

Sincerely,

Peggy Burgin

Peggy Burgin Chair
Older Alaskans Commission

cc: Older Alaskans Commission
Jon Wolfe

Box 7135
Ketchikan, Alaska 99901
Feb. 14, 1986

Representative Mike Navarre
House of Representatives
Juneau, Alaska

Dear Sir:

I would like to go on record in support of House Bill 430.

I have had several hearing aids which have cost in the hundreds of dollars purchased from various agents. After using them for a period of time, they have given me problems and in a lot of cases the agent or company has gone out of business, leaving me holding the sack.

I heard of the state program and called the Health Clinic here for an appointment with Susan Bunting, State Audiologist. On 11/6/84, I received two aids from her, after going thru tests, and have them since. They have given me no problems and if they do, I know where to go to have them corrected.

I think Bill 430 would protect individuals like myself both physically and financially. I was born in Ketchikan 74 years ago.

Thank you,

Arthur J. Thompson

Pat Malone

I have enclosed the info I have on consumer complaint. It would probably be wise to call the Senior Voice (Becky Goodman 364-3874) to get an update on complaints. They were getting calls and letters in response to an article they ran a few months ago. The attorney Generals office may also provide current information. Hope this helps.

Dave
Canterbury

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

XX REPLY TO
1031 W 4th SUITE 200
ANCHORAGE ALASKA 99501
PHONE (907) 279-0428

1st NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 456-3528

S S FULLER BLDG
4th & HARRIS, SUITE 2H
POUCH K
JUNEAU ALASKA 99811
PHONE (907) 465-3692

STATE COURTHOUSE ROOM 28
P O BOX 671
VALDEZ ALASKA 99686
PHONE (907) 835-2462

September 23, 1985

Department of Health
and Social Services
Communicative Disorders Program
1231 Gambell Street
Anchorage, AK 99501-4627

Attention: Dr. David Canterbury

RE: Hearing and Consumer Complaints

Dear Sir:

Enclosed please find copies of consumer complaints received by our office during fiscal year '85 that involve hearing aids. All of these complaints (except the Wrangell Publishing, Inc. complaint) have been either resolved, or closed/unresolved due to our inability to locate the respondent or elicit his cooperation.

We noticed your article in the August edition of the "Senior Voice" and believe these complaints may support you and your efforts with respect to HB-430. For your information, a major problem is that the businesses are often closed and the owner somewhere out-of-state by the time the complaint reaches our office. Needless to say, this situation interferes with, and sometimes precludes any efforts on our part to resolve these matters. If the complaint involves defective merchandise, we are sometimes able to obtain restitution through the manufacturer. However, if the problem is with a distributer who has accepted partial or full payment for merchandise not delivered, there is little this office can do.

We hope this information is helpful to you. If you have any questions, please feel free to call.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Duane L. Sipary
Duane L. Sipary
Paralegal Assistant

DLS/np

03-C30LH

RECEIVED
Department of Law
AUG 23 1984
Office of the Attorney General
Consumer Protection Section
Anchorage, Alaska

CONSUMER COMPLAINT

ATTORNEY GENERAL

2CW329-F85-A-I 460

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Avenue Suite 110 Anchorage, AK 99501 279-0428	National Center Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME (Last) MAHLE (First) PRISCILLA (M.I.) J	2. TODAY'S DATE August 23, 1984
3. MAILING ADDRESS 8081 WISTERIA	CITY ANCHORAGE STATE AK ZIP CODE 99504
4. HOME ADDRESS (If different) SAME	CITY STATE ZIP CODE
5. HOME TELEPHONE NO. (907) 243-0467	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Custom Hosting Center	NAME OF SALESPERSON: Thomas Garcia
8. COMPANY'S ADDRESS 3136 New Seward Hiway	CITY Anchorage STATE AK ZIP CODE 99502
9. COMPANY'S TELEPHONE NO. (907) 274-7330	10. DATE OF TRANSACTION

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?

LOCAL NEWSPAPERS

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. Thomas Garcia
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES ☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES ☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES ☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
		DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Priscilla Mahle
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

I PURCHASED HEARING AID FROM TOM GARCIA AT "CUSTOM HEARING AIDS" FOR $650.00 AFTER A FEW MONTHS IT BEGAN TO FAIL AND FINALLY IT QUIT ALTOGETHER. I TRIED CALLING COMPANY BUT WAS TOLD THIS WAS A NON WORKING NUMBER I ALSO WENT BY THERE. SHOP IT WAS VACATED. THIS HEARING AID IS OF NO USE TO ME AS IT DOES NOT WORK AND I CAN NOT GET IT REPAIRED I WILL BE FORCED TO PURCHASE ANOTHER HEARING AID, [redacted]. SO I WOULD LIKE TO BE REIMBURSED FOR MY $650.00 FOR I PAID DEFECTIVE HEARING AID

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

I WOULD LIKE MY MONEY REFUNDED, I NEED A NEW HEARING AID, AS I CANNOT HEAR WITHOUT IT, AND I HAVE NO MONEY TO PURCHASE ONE.

(Please use additional sheets if necessary)

RECEIVED

Department of L

2/11/85
LP

FEB - 3 1985

CONSUMER COMPLAINT

ATTORNEY GENERAL

cc0864-85-AI 46.0

Office of the Attorney General
Consumer Protection Section

ANCHORAGE ~~Anchorage~~ FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	1st National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME Yakasoff (Last) Albert (First) J. (M.I.)	2. TODAY'S DATE Feb. 7th 1985
3. MAILING ADDRESS 4320 East 3rd Ave.	CITY Anchorage STATE AK. ZIP CODE 99504
4. HOME ADDRESS (If different)	CITY STATE ZIP CODE
5. HOME TELEPHONE NO. (907) 333-6369	6. BUSINESS TELEPHONE NO. None — Retire
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Miracle FAR	NAME OF SALESPERSON: Jack E. Hurd
8. COMPANY'S ADDRESS. 2909 Artic Blvd.	CITY Anchorage STATE AK ZIP CODE 99503
9. COMPANY'S TELEPHONE NO. 907) 562-4463	10. DATE OF TRANSACTION Jan. 8th 1985

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
Anchorage Times
News Paper

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. Jack Hurd — Salesman
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☒ NO	DID YOU RECEIVE IT?	☐ YES	☒ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☒ YES	☐ NO	DID YOU RECEIVE IT?	☒ Y	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☒ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☒ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
			DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Albert J. Yakasoff
Signature

(over)

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

Order (2) pairs of hearing aid, Thru salesman Jack E. Hurd
two weeks after I order them. - Mr Hurd had to come back & take second impress of the canal of ones ears.
Then I had to wait another couple weeks for hearing aid. Then I went to Alaska Native Hospital, and I was told that the price I was paying was to much for them
So I called Mr Hurd. Asked him to return some down payment. And he said he would But I would have to wait for my money. this what I do not under. - stand Because! - I notice they had deposit my check here in Anchorage Bank I don't see why they can't make out Anchorage Bank check to me.
I gave them #1,000.00 & I expect to get back. #800.00. as agreed upon
Copy are enclose with this statement.
I was told by Mr. Hurd - I got a check from Company in Minneapolis, Minn.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?
Return of #800.00 as I agreed to in their contract.

(Please use additional sheets if necessary)

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Department of Law

JUN 17 1985

ATTORNEY GENERAL

CONSUMER COMPLAINT

Office of the Attorney General
Consumer Protection Section
Anchorage, Alaska

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Avenue Suite 110 Anchorage, AK 99501 279 0428	675 7th National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME [redacted] (Last, First, M.I.)	2. TODAY'S DATE 6-17-85
3. MAILING ADDRESS Powell Margaret R. 617 N. Lake ST.	CITY / STATE / ZIP CODE
4. HOME ADDRESS (If different) Anchorage AK. 99502	CITY / STATE / ZIP CODE
5. HOME TELEPHONE NO. 277-0774	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Alaska Healing Center	NAME OF SALESPERSON: Lou Nelegge
8. COMPANY'S ADDRESS. 12c 5 Tudor Rd. Anch. AK	CITY: Anchorage STATE: Alaska ZIP CODE
9. COMPANY'S TELEPHONE NO. 561-5639	10. DATE OF TRANSACTION 5-16-85

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☐ YES ☑ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?

13. WAS A WRITTEN CONTRACT SIGNED? ☑ YES — ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☐ YES ☑ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED.
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☑ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☑ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
			DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

[redacted] Powell
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

~~I~~ I paid the Alaska Hearing center $450.00 down to make me Two hearing aids with a Balance of $750.00 left to Pay after he has another of my hearing aids to fix which should be worth about $350.00 when fixed. I called the Alaska hearing center 6-14-25 to see if my aids where ready & Sharon Clark answered she said she was Taking Her Messages. I ask her when my aids where it had been a whole month since orders they were to be Delivered in 2 weeks. Sharon said she would call me back. She did & Told me that Dr. Delagge had closed his office & was selling everything & better start doing some thing. He is getting ready to leave Town.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN? I would like my $450.00 back & my hearing aid What I figure is worth about $350.00

(Please use additional sheets if necessary)

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Department of Law
MAR - 9 1984

CONSUMER COMPLAINT

ATTORNEY GENERAL

163

FY110-FPV-A-46.0

ANCHORAGE — Office of the Attorney General, Consumer Protection Section
1031 W. 4th Ave, Suite 110, Anchorage, AK 99501, 279-0428

FAIRBANKS
1st National Center
100 Cushman, Ste. 400
Fairbanks, AK
99701
456-8588

JUNEAU
S.S. Fuller Bldg.
4th & Harris, Ste. 214
Pouch K
Juneau, AK 99811
465-3692

VALDEZ
P. O. Box 671
Valdez, AK
99686
835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME: Illery (Last) Ruby (First) (M.I.)	2. TODAY'S DATE: 1-5-84
3. MAILING ADDRESS: 3500 Glen Don Dr. — CITY: Anchorage — STATE: ALASKA — ZIP CODE: 99504	
4. HOME ADDRESS (If different): Same — CITY: Same — STATE — ZIP CODE	
5. HOME TELEPHONE NO.: 338-5830	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT: Custom Hearing Aid Center	NAME OF SALESPERSON: Bill Lyons
8. COMPANY'S ADDRESS: 3136 New Seward Highway — CITY: Anchorage — STATE: ALASKA — ZIP CODE: 99503	
9. COMPANY'S TELEPHONE NO.: 2747330	10. DATE OF TRANSACTION: 3-24-83

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
March-83 in Daily Papper

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. Thomas S. Garcia
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
			DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Ruby M Illery
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the [illegible] checks, copies of advertisements, letters, etc.

SUBJECT: Custom Hearing Aid — Purchased - 24 MARCH 1983

SALESMAN - BILL LYONS

SERVICEMAN - THOMAS S. GARCIA

I purchased TWO (2) hearing aids from Custom Hearing Aid Center
3136 New Seward Hiway
Anchorage, Alaska 99503

The salesman was Bill Lyons, about 3 weeks after they delivered them. They had to send one (Left Ear) to Florida, as it did not fit.

About 4 weeks later delivered it to me & it did not work due to the inside parts. They took it in again & about 3 weeks returned it again. (Same Aid - Left Ear) Seems to work except it has been using batteries at the rate of one battery every 8 days for the last 2 mo.

I have been trying to reach Bill or Thomas for 2 months. My sons went by his office & left word and my daughter & Son-in Law have called - No one there has returned my calls.

The girl who answers the phone there claims she doesn't know where they can be reached or when they will return.

I would like the hearing aid replaced or a full refund of my purchase price.

I am a Senior Citizen on a fixed income

My witness - Mr. & Mrs M. Hartsock 338-5730

Don C. Illery

Florence Illery 562-7114

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

Replacement or Refund!

(Please use additional sheets if necessary)

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Department of Law
JUL 17 1984

7/18/84 26A 16 3B

CONSUMER COMPLAINT

ATTORNEY GENERAL

CC0052-F85-A-I460

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
Office of the Attorney General Consumer Prot. Unit Anchorage Alaska 1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	1st National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME: Last DEANI A First JAMES M.I.	2. TODAY'S DATE: 5-27-84
3. MAILING ADDRESS: 6153 E 22ND AVE	CITY: ANCHORAGE STATE: AK ZIP CODE: 99504
4. HOME ADDRESS (If different): SAME	CITY STATE ZIP CODE
5. HOME TELEPHONE NO.: 333-2676	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT: CUSTOM HEARING AID SERVICES	NAME OF SALESPERSON: GLEN MILLER
8. COMPANY'S ADDRESS: MOSS BAY BLDG. SUITE 20, 135 LAKE ST.	CITY: KIRKLAND STATE: WASHINGTON ZIP CODE: 98033
9. COMPANY'S TELEPHONE NO.: 206-822-1230	10. DATE OF TRANSACTION: 4-1-83

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
NEWSPAPER AD

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. SANDY (NO LAST NAME GIVEN)
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☐ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES ☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES ☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES ☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
		DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

James Deanda
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

Received hearing aids on 5/27/93. Had recurring problems with them and they were returned to Washington for repairs three separate times). In November '93 the right hearing aid was returned for repairs and I have not yet received it back. I have placed four call to the company trying to locate the hearing aid. The Company called me twice & on the last occasion told me they had located the hearing aid & it was being mailed to Anchorage. As of this date 5/27/94 I have not yet received the hearing aid. (Also, the other hearing aid for the left ear is not working and I was instructed by the company not to return it to them until I received the right one.

In my conversations with the Company I was told that a Mr. Jose Garcia had taken over their Anchorage office. I have tried to locate Mr. Garcia but have been unable to do so.

I also received a call from a gentleman who works for Senior Citizens Bill O'Connor 279-2332, who told me a lot of other people were having trouble with the same hearing aid people.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN? I would like to have my money refunded and will return the hearing aids to the company.

(Please use additional sheets if necessary)

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4216 SLAB HB 430 - HB 486

1096

RECEIVED
Department of Law
AUG - 3 1984

CONSUMER COMPLAINT

ATTORNEY GENERAL

CC 0140-785-AL 46.0

Office of the Attorney General
Consumer Protection

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	1st National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME JERDE, (Last) RUTH (First) E. (M.I.)	2. TODAY'S DATE July 31, 1984
3. MAILING ADDRESS P. O. Box 2042 Palmer, Alaska	CITY Palmer STATE Alaska ZIP CODE 99645
4. HOME ADDRESS (If different) NHN Sarasota Drive, Shorewood Sub.	CITY Palmer STATE Alaska ZIP CODE 99645
5. HOME TELEPHONE NO. 745-4797	6. BUSINESS TELEPHONE NO. None
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Fifth Avenue Hearing Center - Miracle Ear	NAME OF SALESPERSON: Mr. Steve Kaufman and Lou
8. COMPANY'S ADDRESS. 1405	CITY Anchorage STATE Alaska ZIP CODE 99501
9. COMPANY'S TELEPHONE NO. 907-562-4463 (Seattle 206-623-0555)	10. DATE OF TRANSACTION October 19, 1984

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
Fall of 1983, in Anchorage Daily News and the Anchorage Times - it was an insert - such as the one sent last week in both papers.

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY?	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED.
☒ YES ☐ NO	Miracle Ear, P.O. Box 549, Minneapolis, Minn. and by phone - Mr. Steve Kaufman in Anchorage
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
			DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Ruth E. Jerde
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

I. the fall of 1983 I answered an ad in the Anchorage papers. it was an insert for Miracle Hearing Aid.

On October 19 a Mr. Steve Kaufman and Lou ? reps of the Fifth Avenue Hearing Aid Centers in Seattle came to our home and sold me two Dahlberg hearing aid units to the cost of $1100 for bo

Mr. Steve Kaufman being advised we were leaving for 4-1/2 mos. and would return March 23 stated if I didn't like the hearing aid in my right ear, he would refund the money upon our return or by April 1, 1984. He also stated he would be in touch w[illegible] us before April 1 to follo up on the aids. However, he did no follow up at all.

While in Seattle on March 12, 1984 one hearing aid was defective. I called the Seattle office ~~of the Fifth Avenue Hearing Aid that Mr. Kaufman represented. I asked for a warranty booklet,~~ and also a cap for the volume control knob and also other items pertaining to the aids working. ~~These were never received.~~

~~April 2, 1984 I contacted the Seattle office again as I was unable to obtain Mr. Steve Kaufman~~ here in the Anchorage area. I called for his telephone number, and again they stated they would ~~send me the volume control cap and warranty booklet. I was having other problems with the unit~~ as it wouldn't hold the battery in place... I contacted the Anchorage office this same day, but received no answer.

April 19, 1984 I again, called the Anchorage office and the fellow Lou ~~[illegible]~~ told me he would come out and make the service call and follow up call before April 26, which was the date I was leaving to care for my invalid Mother from an emergency doctors call to me. No call or attempt to contact me.

While in Minneapolis, someone called my husband here and he (my husband) told them they were too late I had already left.

May 4, I contacted the St. Cloud Hearing Aid Service Center in Minnesota to please fix my hearing aid. This the man came out and temporarily fixed it, and again they called the Dahlberg rep in Mineapolis. The Minneapolis rep told me in no way did the Dahlberg reps act this way, and to contact the home office. I didn't know where it was, and accidently left the reps name from the Minneapolis area out or at my mothers place.

After my return to Anchorage, on July 16, I called Mr. Steve' Kaufman's office. I was advised ~~by the receptionist that Mr. Kaufman was in town and also started up another office of Miracle~~ Ear and Fifth Avenue Hearing Center. I asked the girl to please have Mr. Kaufman or someone ~~contact me before the end of that week — July 20, or I would have no other recourse but to~~ file with the Anchorage Consumer Protection office here in Alaska. To date there has been ~~no contact or answer to my July 16 call.~~

~~While talking to this Lou on April 19, I advised him I knew of 4 more hearing aids they could~~ sell here to one person in the valley.. He wanted to know to whom and I told him when he came to repair and fix my aid I would advise him of such.

Of course, since this shoddy way of treating someone who put out $1100. I wouldn't recommend them to anyone. I feel senior citizens of Alaska deserve better treatment than this one and they should be made aware of the fly-by-night service and selling procedures.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

Either refund of both aides or repair of same. Preferably Refund

(Please use additional sheets if necessary)

MY ONLY WITNESS IS MY HUSBAND:
WALTER E. LEEDE

C.C 16 17- F85-A-I 46.3

RECEIVED
Department of Law

MAR 1 1 1985

Office of the Attorney General
Consumer Protection Section
Anchorage, Alaska

P. O. Box 62
Valparaiso, Florida 32580
March 5, 1985

The Consumer Protection Agency
1031 W. 4th Avenue, Suite 110
Anchorage, Alaska 99501

Gentlemen:

I have been having a problem for some time now with Miracle Ear Hearing Center, located at 2909 Arctic Boulevard, Suite 101. Anchorage, 99503, telephone number 562-4425.

The facts in this case are the following, substantiated by the attached documentation. I am seeking the return of $2,000.00 (what I paid in cash for this (these) hearing aids), plus the $190.00 discount I was due for paying cash for the items at the time of purchase, September 5, 1984. I purchased this (these) hearing aid(s), in a hurry before leaving Anchorage for Florida, where we generally stay through February of each year. After having received no answer to my last two letters to them requesting a refund (see Atchmnts 6 and 8), I decided to wait until our return to Anchorage in early March but now find we will have to remain here longer than expected. That is why I am now writing you to see if you can help me.

At the time I purchased these items I was assured by Jerry Callahan, the salesman, that I had thirty days in which to try them and if I was not totally satisfied I could return them and get full reimbursement. Because of the rush we were in to leave Anchorage at the time of purchase, I neglected to deduct the $190.00 discount which was stated on the contract (Atch 1 below) at the time of purchase. I, therefore, paid them $2000.00 which I should only have paid them $1810.00. Jerry Callahan should have known this at the time I signed the contract but said nary a word. Of course, he had come to the house about 10 in the morning to put me through a series of tests and then had given me the usual salesman's spiel and by that time I was weary, and hungry, and simply forgot the pitch about the $190.00 discount for cash. I should add that I am 74 years of age and, while my hearing is impaired, I am doing very nicely without any kind of a hearing aid at this time.

Listed in chronological order by attachments are the following:

Atch #1 -- Contract for Purchase, dated September 5, 1984. This shows the $190.00 discount I was due for paying cash. Please note I had 30 days in which to try the merchandise and "if for any reason a refund will be made if not satisfied."

Atch #2 -- copy of my check for $2,000.00 with endorsement on reverse.

Atch #3 -- letter dated October 17, 1984, wherein I asked for a 30-day extension trial period because I was having trouble with bleeding and "squealing" in my left ear.

Atch #4 -- statement from Eglin Air Force Regional Hospital personnel that I not wear the hearing aids for two weeks to allow recovery.

Atch #5 -- letter dated October 29, 1984, from Miracle Ear granting me a 30-day extension, through November 30, 1984, telling me where to go for assistance and my notes talking with the Miracle Ear people in Tallahassee, Florida, the closest place they advised I could have the ear molds made and/or pared down or modified to fit my ear.

Atch #6 -- letter dated November 17, 1984, from me to Miracle Ear, explaining the problem I was having getting a new mold made and the requirement they were placing on me to travel back and forth to Tallahassee for assistance. Please note that in the next to the last paragraph I stated I was returning the hearing aids and asked for a refund of my money. This was within the 30 day extension granted in Atch #5.

Atch #7 -- registered receipt number R125714C dated November 20, 1984, for return of the hearing aids, insured for $2000.00 and receipt from them dated November 26, 1984.

Atch #8 -- letter dated January 18, 1985, from me to them asking what had happened to my request for reimbursement and again asking for reimbursement.

I have received no replies to either of the letters mentioned in Atchs. 6 and 8 above.

I thought I was dealing with reputable people but I am now convinced these people are frauds. I want the return of my money in the amount of $12,000.00 plus the $190.00 discount I was supposed to have gotten for a cash payment of $2,000.00.

If I have come to the wrong people in this matter then please direct this request to the proper persons who will ensure that a consumer is not bilked by a supposedly reputable company.

Thanking you in advance, I am,

Sincerely yours

Gladys M. Thomas

(Mrs.) Jay N. Thomas

Atch #9 -- receipt from Miracle Ear dated January 24, 1985, showing they received my letter of January 18, 1985 (Atch #8 above)

RECEIVED
Department of Law

JUL 24 1984

Office of the Attorney General
Consumer Protection Section
Anchorage, Alaska

CONSUMER COMPLAINT

ATTORNEY GENERAL

c.c0393-F85-AEI.46-0

ANCHORAGE		JUNEAU	VALDEZ
1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	1st National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME: HINES (Last) LLOYD (First) W. (M.I.)	2. TODAY'S DATE: JULY 20, 1984
3. MAILING ADDRESS: 4800 BRYN MAWR CT.	CITY: ANCHORAGE STATE: ALASKA ZIP CODE: 99504
4. HOME ADDRESS (If different)	CITY STATE ZIP CODE
5. HOME TELEPHONE NO.: 333-7682	6. BUSINESS TELEPHONE NO.: 333-9411
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT: COSTOM HEARING AID CENTER	NAME OF SALESPERSON: THOMAS S. GARCIA
8. COMPANY'S ADDRESS: 3136 NEW SEWARD HIGHWAY	CITY: ANCHORAGE STATE: ALASKA ZIP CODE: 99503
9. COMPANY'S TELEPHONE NO.: 274-7330	10. DATE OF TRANSACTION: September 6, 1983

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☐ YES ☒ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☐ YES ☒ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED.
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE? ☐ YES ☐ NO DID YOU RECEIVE IT? ☐ YES ☐ NO

DID YOU REQUEST A WRITTEN PRICE ESTIMATE? ☐ YES ☐ NO DID YOU RECEIVE IT? ☐ YES ☐ NO

DID COSTS EXCEED WRITTEN ESTIMATE? ☐ YES ☐ NO

WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE? ☐ YES ☐ NO

DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU? ☐ YES ☐ NO RECEIVED/OR ALLOWED TO INSPECT PARTS? ☐ YES ☐ NO

DID YOU RECEIVE IT? ☐ YES ☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year Make Model V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Lloyd W. Hines
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

I HAVE A HEARING LOSS AND I'M WEARING HEARING AIDS, BUT ALWAYS SEARCHING FOR SOMETHING BETTER. THOMAS S. GARCIA, WHO CALLS HIMSELF "CUSTOM HEARING AID CENTER" STATED HIS HEARING AIDS WERE COMPUTERS. AFTER TRYING THEM OUT, I FOUND THEM TO BE VERY INFERIOR TO WHAT I HAD BEEN USING, DUE TO THE FACT THEY DID NOT FILTER OUT BACKGROUND NOISE. I FINALLY RETURNED THESE HEARING AIDS TO HIM.

AFTER SEVERAL CALLS BACK TO HIM, HE COULD NOT TALK ME INTO CONTINUING WITH THEM, SO HE FINALLY AGREED TO PREPARE ANOTHER PAIR. I INFORMED HIM I WAS GOING SOUTH FOR A FEW MONTHS, AND HE AGREED TO SEND THE NEW ONES TO ME. I NEVER RECEIVED THE HEARING AIDS AND UPON RETURN TO ANCHORAGE, APPROXIMATELY MAY 1, 198. MR. GARCIA, OFFICE & ALL WERE GONE AND HE LEFT NO FORWARDING ADDRESS.

I AGREED TO PAY HIM HIS PRICE OF $1300.00, 50% DOWN, CHECK No. 662 DATED SEPTEMBER 6, 1983 FOR $650.00.

I AM NOW DESIROUS OF RECOVERING THE ABOVE PAYMENT, SINCE I HAVE TOTALLY LOST CONFIDENCE IN HIS PROFESSIONAL ABILITY AS WELL AS HIS HONESTY.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

(Please use additional sheets if necessary)

ALASKA TREATMENT CENTER
3710 E. 20th Avenue • Anchorage, AK 99504 • (907) 272-0586

Dear Dave

here is another letter of dissatisfaction
& dealers to add to the collection.

Geri

ALASKA TREATMENT CENTER

3710 E. 20th Avenue • Anchorage, AK 99504 • (907) 272-0586

Dear Sir
I don't mind spending my money but
I don't like to be Jupjped out of it
I have spent approximately $1,200 for
Hearing aids. That have never worked Right
I think That are just a pile of Junk.
at an unreasonable Price.

A. E Kimbrel
PO. Box 461
Soldotna AK
99669

Phone 262-4994

(Alaska opticians)

RENDEZVOUS
P.O. Box 9382
Ketchikan, Alaska 99901
(907) 225-6837

June 13, 1985

David Canterbury, ED, CCCA
Chief of Communicative Disorders Program
State of Alaska
Depart. of Health and Social Service
3401 E. 42nd St.
Anchorage, Alaska 99504

Dear Mr. Canterbury;

At the present time I am director of an adult day care center here in Kethcikan and had the opportunity to meet Susan Bunting, regional Audiologist, during her recent visit to Ketchikan.

I had accompanied one of our participants for her hearing evaluation. This woman, Caroline Thompson, had purchased two heari g aids from Miracle Ear Hearing Center, Dahlbery hearing systems, 2909 Arctic Blvd. Suite 101, Anchorage, Alaska 99503. Their representative Jack Hurd sold these two hearing aids to Caroline 8-9-84 and finalized the contract 10-9-84 to the total sum of $1400.00. $700 paid initiallly and the other $700 C.O.D. Needless to say Caroline expected miracles from these hearing aids but the miracle did not occur. All through the winter the hearing aides have buzzed and cuase general discomfort.

After meeting Ms. Bunting severalitems were clarified:

1. The hearing aid is a Dahlberg not a Miracle Ear
2. The fit is not correct for Caroline. New molds were made.
3. The price was excessive.
4. The dealer is from out of town thereby eliminating any follow up contact for problems or questions

The consumer must be protected, especially our senior citizens, from this type of fraud through proper legislation. Better educating of our population in the above matters is imperative, and we need more audiologist to serve the Alaskan population.

Caroline already suffers from low self-esteem and chronic depression and lives on a marginal income and to be taken advantage of hurts deeply.

If action can be taken and the problems remedied then our seniors will be better served.

Sincerely,

Patricia Fordney

Patricia Fordney, R.N.
Program Director

Oct 2-85

Dear Dr. Canterbury,

I had a fraud dealing with hearing aids. the alaska Hearing center received $450.00 check from me for a hearing aid & also took my old one to be repaired which I had only bought two years before for $600.00. So I do strongly support the legislation to regulate the dispensing of hearing aids & have made my complaint to the consumer protection section. I am out my money & no hearing aids. which I need for both ears. I would like to find this guy whose name is Lou Delegge. I even wrote to Dear Bud but he didn't put my letter in the paper. this Happened 5-16-83

Sincerely

Margaret R. Powell
617 N. Lane ST.
Anchorage, ak.
99508

MARGARET POWELL
617 N. LANE ST.
ANCHORAGE, AK 99508

MARGARET POWELL
617 N. LANE ST.
ANCHORAGE, AK 99508

ANCHORAGE, AK
PM
3 OCT
1985
995

22

State of Alaska
Dept. of Health & Social Services
ATTN: Dr. canterbury
1231 Gambell St.
Anchorage, Ak. 99501

ALASKA TREATMENT CENTER

3710 E. 20th Avenue • Anchorage, AK 99508 • (907) 272-0586

May 7, 1985

David Canterbury
Chief of Communicative Disorders Program
Department of Health and Social Services
3401 E. 42nd Avenue
Anchorage, Alaska 99504

Dear Mr. Canterbury:

Enclosed is a receipt for a used hearing aid sold to an elderly woman on Medicaid. She did understand the aid was used when she purchased it. There is no indication as to the make or age of the aid or if it had been reconditioned prior to the sale.

A visual check revealed this to be a modular unit that snapped into an "all purpose" ear mold. The model of this aid could not be determined.

This aid fit very poorly resulting in discomfort and feedback. The consumer had used a kitchen knife to try and modify the mold so that it fit comfortably. She and her family were extremely dissatisfied with this aid as well as the method of sale.

Through this Center, she was fit with a postauricular aid with good subjective and objective results.

I will send further documentation of abuse as received.

Sincerely,

Jeri Powers

Jeri Powers, MS
Audiologist

JP/vm

Anchorage Hearing Aids

3605 S. Arctic Blvd.
Box 281
Anchorage, Alaska 99503
(907) 333-0978

office 338-7877

Model	SERIAL NO.	POWER CODE	TONE	RESPONSE	COLOR INSTRU.	TEMPLE COLOR	LENGTH OF TEMPLE	BATTERY NO.	DELIVERY DATE	☐ NEW ☒ USED
Right		Rt.								
Left	X	Lf.								

TESTING . . . . . $ N.C.
CUSTOM EAR MOLD . . . . . $ N.C
LAB FEE . . . . . $ N.C
TOTAL . . . . . $

CREDITS:

Amount of Trade-In . . . . . $
Make of Trade-In . . . . . $
Balance . . . . . $
Sales Tax . . . . . $
Cash Price . . Paid . . . $ 350.00
Down Payment . . . . . $
Unpaid Cash Price . . . . $
FINANCE CHARGE . . . . . $
BALANCE DUE . . . . . $

Aid to be Used by _____
Mr. Mrs. Miss

Address Street City

SPECIAL COMMENTS

ONE USED Aid

Client's Signature (in ink) MARGARET Schenck
(Print Client's Full Name)

Street 13 BARTLETT
Street
City HOOVER State AK Zip 99683
Telephone 345 7625

Consultant BYRON SCHNEIDER
Date 12-15-93

Check No. _____ For Amount _____
or
Amount Cash Received _____ By _____

BUYER'S RIGHT TO CANCEL – If this Agreement was solicited at a residence other than that of the Seller and you do not want the goods or services, you may cancel this Agreement by mailing a notice to the Seller. The notice must say that you do not want the goods or services and must be mailed before 12 midnight of the fifth business day after you sign this Agreement.

NORTON SOUND
HEALTH CORPORATION

P.O. BOX 966
NOME, ALASKA 99762
(907) 443 5411

June 25, 1985

David Canterbury, Ed.D.
Communicative Disorders Program
3401 E. 42nd Ave.
Anchorage, Alaska 99504

RE: House Bill 430

Dear Dave:

Thank you for providing me with a copy of the above House Bill. I am encouraged by this Bill in that better regulation of hearing aid dispensing will be enforced. It's frustrating when someone from your region ends up with hearing aids that are inappropriate or monstrously expensive or unreturnable! I assume most States have this kind of regulation (at least they do where I've been), and it's about time Alaska quit hiding behind that "wilderness-anything-goes" excuse.

After reading this comprehensive bill, I find only one area of possible conflict. Under Section 08.11.110 Exemptions is listed "a physician..." Usually, physicians are their own employers, so I don't see who is going to supervise their audiological procedures. I would think that a physician would either make an appropriate referral to an audiologist, or only practice limited hearing screening procedures (unless he/she is also a certified audiologist).

I think it is important to set up a supervision structure for those held exempt from licensure - perhaps with the State?

Let me know if any further comments are needed. I know you'll keep me informed.

Sincerely,

NORTON SOUND REGIONAL HOSPITAL

Beverly

Beverly Short
Audiologist

BS/kn

cc: File



Illinois Hearing Aid Consumer Protection

A consumer protection service provided through the Illinois Department of Public Health - IDPH.

CALL TOLL-FREE 1-800-572-3270

VOLUME 85-1

The Illinois Hearing Aid Consumer Protection Program

"A Hearing Aid Can Be A Good Sound Investment." This is the promotional theme for the new Illinois law designed to promote the benefits of hearing aids and protect the public from fraudulent dispensing practices which threaten the health, safety and welfare of Illinois citizens.

The Illinois Hearing Aid Consumer Protection Act (HACPA-Supplement to Ill. Rev. Stat. 1983, chap. 111, par. 7403 et seq.) supports sound hearing aid dispensing practices through the certification of dispensers and the follow-up of complaints and/or inquiries. The Illinois Department of Public Health is responsible for administering the provisions of the Hearing Aid Consumer Protection Act (HACPA) by initiating a four component action plan which focuses on:

1. health promotion/ consumer education;
2. continuing education services for hearing aid dispensers;
3. certification of dispensers; and
4. follow-up of inquiries and complaints.

The Illinois Department of Public Health has developed and implemented a system to follow-up consumer inquiries and problems. Inquiries can be received by the toll-free action line or by mail. Program staff are available to respond to all inquiries and initiate follow-up activities, whether received by the toll-free action line or by mail. Should a reconciliation be unattainable, the individual case and all documentation will be forwarded to the Department and after review, if warranted, to the Board. The Board has the authority, by mandate, to conduct hearings and make recommendations to the Director, should disciplinary action be indicated. The Board is comprised of:

Jack D. Clemis, M.D.
Board Chairman, Otolaryngologist, Chicago, Illinois

Thomas Regnier, Hearing Aid Dispenser, Illinois Society of Hearing Aid Specialists, Peoria, Illinois

Gail Gudmundsen, Hearing Aid Dispenser, Illinois Speech, Hearing and Language Association, Hoffman Estates, Illinois

Bee White, Senior Advocate, Springfield, Illinois*

To facilitate the promotion of the HACPA, its provisions, and the service it provides to consumers, program staff are currently developing a statewide networking effort to involve all state and community programs which provide a link to the senior citizens. By successfully educating these interested allied agencies to the services and provision of the HACPA, a larger population of hearing aid consumers can be served.

* One Board position is currently vacant due to the recent resignation of Richard Gelula, Chicago Hearing Society, Chicago, Illinois.



THE ILLINOIS HEARING AID DISPENSERS EXAMINATION

To carry out the requirements for the hearing aid dispensers examinations as stated in the Illinois Hearing Aid Consumer Protection Act, the Department of Public Health convened a statewide committee of hearing aid dispensers to review available tests and decide upon a test for Illinois hearing aid dispensers. This committee chose to work with the Educational Testing Service (ETS) to develop the Illinois Hearing Aid Dispensers' Examination. Guided by the committee, ETS designed a job analysis survey that was completed by over half of the practicing dispensers in Illinois. Based on the survey results and the committee's recommendations, ETS developed multiple forms of a 75-question exam, using questions drafted by the committee.

This first examination is intended for temporary certificate holders. Those temporary certificate holders who registered with IDPH on or before May 31, 1985 will be notified by ETS regarding the examination scheduled for August 24, 1985. On this date, two examinations will be conducted simultaneously in Springfield and Chicago. The times and locations will be announced in registration packages. Registration packages must be completed and returned to ETS so that an entrance ticket to the examination can be mailed to each registrant.

The examination will consist of multiple-choice questions. Each question will have four options and only one correct answer. Test-takers are encouraged to choose the option they think is more than likely correct when they do not know the correct answer. There is no penalty for guessing on this examination.

Test-takers will have ample time to complete this exam. The three and one-half hours scheduled for the test should allow sufficient time for all test-takers. You need only bring one or two #2 pencils. No notes, dictionaries, etc., will be allowed in the test room. You may bring a silent, hand-held calculator. Calculators, however, are not really needed for this exam.

The examination questions will cover the following subjects:

1. ACOUSTICS
2. NATURE OF THE EAR (normal ear, hearing process, disorders of the ear)
3. HEARING MEASUREMENT (data collection and measurement)
4. HEARING AID TECHNOLOGY
5. SELECTION OF HEARING AIDS
6. DISPENSING AND SERVICING HEARING AIDS
7. CONSUMER PROTECTION REGULATIONS —(Federal and State)

In developing this examination, the committee has made every effort to limit the examination to basic information that all hearing aid dispensers should know so that the public may be adequately protected.

The passing score on the examination will be set in a meeting of the committee on July 11. The committee, in reviewing the test, will define what it expects a person to know in order to be minimally qualified as a hearing aid dispenser.

Test-takers will be informed of the passing score as they begin the examination on August 24. Again, the purpose of the passing score will be to assure that the public is adequately protected. This is not a competitive examination in which the top group passes and the rest fail. If all test-takers are minimally qualified, as defined above, all will pass this examination.

The practicum component of the examination is only available to those who successfully complete the written examination. (The written exam will be offered October 19, 1985 only, at the ETS Headquarters in Evanston for those who fail the written component and wish to retake the examination.) The practicums will be comprised of eight stations each, manned by two examiners (certified hearing aid dispensers). All examiners will be trained by ETS to objectively and uniformly evaluate the practicum performance. This examination component is scheduled to take approximately one hour per person. Admission tickets with the assigned date and location will be mailed with notifications of passing the written examination. The practicums will be conducted:

October 22, 23, 24, 25 and December 4
(Chicago Metropolitan Area)

November 12, 13, (Springfield)



AT YOUR FINGER TIPS:

A toll-free action line was established earlier this year to acilitate the consumer service component of the Hearing Aid Consumer Protection Act (HACPA). Since its development, over 400 calls have been received by the Illinois Department of Public Health. A majority of the calls received focused on consumer education and awareness about the newly enacted program.

The toll-free telephone line (1-800-572-3270) is provided to respond to problems, questions, or about hearing aid goods and services. In addition, a telecommunication device for the deaf (TDD) can be accessed through this same number. Program staff are available 8:00 a.m. - 5:00 p.m. Monday - Friday to accept calls. A telephone answering device will accept telephone calls received after work hours. The toll-free action line is being promoted on posters and pamphlets developed and disseminated by the Hearing Aid Consumer Protection Program. Copies are available upon request by contacting the toll-free action line. All telephone calls are forwarded to IDPH Vision and Hearing Regional Consultants for follow-up.

"CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT"

The Consumer Fraud and Deceptive Business Practices Act protects consumers, borrowers, and businessmen against fraud, unfair methods of competition and deceptive acts or practices in the conduct of any trade or commerce. It also clarifies the powers of the Attorney General. For these reasons, it is crucial that hearing aid dispensers and consumers understand the Consumer Fraud and Deceptive Business Practices Act. Several major points of this Act are identified below.

1. If a sale of merchandise involving $25 or more is made or contracted to be made to a consumer as a result of or in connection with a person's contact

with or call on the consumer, that consumer may void the contract or transaction by notifying the seller within three full business days following that day on which the contract was signed or the sale was made. In addition, the consumer must return in its original condition, any merchandise delivered to the consumer under the contract or sale.

2. At the time of a transaction, the dispenser should furnish the consumer with a completed receipt or contract containing a "Notice of Cancellation" informing the consumer that the transaction may be cancelled within three days.

3. The following statement shall be, located near the consumer's signature on the contract or on the front page of the receipt (if a contract is not used) in at least 10-point type.

   "YOU, THE CONSUMER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

4. Attached to the receipt or contract shall be a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be easily detachable and shall contain in 10-point bold face type the information identified in the Consumer Fraud and Deceptive Business Practices Act.

These points are provided only to highlight a few of the major issues contained in this Act. If you would like to obtain a copy of this Act, contact the Illinois Department of Public Health.

ROSTER OF PREFERRED MAILING ADDRESSES FOR HEARING AID DISPENSER APPLICANTS

If the place of business of a certificant is changed from that address provided on the certificate and maintained on file by the Illinois Department of Public Health (IDPH), the certificant should notify IDPH in writing within 10 working days of the change. After a change in the business location, the dispenser should leave a forwarding address with the post office for one year and a forwarding telephone number for six months where the consumer can contact the dispenser.

A roster of preferred mailing addresses for Certified and Temporary Hearing Aid Dispenser applicants is now available to the general public. This list identifies each applicants preferred mailing address and the dispenser's certification status.

The cost of the roster is 25c/page which covers duplication, postage and handling expenses.

To obtain this list, contact the HACP Action Line by calling 1-800-572-3270.

IDPH WORKSHOP
Hearing Aid Dispensing Practices: An Overview

The Illinois Department of Public Health is offering a workshop entitled "Hearing Aid Dispensing Practices: An Overview," to orient hearing aid dispensers to the use of acceptable and appropriate dispensing practices. Especially designed for Temporary Certified Dispensers, the workshop was created to augment the skill and knowledge of dispensers. Experts from the field of medicine and the hearing aid industry will provide information regarding hearing aid selection and

fitting. The workshop will be offered at two locations:

August 1, 1985	August 2, 1985
Holiday Inn East 3100 S. Dirksen Parkway I-55 Junction By Pass 66 Stevenson Drive Audiovisual Room Springfield, Illinois	Holiday Inn 4400 Frontage Road Churchill Room Hillside, Illinois

AGENDA

8:00 a.m.	Registration	
8:30 a.m.	Consumer Protection: The Responsibilities of the Dispenser.	James. R. Nelson, Chief, Division of Health Promotion and Screening, IDPH
9:00 a.m.	Shall I Sign the Medical Waiver?	Leonard Rybak, M.D., Ph.D. Otolaryngologist, Springfield Memorial Medical Center (Springfield) Richard Wiet, M.D., Otolaryngologist, Hinsdale, IL (Hillside)
10:00 a.m.	BREAK	
10:15 a.m.	Hearing Aid Selection: Options and Alternatives	Ronald Regan, President, Argosy Electronics, Edina, Minnesota
11:45 a.m.	LUNCH	
1:00 p.m.	Earmolds: Making a Good Impression	Marie Jablin, Vice President Marketing & Audiological Research, Audiovox, Bensonville, IL
2:45 p.m.	BREAK	
3:00 p.m.	The Educational Testing Service (ETS):Test Preparation and Administration	Terri Strand, Ph.D., Professional Associate, ETS, Evanston, IL (Springfield)

3:00 p.m. (Continued)		George Elford, Director, Midwestern Region, Educational Testing Service, Evanston, Illinois (Hillside)
4:00 p.m.	Laboratory Session: Introduction to the Qualitone Acoustic Appraiser and the Bioacoustic Audiometric Simulator*	IDPH Staff
5:00 p.m.	CLOSURE	

* This equipment will be used in the practicum component of the Illinois Hearing Aid Dispenser Examination.

Those interested in attending this workshop should complete the following registration form.

REGISTRATION
Hearing Aid Dispensing Practices: An Overview

Please check the date and location you plan to attend. Advance registration fee is $40.00 (includes lunch, coffee and materials). At site registration will be $50.00.

____ August 1, 1985 (Springfield) ____ August 2, 1985 (Hillside)

Please type or print

NAME: _____

CERTIFICATION I.D. NUMBER: _____

BUSINESS ADDRESS: _____

HOME TELEPHONE: (___) _____ WORK TELEPHONE: (___) _____

Please make checks payable to: IDPH/Hearing Aid Program
(Your cancelled check is your receipt)

Mail registration to: Hearing Aid Program
Division of Health Promotion and Screening
Illinois Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62761

NO REFUNDS WILL BE AVAILABLE AFTER JULY 19, 1985

such receipt in Court shall be grounds for dismissal of the action.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7025.16. Penalties

§ 25.16. Any person who is found to have violated any provision of this Act is guilty of a Class A misdemeanor. On conviction of a second or subsequent offense, the violator shall be guilty of a Class 4 felony.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7026. State powers and functions

§ 26. It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the State is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7027. Administrative Procedure Act

§ 27. "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended,[1] is hereby expressly adopted and incorporated herein as if all of the provisions of such Act were included in this Act, except that the provision of paragraph (c) of Section 16 of "The Illinois Administrative Procedure Act", as amended,[2] which provides that at hearings the licensee has the right to show compliance with all lawful requirements for retention, or continuation or renewal of the license, is specifically excluded, and for the purpose of this Act the notice required under Section 10 of "The Illinois Administrative Procedure Act", as amended,[3] is considered sufficient when mailed to the last known address of a party.

[1] Chapter 127, ¶ 1001 et seq.

[2] Chapter 127, ¶ 1016.

[3] Chapter 127, ¶ 1010.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7028. Rights under prior laws

§ 28. Rights and obligations incurred and any actions commenced under the "Veterinary Medicine and Surgery Practice Act", approved August 14, 1961, as amended,[1] as it existed prior to the effective date of this Act shall not be impaired by the enactment of this Act. Rules adopted under the former Act, unless clearly inconsistent with the provisions of this Act, shall remain in effect until amended or rescinded.

All licenses heretofore legally issued in this State permitting the holder thereof to practice veterinary medicine and surgery and valid and in effect on the taking effect of this Act shall have the same force, and be subject to the same authority of the Department to revoke or suspend them as licenses issued under this Act.

[1] Paragraph 4901 et seq. (repealed) of this chapter.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

HEARING AID CONSUMER PROTECTION ACT

AN ACT to regulate the selling, practice of fitting, dispensing or servicing of hearing aids in the State of Illinois. P.A. 83-928, am. veto overridden Nov. 1, 1983, eff. July 1, 1984.

Repeal of Act

P.A. 81-959, the Regulatory Agency Sunset Act, eff. Sept. 22, 1979, which provides for the legislative review of programs and agencies which regulate professions, occupations, business, industry and trade in Illinois, as amended by P.A. 83-928, § 37, eff. July 1, 1984, provided in section 1.1 of the Act for repeal of "The 'Hearing Aid Consumer Protection Act', enacted by the 83rd General Assembly, as now or hereafter amended", effective Dec. 31, 1995. For complete text of the Regulatory Agency Sunset Act, see ¶ 1901 et seq. of chapter 127.

7401. Purpose

Paragraph effective July 1, 1984.

§ 1. The purpose of this Act is to protect the hearing-impaired public from incompetent and dishonest dispensers of hearing aids who could endanger the health, safety and welfare of the People of this State. The Federal Food and Drug Administration has recommended that State legislation is necessary in order to establish standards of competency and to impose stringent penalties for those who violate the public trust in this field of health care.

For repeal of Act, see note preceding this paragraph.

7402. Short title

Paragraph effective July 1, 1984.

§ 2. This Act shall be known as the Hearing Aid Consumer Protection Act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7403. Definitions

Paragraph effective July 1, 1984.

§ 3. As used in this Act, except as the context requires otherwise:

(a) "Department" means the Department of Public Health.

(b) "Director" means the Director of the Department of Public Health.

(c) "Certification" means a certificate issued by the State under this Act to a hearing aid dispenser.

(d) "Temporary certificate" means a certificate issued while the applicant is in training or is qualifying to become a certified hearing aid dispenser.

(e) "Clinical Audiologist" means a person with a Masters Degree in Audiology who holds a certificate of clinical competence in Audiology from the American Speech and Hearing Association or its equivalent.

(f) "Hearing Aid Audiologist" means a person who has been so certified after qualification by examination and experience by the National Board of Certification of the National Hearing Aid Society.

(g) "Licensed Physician" means a physician licensed to practice medicine in all of its branches.

(h) "Board" means the Hearing Aid Consumer Protection Board.

(i) "Hearing aid" means any instrument or device designed, intended or offered for the purpose of effectively compensating for impaired human hearing and any parts, attachments or accessories, including earmold. However, batteries, cords and individual or group auditory training devices and any instrument or device used by a public utility in providing telephone or other communication services are excluded.

(j) "Practice of fitting, dispensing and servicing of hearing aids" means the selection, adaptation, sale and service of hearing aids and include the testing of hearing by means of an audiometer properly calibrated to American National Standard Institute standards.

(k) "Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7404. Consumer information—Medical evaluation—Waiver—Complaint procedure—Liability insurance

Paragraph effective July 1, 1984.

§ 4. Every person fitted and sold a hearing aid shall be given, at no charge, the "User Instructional Brochure", supplied by all hearing aid manufacturers, containing advice to the user regarding requirements for evaluation by licensed physicians, specific waivers to the medical evaluation requirements, hearing aid manufacturer evaluations, purchase privileges and technical data.

Any person who fits, dispenses, services or sells hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the seller's signature, number, the manufacturer's specifications, the name, model and serial number of the hearing aid furnished and the full sales terms clearly stated. If a used hearing aid is sold, the receipt and the container thereof shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

A hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician which states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the 6 months immediately preceding the time the written statement is presented by the prospective hearing aid user to the hearing aid dispenser. If the prospective hearing aid user is 18 years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement of this Section, provided that the hearing aid dispenser:

(i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and

(iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by _____ (Hearing aid dispenser's name) that the Food and Drug Administration has determined that my best interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

The hearing aid dispenser shall retain such proof of medical examination or waiver for at least 4 years.

If the parent or guardian of any individual under the age of 18 years is a member of any church or religious denomination, whose tenets and practices include reliance upon spiritual means through prayer alone and objects to medical treatment and so states in writing to the hearing aid dispenser, such individual shall undergo a hearing examination as provided by this Section, but no proof, ruling out any medically treatable problem causing hearing loss, shall be required.

All persons certified under this Act shall have conspicuously displayed in their business establishment a sign indicating that formal complaints regarding hearing aid goods or services may be made to the Department. Such sign shall give the address of the Department. All persons purchasing hearing aids shall be provided with a written statement indicating that formal complaints regarding hearing aid goods or services may be made to the Department and shall give the address of the Department.

Any person wishing to make a complaint, against a hearing aid dispenser under this Act, shall file it with the Department within 3 years from the date of the action upon which the complaint is based. The Department shall investigate all such complaints.

All persons certified under this Act shall maintain liability insurance as set forth by rule and shall be responsible for the annual calibration of all audiometers in use by such persons. Such annual calibrations shall be in conformance with the standards set by American National Standard Institute.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7405. Certified hearing aid dispensers

Paragraph effective July 1, 1984.

§ 5. No person shall engage in the selling, practice of fitting, dispensing or servicing hearing aids or display a sign, advertise or represent oneself as a person who practices the fitting and selling of hearing aids after January 1, 1985, unless such person holds a current certificate issued by the Department as provided in this Act. For purposes of this Act, such person shall be known as a certified hearing aid dispenser. The certificate shall be conspicuously displayed in the place of business. Duplicate certificates shall be issued by the Department to valid certificate holders operating more than one office, with such additional payment as may be required.

Nothing in this Act shall prohibit a corporation, partnership, trust, association or other organization maintaining an established business address, from engaging in the business of fitting and selling or offering for sale hearing aids at retail without a certificate, provided it employs only certified individuals in the direct fitting and dispensing of such products. Each such corporations, partnerships, trusts, associations or other organizations shall file annually, with the Department, a list of all certified hearing aid dispensers employed by it. Such organizations shall also file with the Department a statement that they comply with this Act, the rules issued pursuant to it and the regulations of the Federal Food and Drug Administration

and the Federal Trade Commission insofar as they are applicable.

For repeal of Act, see note preceding ¶ 7101 of this chapter.

7406. Sale of hearing aids by business organizations—Registration—Disclosure statement—Consent to service of process—Right of cancellation by consumer of mail order—Other requirements

Paragraph effective July 1, 1984.

§ 6. Nothing in this Act shall prohibit a corporation, partnership, trust, association or other organization maintaining an established business address, from engaging in the business of selling or offering for sale hearing aids at retail by mail to persons 18 years of age or older who have not been examined by a licensed physician or tested by a certified hearing aid dispenser provided that:

(a) Each such organization is registered by the Department prior to engaging in business in this State.

(b) Each such organization files with the Department, prior to registration and annually thereafter, a Disclosure Statement containing the following:

(1) the name under which the organization is doing or intends to do business and the name of any affiliated company which the organization recommends or will recommend to persons as a supplier of goods or services or in connection with other business transactions of the organization;

(2) the organization's principal business address and the name and address of its agent in this State authorized to receive process;

(3) the business form of the organization, whether corporate, partnership, or otherwise and the state of other sovereign power under which the organization is organized;

(4) the names of the directors or persons performing similar functions and names and addresses of the chief executive officer, and the financial, accounting, sales, and other principal executive officers, if the organization is a corporation, association, or other similar entity; of all general partners, if the organization is a partnership; and of the owner, if the organization is a sole proprietorship, together with a statement of the business background during the past 5 years for each such person;

(5) a statement as to whether the organization or any person identified in the disclosure statement:

(i) has during the 5 year period immediately preceding the date of the disclosure statement been convicted of a felony, pleaded nolo contendere to a felony charge, or been held liable in a civil action by final judgment, if such felony or civil action involved fraud, embezzlement, or misappropriation of property, and a description thereof; or

(ii) is subject to any currently effective injunctive or restrictive order as a result of a proceeding or pending action brought by any public agency or department, and a description thereof; or

(iii) is a defendant in any pending criminal or material civil action relating to fraud, embezzlement, misappropriation of property or violations of the antitrust or trade regulation laws of the United States or any state, and a description thereof; or

(iv) has during the 5 year period immediately preceding the date of the disclosure statement had entered against such person or organization a final judgment in any material civil proceeding, and a description thereof; or

(v) has during the 5 year period immediately preceding the date of the disclosure statement been adjudicated a bankrupt or reorganized due to insolvency or was a principal executive officer or general partner of any company that has been adjudicated a bankrupt or reorganized due to insolvency during such 5 year period, and a description thereof;

(6) the length of time the organization and any predecessor of the organization has conducted a business dealing with hearing aid goods or services;

(7) a financial statement of the organization audited by an independent certified public accountant, as of the close of the most recent fiscal year of the organization. If the financial statement is filed later than 120 days following the close of the fiscal year of the organization it must be accompanied by a statement of the organization of any material changes in the financial condition of the organization. The Department may in its discretion waive the requirement for audited statements for organizations who have not previously had such certified audits, if the unaudited financial statement is prepared by an independent certified public accountant. If the unaudited financial statement is filed later than 120 days following the close of the fiscal year of the organization, it must be accompanied by a statement of the organization of any material changes in the financial condition of the organization;

(8) a general description of the business, including without limitation a description of the goods, training programs, supervision, advertising, promotion and other services provided by the organization;

(9) a statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (i) the use of the public figure in the name or symbol of the organization or (ii) the endorsement or recommendation of the organization by the public figure in advertisements;

(10) a statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the organization may desire to present.

(c) Each such organization files with the Department prior to registration and annually thereafter a statement that they comply with the Act, the rules issued pursuant to it and the regulations of the Federal Food and Drug Administration and the Federal Trade Commission insofar as they are applicable.

(d) Each such organization files with the Department at the time of registration an irrevocable consent to service of process authorizing the Department and any of its successors to be served any notice, process or pleading in any action or proceeding against such organization arising out of or in connection with any violation of this Act. Such service shall have the effect of conferring personal jurisdiction over such organization in any court of competent jurisdiction.

(e) Each such organization affords the prospective user an opportunity to waive the medical evaluation requirement of Section 4 of this Act [1] and the testing requirement of subsection (j) of Section 3 [2] and subsection (z) of Section 18 [3] provided that the organization:

(1) informs the prospective user that the exercise of the waiver is not in the user's best health interest;

2) does not in any way actively encourage the prospective user to waive such a medical evaluation or test; and

3) affords the prospective user the opportunity to sign a following statement:

"I have been advised by ____ (Hearing Aid dispenser's name) that the Food and Drug Administration and the State of Illinois have determined that my best interests would be served if I had a medical evaluation by a licensed physician, preferably a physician who specialized in diseases of the ear, before purchasing a hearing aid; or a test by a certified hearing aid dispenser utilizing established procedures and instrumentation in the fitting of hearing aids. I do not wish either a medical evaluation or test before purchasing a hearing aid".

(c) Where a sale, lease, or rental of hearing aids is sold or contracted to be sold to a consumer by mail order, that consumer may avoid the contract or sale by notifying the seller within 45 full business days following that day on which the hearing aids were mailed by the seller to the consumer and by returning to the seller in its original condition, any hearing aid delivered to the consumer under the contract or sale. At the time the hearing aid is mailed the seller shall furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale containing a "Notice of Cancellation" informing the consumer that he may cancel the sale at any time within such 45 days and which shows the date of the mailing and contains the name, address and telephone number of the seller, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the 45th business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right".

Attached to the receipt or contract shall be a completed form in duplicate, captioned "NOTICE OF CANCELLATION" which shall be easily detachable and which shall contain in 10 point bold face type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

enter date of transaction

(DATE)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN 45 BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE, OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of seller), AT (address of seller's place of business) AND (seller's telephone number) NO LATER THAN MIDNIGHT OF ____ (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date) _____

_____

(Buyers Signature)

Such written "Notice of Cancellation" may be sent by the consumer to the seller to cancel the contract. The 45 day period provided for in this Section does not commence until the consumer is furnished the Notice of Cancellation, the address and phone number at which such notice to the seller can be given is furnished.

If the conditions of this Section are met, the seller must return to the consumer the full amount of any payment made or consideration given under the contract or for the merchandise.

It is an unlawful practice within the meaning of this Act for a seller to: (1) mail hearing aids to a consumer other than by certified mail; (2) fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the seller's telephone number, the date of the mailing, and the date, not earlier than the 45th business day following the date of the mailing, by which the consumer may give notice of cancellation; (3) include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under this Section including specifically his right to cancel the sale in accordance with the provisions of this Section; (4) misrepresent in any manner the consumer's right to cancel; (5) use any undue influence, coercion, or any other wilful act or representation to interfere with the consumer's exercise of his rights under this Section; (6) fail or refuse to honor any valid notice of cancellation by a consumer and within 10 business days after the receipt of such notice, to (i) Refund all payments made under the contract or sale, (ii) return any goods or property traded in, in substantially as good condition as when received by the person, (iii) cancel and return any negotiable instrument executed by the consumer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction; (7) negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the 50th business day following the day of the mailing; or (8) fail, within 10 business days of receipt of the consumer's notice of cancellation, to notify him wherein

er the seller intends to repossess or to abandon any stopped or delivered goods.

(g) Each such organization employs only certified individuals in the dispensing of hearing aids and files annually, with the Department, a list of all certified hearing aid dispensers employed by it.

[1] Paragraph 7404 of this chapter.

[2] Paragraph 7403 of this chapter.

[3] Paragraph 7418 of this chapter.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7407. Exemptions

Paragraph effective July 1, 1984.

§ 7. The following are exempt from this Act:

(a) Persons who measure human hearing and who fit hearing aids for the sole purpose of audiological evaluations. Such persons shall not sell or dispense hearing aids or accessories thereto unless certified under this Act.

(b) Licensed physicians.

(c) Persons who only repair or manufacture hearing aids and their accessories.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7408. Examination of hearing aid dispensers—Requirements of applicants

Paragraph effective July 1, 1984.

§ 8. In order to protect the hearing-impaired individual, the Department shall authorize or shall conduct an appropriate examination for persons who dispense, fit or service hearing aids. The Department may use the test prepared by the National Institute for Hearing Instruments Studies. Those who successfully pass such an examination shall be issued a certificate as a hearing aid dispenser which shall be effective for a 3-year period. Applicants shall be:

(1) At least 18 years of age;

(2) Of good moral character;

(3) A high school graduate or the equivalent;

(4) Free of contagious or infectious disease; and

(5) A citizen or person who has the status as a legal alien.

An applicant for certification by examination shall, by means of written and practical tests, demonstrate that such person is qualified to practice the fitting, selling and servicing of hearing aids.

The renewal of a certificate shall be contingent upon compliance with the continuing education requirement as determined by the Board.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7409. Matters included in examination

Paragraph effective July 1, 1984.

§ 9. The examination required by Section 8 [1] shall demonstrate the applicant's technical qualifications by:

(a) Tests of knowledge in the following areas as they pertain to the fitting and selling of hearing aids:

(1) Characteristics of sound;

(2) The nature of the ear; and

(3) The function and maintenance of hearing aids.

(b) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(1) Pure tone audiometry including air conduction testing and bone conduction testing;

(2) Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing;

(3) Masking;

(4) Proper selection and adaptation of a hearing aid in relation to the above procedure;

(5) Taking earmold impressions;

(6) Proper maintenance procedures; and

(7) A general knowledge of the medical and physical contra-indications to the use and fitting of a hearing aid.

(c) Knowledge of the general medical and hearing rehabilitation facilities in the area being served.

[1] Paragraph 7408 of this chapter.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7410. Provisional certificates

Paragraph effective July 1, 1984.

§ 10. For the period of 6 months immediately following the effective date of this Act, an applicant for certification shall be issued a certificate, provided the applicant:

(a) Has been engaged, at a place of business in Illinois, as a hearing aid dispenser for a total of at least 2 years within the 5-year period immediately prior to July 1, 1984;

(b) Is a person of good moral character;

(c) Is 18 years of age or older;

(d) Is free of contagious or infectious disease;

(e) Agrees, in writing, to comply with the provisions of this Act, the rules issued hereunder and the applicable regulations of the Federal Food and Drug Administration and the Federal Trade Commission;

(f) Pays the appropriate fee; and

(g) Is a citizen or has the status of a legal alien.

However, within 3 years of the effective date of this Act, all persons granted a certificate under this Section shall be required to pass the examination required by Section 8.[1] Those who do not pass the examination within this period shall immediately surrender their certificate to the Department and cease operating as a hearing aid dispenser. Upon failure to do so, the Department shall seize the certificate.

[1] Paragraph 7408 of this chapter.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7411. Temporary certificates

Paragraph effective July 1, 1984.

§ 11. An applicant who fulfills the requirements regarding age, character, education and health, as set forth in Section 8,[1] may obtain a temporary certificate upon application to the Department. Previous experience or a waiting period shall not be a requirement to obtain a temporary or qualifying certificate. Upon receiving such application, when accompanied by the appropriate fee, the Department shall issue a temporary certificate which entitles the applicant to engage in the fitting, dispensing and

...ising of hearing aids for a period not to exceed one ...r. A temporary certificate shall not be renewable and ...e applicant must take the examination within a year ...ter receiving the temporary certificate. All applicants ...r a temporary certificate shall be employed by a person ...o has a certificate as a hearing aid dispenser. Such ...rson shall be responsible for the supervision and train... of the applicant and shall maintain personal contact ...nd records.

The Department may issue a temporary certificate to an ...pplicant starting a hearing aid dealership as sole owner, ...rincipal of a firm, or employee-manager for a corporation ...f the applicant's training is provided by a manufacturer ...r by a person who holds a valid certificate issued under this Act, and if the new dealer, not later than 5 days prior to the commencement of operation under a temporary certificate, obtains and files with the Department a surety bond in the sum of at least $5,000, which shall be conditioned on the satisfactory performance, pursuant to and in accordance with this Act and the rules hereunder, during the period covered by the temporary certificate.

[1] Paragraph 7408 of this chapter.

For repeal of Act, see note preceding § 7401 of this chapter.

7412. Registration of person licensed or certified in another state

Paragraph effective July 1, 1984.

§ 12. The Department may register as a hearing aid dispenser without examination, but upon payment of the required fee, an applicant who has a certificate or license in good standing to practice in another state, if the requirements in such state are substantially equal to the requirements imposed by this Act. Applicants who meet such endorsement requirements may practice in this State pending action on their application. If the application is denied, their right to practice ceases on the date of denial.

For repeal of Act, see note preceding § 7401 of this chapter.

7413. Expiration and renewal of certificates

Paragraph effective July 1, 1984.

§ 13. The expiration date and renewal period for each certificate issued under this Act shall be set by rule. A hearing aid dispenser whose certificate has expired may have it reinstated within 3 years after the expiration thereof, by making a renewal application therefor and by paying the required fee. However, any hearing aid dispenser whose certificate expired while: (1) on active duty with the Armed Forces of the United States, or the State Militia called into service or training, or (2) in training or education under the supervision of the United States preliminary to induction into the military service, may have the certificate renewed, reinstated or restored without paying any lapsed renewal fees if, within 2 years after honorable termination of such service, training or education, except under conditions other than honorable, such person must furnish the Department with satisfactory evidence of being so engaged and that the service, training or education has been terminated.

If the hearing aid dispenser has not practiced for 5 years or more, the Board shall determine, by an evaluation program established by rule, such person's fitness to resume active status and may require the hearing aid dispenser to complete a period of evaluated experience and may require successful completion of the examination.

Any hearing aid dispenser whose certificate has expired for more than 5 years prior to July 1, 1984 may have it restored by making application, and filing acceptable proof, to the Department of his fitness to have such certificate restored, including sworn evidence certifying to active practice in another jurisdiction and by paying the required restoration fee.

For repeal of Act, see note preceding § 7401 of this chapter.

7414. Powers and duties of department

Paragraph effective July 1, 1984.

§ 14. The powers and duties of the Department are:

(a) To supervise issuance of certificates and to administer examinations to applicants. However, the Department may authorize a testing service to provide this function or it may use the test prepared by the National Institute for Hearing Instruments Studies.

(b) To certify persons who are qualified to engage in the fitting, selling and dispensing of hearing aids;

(c) To provide the equipment and facilities necessary for the examination;

(d) To issue and to renew certificates;

(e) To suspend or revoke certificates or to take such other disciplinary action as provided in this Act;

(f) To consider all recommendations of the Board and to inform it of all actions of the Department insofar as hearing aid dispensers are concerned, including any instances where the actions of the Department are contrary to the recommendations of the Board; and

(g) To promulgate rules necessary to implement this Act.

For repeal of Act, see note preceding § 7401 of this chapter.

7415. Fees—Disposition of fees

Paragraph effective July 1, 1984.

§ 15. (a) The following are fees to be charged and are not refundable:

(1) The fee for application for a certificate is $25.

(2) In addition to the application fee, applicants for any examination shall be required to pay, either to the Department or to the designated testing service, a fee covering the actual cost of the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application and fee for the examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the fee.

(3) The fee for the renewal of a certificate shall be $30 per year.

(4) The fee for the reinstatement of a certificate which has expired for not more than 5 years is $10, plus payment of all lapsed renewal fees.

(5) The fee for the restoration of a certificate which has expired for more than 5 years is $100.

(6) The fee for the issuance of a duplicate certificate, for the issuance of a replacement certificate which has been lost or destroyed or for the issuance of a certificate with a change of name or address, other than during the renewal

period, is $10. No fee is required for name and address changes on Department records when no duplicate certificate is issued.

(7) The fee for a certification of a registrant's record for any purpose is $10.

(8) The fee to have the scoring of an examination administered by the Department reviewed and verified is $10, plus any fee charged by the testing service.

(9) The fee for a wall certificate shall be the actual cost of such certificate.

(10) The fee for a roster of persons registered as hearing aid dispensers shall be the actual cost of such roster.

(b) The moneys received as license fees by the Department of Public Health under this Act shall be deposited in the Hearing Aid Dispenser Examining and Certification Fund, which is hereby created as a special fund in the State Treasury, and shall be used only for the administration of this Act, including: (1) costs directly related to certification of persons under this Act; and (2) by the Hearing Aid Consumer Protection Board in the exercise of its powers and performance of its duties, and such use shall be made by the Department of Public Health with full consideration of all recommendations of the Hearing Aid Consumer Protection Board.

For the fiscal year beginning July 1, 1984, the moneys deposited in the Hearing Aid Dispenser Examining and Certification Fund shall be appropriated to the Department for expenses of the Department and the Hearing Aid Consumer Protection Board in the administration of this Act.

Moneys in the Hearing Aid Dispenser Examining and Certification Fund may be invested and reinvested, with all earnings received from such investment to be deposited in the Hearing Aid Dispenser Examining and Certification Fund and used for the same purposes as fees deposited in such fund.

Upon the completion of any audit of the Department as prescribed by the Illinois State Auditing Act,[1] which audit includes an audit of the Hearing Aid Dispenser Examining and Certification Fund, the Department shall make a copy of the audit open to inspection by any interested person, which copy shall be submitted to the Department by the Auditor General, in addition to the copies of audit reports required to be submitted to other State officers and agencies by Section 3–14 of the Illinois State Auditing Act.[2]

[1] Chapter 15, ¶ 301–1 et seq.

[2] Chapter 15, ¶ 303–14.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7416. Hearing aid consumer protection board—Establishment—Members

Paragraph effective July 1, 1984.

§ 16. There shall be established a Hearing Aid Consumer Protection Board which shall assist, advise and make recommendations to the Department pursuant to this Act.

The Board shall consist of 5 members who shall be residents of Illinois. One shall be a licensed physician who specializes in otology or otolaryngology; one shall be a member of a consumer-oriented organization concerned with the hearing impaired; one shall be from the general public, preferably a senior citizen; and 2 shall be certified hearing aid dispensers. Each such certified hearing aid dispenser shall have at least 5 years of experience, excepting those appointed to the first Board. One of the certified hearing aid dispensers shall be a Certified Clinical Audiologist, the other shall be a Certified Hearing Aid Audiologist.

Members of the Board shall be appointed by the Director. The term of office of each shall be 4 years, except for those of the first Board, 2 shall be appointed for 2 year terms. Before a member's term expires, the Director shall appoint a successor to assume member's duties at the expiration of his predecessor's term. A vacancy shall be filled by appointment for the unexpired term. The members shall annually designate one member as chairman. No member of the Board who has served 2 or more successive and full terms may be reappointed. The Director may remove members for good cause.

Members of the Board shall receive reimbursement for actual and necessary travel and for other expenses, not to exceed the limit established by the Department.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7417. Duties of board

Paragraph effective July 1, 1984.

§ 17. The Board shall advise the Department in all matters relating to this Act and shall assist as requested by the Director.

The Board shall respond to issues and problems relating to the improvement of services to the hearing-impaired and shall make such recommendations as it considers advisable. It shall file an annual report with the Director and shall meet at least twice a year.

The Board shall recommend specialized education programs for persons wishing to become certified as hearing aid dispensers and shall, by rule, establish minimum standards of continuing education required for certificate renewal.

The Board shall hear charges brought against hearing aid dispensers and shall recommend disciplinary action to the Director.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7418. Disciplinary actions by department—Grounds

Paragraph effective July 1, 1984.

§ 18. The Department may refuse to issue or renew a certificate or it may revoke, suspend, place on probation, censure or reprimand a certificate holder for any of the following:

(a) Material misstatement in furnishing information to the Department;

(b) Violations of this Act, or the rules promulgated hereunder;

(c) Conviction of any crime under the laws of the United States or any state or territory thereof which is a felony or misdemeanor, an essential element of which is dishonesty, or of any crime which is directly related to the practice of the profession;

(d) Making any misrepresentation for the purpose of obtaining a certificate or renewing a certificate, including falsification of the continuing education requirement;

(e) Professional incompetence;

(f) Malpractice;

(g) Aiding or assisting another person in violating any provision of this Act or the rules promulgated hereunder;

(h) Failing, within 60 days, to provide information in response to a written request made by the Department;

(i) Engaging in dishonorable, unethical or unprofessional conduct which is likely to deceive, defraud or harm the public;

(j) Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any services covered by this Act;

(k) Habitual intoxication or addiction to the use of drugs;

(l) Discipline by another state, the District of Columbia, territory, or a foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth herein;

(m) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership or association any fee, commission, rebate or other form of compensation for any professional services not actually rendered;

(n) A finding by the Board that the registrant, after having his certificate placed on probationary status has violated the terms of probation;

(o) Willfully making or filing false records or reports;

(p) Willfully failing to report an instance of suspected child abuse or neglect as required by the "Abused and Neglected Child Reporting Act", approved June 26, 1975, as amended; [1]

(q) Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill which results in the inability to practice the profession with reasonable judgment, skill or safety;

(r) Solicitation of professional services other than by permitted advertising;

(s) Participating in subterfuge or misrepresentation in the fitting and servicing of a hearing aid;

(t) Advertising a particular model or type of hearing aid for sale, when prospective purchasers cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(u) Representing that the services of a licensed physician will be used or made available in the fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the words "doctor", "audiologist", "clinic", "Clinical Audiologist", "Certified Hearing Aid Audiologist", "State Certified", "Certified Hearing Aid Dispenser" or any other term, abbreviation or symbol when it would give the impression that service is being provided by persons awarded that degree or title, or that the person's service who is holding the certificate has been recommended by a governmental agency, when such is not the case;

(v) Advertising a manufacturer's product or using a manufacturer's name or trademark implying a relationship which does not exist;

(w) Directly or indirectly giving or offering anything of value to any person who advises another in a professional capacity, as an inducement to influence the purchase of a product sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(x) Conducting business while suffering from a contagious disease;

(y) Engaging in the fitting and sale of hearing aids under a name with fraudulent intent;

(z) Dispensing a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except where there is the replacement of a hearing aid, of the same make and model;

(aa) Unavailability or unwillingness to adequately provide for service and repair of hearing aids fitted and sold by the dispenser;

(bb) Violating the regulations of the Federal Food and Drug Administration or the Federal Trade Commission as they affect hearing aids;

(cc) Violating any provision of the "Consumer Fraud and Deceptive Business Practices Act", approved July 24, 1961, as amended.[2]

[1] Chapter 23, ¶ 2051 et seq.

[2] Chapter 121½, ¶ 261 et seq.

For repeal of Act, see note preceding ¶ 7101 of this chapter.

7419. Dispensing of hearing aids without certificate—Injunction—Costs

Paragraph effective July 1, 1984.

§ 19. The practice of fitting, dispensing and servicing hearing aids by any person not at that time holding a valid and current certificate under this Act is hereby declared to be inimical to the public welfare and constitutes a public nuisance. The Director of the Department, through the Attorney General or the State's Attorney of any county, may maintain an action in the name of the people of the State of Illinois and may apply for an injunction in the circuit court to enjoin any such person from engaging in such practice. Upon the filing of a verified petition in such court, the court, if satisfied by affidavit, or otherwise, that such person has been engaged in such practice without a current certificate to do so, may issue a temporary injunction without notice or bond, enjoining the defendant from any such further practice. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as other civil cases. If it is established that the defendant has been, or is engaged in any unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further such practice. In all proceedings hereunder, the court, in its discretion, may apportion the costs among the parties interested in the suit, including cost of filing complaint, service of process, witness fees and expenses, court reporter charges and reasonable attorneys fees. In case of violation of any injunction issued pursuant to this Section, the court may try and punish the offender for contempt of court. Such injunction proceedings shall be in addition to all penalties and other remedies in this Act.

For repeal of Act, see note preceding ¶ 7101 of this chapter.

7420. Inactive status

Paragraph effective July 1, 1984.

§ 20. Any hearing aid dispenser who notifies the Department, on the prescribed forms, may place such certificate on inactive status and shall be exempt from payment of renewal fees until such person notifies the Department

cate to the Department and if such person fails to do so, the Department shall seize such certificate.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7427. Restoration of certificate

Paragraph effective July 1, 1984.

§ 27. At any time after the suspension or revocation of any certificate, the Department may restore it to the accused person, upon the written recommendation of the Board.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7428. Payment of costs—Filing or receipt

Paragraph effective July 1, 1984.

§ 28. The Department shall not be required to certify any record to the Court or to file any answer in court or otherwise appear in any court in a judicial review proceeding, unless there is filed in the court, with the complaint, a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record, which costs shall be computed at the rate of 20 cents per page of such record. Failure on the part of the plaintiff to file such receipt in court shall be grounds for dismissal of the action.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7429. Certain orders as prima facie proof

Paragraph effective July 1, 1984.

§ 29. An order or a certified copy thereof, over the seal of the Department and purporting to be signed by the Director, shall be prima facie proof:

(a) That such signature is the signature of the Director;

(b) That the Director is duly appointed and qualified; and

(c) That the Board, and the members thereof, are qualified to act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7430. Determination of mental illness—Automatic suspension of certificate

Paragraph effective July 1, 1984.

§ 30. The determination by a circuit court that a certificate holder is subject to involuntary admission or judicial admission, as provided in the "Mental Health and Developmental Disabilities Code", approved September 5, 1978, as amended,[1] operates as an automatic suspension of the holder's certificate. Such suspension will end upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and the court issues an order so finding and discharging the patient and upon the recommendation of the Board to the Director that the registrant be allowed to resume his practice.

[1] Chapter 91½, ¶ 1-100 et seq.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7431. Applicability of Administrative Procedure Act—Review under Administrative Review Law

Paragraph effective July 1, 1984.

§ 31. The provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended,[1] shall apply to this Act. All final administrative decisions of the Department are subject to judicial review pursuant to the provisions of Article 3 of the "Code of Civil Procedure", approved August 19, 1981, as amended.[2] Any circuit court, upon the application of the certificate holder or the Department, may order the attendance of witnesses and the production of relevant records in any Departmental hearing relative to the application for or refusal, recall, suspension or revocation of a certificate.

[1] Chapter 127, ¶ 1001 et seq.

[2] Chapter 110, ¶ 3-101 et seq.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7432. Public policy

Paragraph effective July 1, 1984.

§ 32. It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the State is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7433. Violations of act—Unlawful practice under Consumer Fraud and Deceptive Business Practices Act

Paragraph effective July 1, 1984.

§ 33. The advertising, offering for sale, sale or distribution of hearing aid goods and services to consumers by any person in violation of any of the provisions of this Act is an unlawful practice pursuant to Section 2S of the "Consumer Fraud and Deceptive Business Practices Act", approved July 24, 1961, as amended.[1]

[1] Chapter 121½, ¶ 262a.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7434. Powers of attorney general—Award of actual damages

Paragraph effective July 1, 1984.

§ 34. All remedies, penalties and authority granted to the Attorney General by the "Consumer Fraud and Deceptive Practices Act", approved July 24, 1961, as now or hereafter amended,[1] shall be available to him for the enforcement of this Act, and Sections 3, 4, 5, 6, 6.1, 7 and 10 of that Act[2] are hereby incorporated by reference into this Act. In addition, in any action brought by the Attorney General to enforce this Act, the court may order that persons who incurred actual damages be awarded the amount at which actual damages are assessed.

[1] Chapter 121½, ¶ 261 et seq.

[2] Chapter 121½, ¶¶ 263 to 267 and 270.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

in writing, of his intention to resume the practice of fitting, dispensing and servicing hearing aids and pays the current renewal fee. However, if such period of inactive status is more than 5 years, the hearing aid dispenser shall also provide the Department with sworn evidence certifying to active practice in another jurisdiction that is satisfactory to the Department. If such person has not practiced in any jurisdiction for 5 years or more, he shall be required to restore his certificate as provided in this Act. Any hearing aid dispenser whose certificate has an inactive status shall not practice in Illinois.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7421. Investigation by department—Notice of charges—Hearing

Paragraph effective July 1, 1984.

§ 21. The Department may investigate the actions of any applicant or any person holding or claiming to hold a certificate. The Department shall, before refusing to issue a certificate or disciplining a registrant, notify, in writing, at least 10 days prior to the date set for the hearing, the applicant for, or holder of, a certificate. The notification shall set forth the charges and the date of the hearing. The hearing shall determine whether the applicant or holder is entitled to hold such certificate, and shall afford such person an opportunity to be heard in person or by counsel. Such written notice may be served by certified or registered mail to the respondent at his last known address. At the time and place fixed in the notice, the Board shall hear the charges and the parties shall be accorded opportunity to present such statements, testimony and evidence as may be pertinent to the charges or defenses. The Board may continue such hearing from time to time. Pursuant to rule, the Director may conduct informal hearings, and shall so inform the Board.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7422. Findings and recommendation of board

Paragraph effective July 1, 1984.

§ 22. At the conclusion of the hearing, the Board shall present to the Director a written report of its finding and recommendation as to whether or not the accused person violated this Act or failed to comply with the conditions required in this Act or any rule promulgated pursuant hereto. The Board shall specify the nature of the violation or failure to comply and shall make its recommendations to the Director.

The report of findings and recommendation of the Board shall be the basis for the Department's action with respect to certificates or the imposition of any disciplinary action. The findings are not admissible in evidence against the person in a criminal prosecution brought for the violation of this Act, but the hearing and findings are not a bar to a criminal prosecution brought for violating this Act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7423. Record of proceedings—Service upon respondent of copy of board's report—Motion for rehearing—Order

Paragraph effective July 1, 1984.

§ 23. The Department, at its expense, shall preserve a record of all proceedings at the formal hearing of any case involving the refusal to issue a certificate or to discipline a registrant. The notice of hearing, the complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Board and the orders of the Department shall be the record of such proceeding.

In any case involving the refusal to issue a certificate or to discipline a registrant, a copy of the Board's report shall be served upon the respondent by the Department, as provided in this Act for the service of the notice of hearing. Within 20 days after such service, the respondent may present to the Department a motion in writing for a rehearing, which motion shall specify the particular grounds therefor. If no motion for rehearing is filed, then upon the expiration of the time specified for filing such a motion, or if a motion for rehearing is denied, then upon such denial, the Director may enter an order in accordance with recommendations of the Board. If the respondent orders and pays for a transcript of the record within the time for filing a motion for rehearing, the 20-day period within which such a motion may be filed shall commence upon the delivery of the transcript to the respondent.

Whenever the Director is satisfied that substantial justice has not been done either in an examination or in the revocation, suspension or refusal to issue a certificate, the Director may order a re-examination or rehearing.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7424. Violations of act—Injunctions

Paragraph effective July 1, 1984.

§ 24. If any registrant violates any provision of this Act, the Director may, through the Attorney General, petition, for an order enjoining such violation or for an order enforcing compliance with this Act or any rule issued pursuant hereto. Upon the filing of a verified petition in such court, the court may issue a temporary injunction, without notice or bond, enjoining such continued violation, and if it is established that such person has violated or is violating the injunction, the Court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to all other remedies and penalties.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7425. Powers of circuit court

Paragraph effective July 1, 1984.

§ 25. Any circuit court may, upon application of the prosecutor or of the applicant or registrant against whom disciplinary proceedings are pending, enter an order requiring the attendance of witnesses and their testimony, and the production of documents, papers, files, books and records in connection with any hearing or investigation. The court may compel obedience to its order by proceedings for contempt.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7426. Surrender of certificate

Paragraph effective July 1, 1984.

§ 26. Upon the revocation or suspension of any certificate, the registrant shall forthwith surrender the certifi-

VICTOR ATIYEH
GOVERNOR

Department of Human Resources
HEALTH DIVISION
1400 S.W. 5th AVENUE, PORTLAND, OREGON 97201 PHONE 228-6479

Board of Examiners for Speech Pathology and Audiology

November 15, 1982

TO: Oregon Licensed Audiologists

FROM: Duane Anderson, Executive Secretary, Board of Examiners for Speech Pathology and Audiology

SUBJECT: Law concerning use of the term "Audiologist"

On July 1, 1983 the Board mailed the attached memos to all Oregon registered hearing aid dealers. During their October 15, 1983 meeting the Board requested that we mail copies of this material to all licensed audiologists in Oregon. The Board plans to pursue legal action against any person in Oregon who uses the term "Audiologist" in any context and is not licensed as an audiologist under ORS 681.

attachment

228-6479

July 1, 1983

TO: Oregon Registered Hearing Aid Dealers

FROM: Board of Examiners for Speech Pathology and Audiology

SUBJECT: Use of the Term "Audiologist" and Related Words

During the last few years the Board of Examiners for Speech Pathology and Audiology has made numerous attempts to discourage hearing aid dealers from using the term "audiologist" and related terms in their telephone directory and newspaper advertising. In addition, several hearing aid dealers are displaying their NHAS certificate which identifies them as a "Certified Hearing Aid Audiologist".

Recently we requested an advisory statement on this matter from the Consumer Protection Section of the Department of Justice. The attached memo from their office should resolve any misunderstandings which may currently exist. If you have any questions, please feel free to contact our office or the Consumer Protection Section of the Department of Justice.

attachment

STATE OF OREGON INTEROFFICE MEMO

TO: Board of Examiners for Speech Pathology and Audiology DATE: June 15, 1983

FROM: Daryl Dodson Wilson
Assistant Attorney General

SUBJECT: Hearing Aid Dealer's Use of the Term "Audiology" and Related Words

A review of ORS Chapter 681 and ORS Chapter 694 shows that a hearing aid dealer who falsely represents that the services of an audiologist are available, or who claims to be giving "audiological testing" when no licensed audiologist is performing the test, may be in violation of several statutes. The penalties may be cumulative.

1. Hearing aid dealers are generally governed by ORS Chapter 694.

ORS 694.015(5) anticipates that hearing aid dealers will be conducting some hearing tests in conjunction with the provision of hearing aids. These tests include evaluation or measurement of the powers or range of human hearing. In offering these tests, a dealer may not advertise that the services of either an "audiologist" or "clinical audiologist" is available for selection, fitting, adjustment, maintenance or repair of hearing aids, when no properly licensed audiologist is performing the serivce. A dealer may have his or her license suspended or revoked or may be put on probation for these false representations. ORS 694.136(8).

A problem may arise when a dealer offers "audiological" testing without having a licensed audiologist performing the test. Even though "audiological" and related terms may have trade or common meaning, these words should only be used in advertisements in Oregon in accordance with the definition in ORS 681.205 (see 2. below). It would seem that the Oregon statutory scheme anticipates that only licensed audiologists may conduct "audiological" tests.

ORS Chapter 694 also provides criminal sanctions for some misrepresentations. A false claim that an audiologist's services will be used, are used, or made available may be punishable by up to a $500 fine and up to 90 days of imprisonment. ORS 694.911(1).

A hearing aid dealer should also be concerned that no false, misleading or deceptive name is used in his or her business. ORS 694.136(11). A dealer would also violate the

statutes by making a false, misleading or deceptive representation regarding any guarantee or services provided. ORS 694.136(2).

2. ORS Chapter 681 dealing with audiologists and speech pathologists may also be of concern to hearing aid dealers.

Both hearing aid dealers and audiologists measure the powers or range of human hearing. See ORS 694.015(5) and ORS 681.205(4). However, the focus and extent of the testing and evaluation are quite different. ORS Chapter 681 provides that only a licensed audiologist may represent that he or she is engaged in the practice of audiology.

Although many of the terms used in these statutes may have meanings in the hearing aid trade, the statutory definition takes precedence in Oregon. Thus, the terms "audiology" and "practice of audiology" carry a particular meaning, whether used by audiologists or by hearing aid dealers. See ORS 681.205(1) and (4). Any person holding him or herself out as a "hearing clinician", "hearing therapist" or "audiologist" or a similar title or description of service must be a licensed audiologist. ORS 681.250(2). Similar titles or descriptions of service might include "audiological testing" and "audiological service". Remember, the common meaning of these words must give way when the statute provides a definition.

It is a misdemeanor to falsely use any of these titles or descriptions of service. ORS 681.991. The District Attorney's office would prosecute the case. Class A misdemeanor carries a penalty of a maximum $2,500 fine and a maximum one year in prison. See ORS 161.555(3) and ORS 161.615 and 161.635.

3. The Oregon Unlawful Trade Practices Act (UTPA) ORS 646.605 to 646.638 governs some activities of hearing aid dealers.

A variety of unconscionable tactics and unlawful trade practices are prescribed by the UTPA. A hearing aid dealer might be in conflict with the Unlawful Trade Practices Act if he or she said that "audiological testing services" were available when no licensed audiologist actually performed the services. The unlawful business practice in that case might include causing a likelihood of confusion or misunderstanding as to the affiliation, connection or association with another; or representing that services have quantities or qualities that they do not have or that a person has a status or qualification or connection that he does not have. See ORS 646.608(1)(c) and (e).

A hearing aid dealer who said that audiological testing was performed, when no licensed audiologist performed those tests, might be found in violation of the Unlawful Trade Practices Act for that false advertising, as well as being in violation of ORS Chapter 681 and ORS Chapter 694. The penalties for violation of the Unlawful Trade Practices Act include injunction, restitution for actual damages, possible punitive damages, attorneys fees and other relief granted by the court. The statute provides for suit by the Attorney General, the District Attorney or by a private citizen. This is the area of concern to the Consumer Protection Division (Financial Fraud Unit) of the Department of Justice.

4. Other regulations are also pertinent to hearing aid dealers.

Oregon common law and statutes provide other remedies for a person who has been defrauded. Separate statutes cover home solicitations. See ORS 646.611 and 83.720. A dealer might want to take extra steps to check compliance with these laws before sales are made.

kp

You can call the Illinois Department of Public Health toll-free

1-800-572-3270
(TDD OR VOICE AVAILABLE)

Division of Health Promotion and Screening
Illinois Department of Public Health
535 West Jefferson
Springfield, Illinois 62761

Printed by Authority of the State of Illinois
6/85



IF...

YOU PURCHASE WISELY

A consumer protection service provided through the Hearing Aid Consumer Protection Program

Illinois Department of Public Health

Remember these important facts:

1. **MEDICAL CLEARANCE** from a licensed physician should be obtained before buying a hearing aid. This identifies medically treatable conditions which affect your hearing.
2. Obtain a **HEARING EVALUATION** from a certified dispenser or clinical audiologist before purchasing a hearing aid.
3. Be sure the hearing aid dispenser is **CERTIFIED** by the Illinois Department of Public Health.
4. Ask if a **TRIAL PERIOD OR RETURN PRIVILEGE** is offered. If so, make sure that this and the cost of this trial period are stated in the contract.
5. Ask if the hearing aid has a **MANUFACTURER'S WARRANTY** and/or **SERVICE CONTRACT.** Find out what services each provide, what costs are involved and the time period they cover.
6. Illinois Law requires a dispenser who sells hearing aids door-to-door or in a customer's home to give a **NOTICE OF CANCELLATION** to the buyer. The Notice explains the legal right of the buyer to cancel the purchase within three days of the sale.
7. Make sure that the **DELIVERY DATE** of the hearing aid is written in the contract.
8. If possible, do not pay the full price of the hearing aid in advance. Make a **DEPOSIT** and pay the balance when the hearing aid is delivered.
9. If the hearing aid is uncomfortable, causing problems or not working properly, **CONTACT YOUR DISPENSER** immediately.
10. Ask about the dispenser's **REPAIR POLICY.** Can repairs be done at the office or must hearing aids be mailed to the manufacturer? How long will these repairs take and are "loaner" aids available?
11. Keep all information received as **RECORD OF PURCHASE,** such as receipts, warranties, etc., for future reference.
12. You may want to **BRING A FRIEND** along to assist you when you purchase a hearing aid.
13. A hearing aid is an important investment. Don't be afraid to **ASK QUESTIONS** or seek a second opinion.

There is a law to protect Illinois consumers from dishonest and incompetent hearing aid dispensing practices. The **ILLINOIS HEARING AID CONSUMER PROTECTION ACT,** administered by the Illinois Department of Public Health, requires that:

1. All dispensers must be **CERTIFIED** to dispense hearing aids, and
2. Should a consumer have an **INQUIRY** or **COMPLAINT** regarding a hearing aid and/or dispenser, the **ILLINOIS DEPARTMENT OF PUBLIC HEALTH** will investigate and offer assistance.

"The Logo "A Hearing Aid Can Be a Good Sound Investment" by service mark is the property of the Illinois Department of Public Health



Illinois Hearing Aid Consumer Protection

A consumer protection service provided through the Illinois Department of Public Health (IDPH)

CALL TOLL FREE 1-800-572-3270

IF YOU HAVE ANY QUESTIONS ABOUT THE HEARING AID CONSUMER PROTECTION ACT, OR WOULD LIKE A COPY OF THIS ACT, PLEASE CONTACT THE VISION/HEARING CONSULTANT AT ONE OF THE OFFICES LISTED BELOW.

Region 1
Illinois Department of Public Health
4302 N. Main Street
Rockford, Illinois 61105
815/987-7511

Region 2
Illinois Department of Public Health
5415 University
Peoria, Illinois 61614
309/691-2200, ext. 312

Region 3
Illinois Department of Public Health
4500 South Sixth Street Road
Springfield, Illinois 62706
217/786-6345

Region 4
Illinois Department of Public Health
Cottonwood Road
Edwardsville, Illinois 62025
618/288-5756

Region 5
Illinois Department of Public Health
2209 Main Street
Marion, Illinois 62959
618/997-4371

Region 6
Illinois Department of Public Health
2125 South First Street
Champaign, Illinois 61820
217/333-6914

Region 7
Illinois Department of Public Health
245 West Roosevelt Road
Bldg. 5
West Chicago, Illinois 60185
312/293-6842

Region 8
Illinois Department of Public Health
160 N. LaSalle, Room 1112
Chicago, Illinois 60601
312/793-3880

ILLINOIS DEPARTMENT OF PUBLIC HEALTH
DIVISION OF HEALTH PROMOTION AND SCREENING
535 WEST JEFFERSON STREET
SPRINGFIELD, ILLINOIS 62761

Printed by Authority of the
State of Illinois
5/84

A SYNOPSIS OF THE HEARING AID CONSUMER PROTECTION ACT

PUBLIC ACT 83-0928

EFFECTIVE JULY 1, 1984

For more information call
1-800-572-3270
(Voice or TDD)

Illinois Department of Public Health
Division of Health Promotion and Screening
Hearing Aid Consumer Program

HEARING AID CONSUMER PROTECTION ACT

The Illinois "Hearing Aid Consumer Protection Act" was enacted into law by the 83rd General Assembly. The purpose of the Act is to protect the hearing impaired public from incompetent and dishonest dispensers of hearing aids who could endanger the health, safety and welfare of the people of this State.

ILLINOIS DEPARTMENT OF PUBLIC HEALTH

The Illinois Department of Public Health is mandated to supervise the issuance of certificates to hearing aid dispensers, administer examinations to applicants for the hearing aid dispenser certificate, suspend or revoke certificates or take such other disciplinary action, if the provisions of the Act are violated, and to promulgate rules necessary to implement this Act, which becomes effective July 1, 1984.

Under the direction of the Division of Health Promotion and Screening, Vision and Hearing Section, the Department will initiate a four point action plan to implement Public Act 83-0928:

1. Health Promotion - Consumer Education
2. Continuing Education for Dispenser of Hearing Aids
3. Certification of Dispensers of Hearing Aids
4. Follow-up and Investigation of Complaints

WHAT THE CONSUMER SHOULD KNOW ABOUT THE HEARING AID CONSUMER PROTECTION ACT

1. No person shall engage in the selling, practice of fitting, dispensing or servicing hearing aids, or display signs, advertise, or represent oneself as a person who practices the fitting and selling of hearing aids after January 1, 1985, unless such holds a current certificate issued by the Department as provided in this Act.

2. The certificate shall be conspicuously displayed in the place of business. A sign must be conspicuously displayed in the dispenser's business and a written statement must be given to each hearing aid purchaser indicating that complaints regarding hearing aids may be made to the Illinois Department of Public Health.

3. Every person fitted and sold a hearing aid shall be given, at no charge, the "User Instructional Brochure" supplied by the manufacturer.

4. The dispenser shall provide a receipt to each hearing aid purchaser with the seller's signature, phone number, the manufacturer's specifications, the make, model and serial number of the hearing aid furnished, the dispenser's certification number, and the full sales term clearly stated. The receipt and container for a used hearing aid shall be clearly marked as such.

5. A hearing aid dispenser shall not sell a hearing aid unless the prospective user presents to the dispenser a written statement signed by a licensed physician which states that the patient's hearing loss has been medically evaluated.

   The medical waiver requirement may only be waived by the patient when the patient is 18 years or older. The dispenser must inform the user that the exercise of the waiver is not in the user's best health interest; and the dispenser cannot in any way encourage the buyer to waive medical evaluation.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

479

RECEIVED
JAN 6 1986

January 3, 1986

Senator Bill Ray
Representative Duncan
Representative Miller
P.O. Box V
State Capitol
Juneau, Alaska 99811

Re: State of Alaska
Alternative energy Loans

Dear Senator and Representatives:

We are soon providing an alternative to wood burning stoves in the Juneau area and I understand that this is presently available in Anchorage.

Our product is a pelletized wood and other fuel which burns in specially constructed stoves and burns smoke free.

I am enclosing a couple of articles for your further information.

To meet new ordinances in Juneau, many people will have to replace their wood burning stoves.

I understand that under present law, Alternative Energy Loans are available for catalytic equipped wood stoves, or catalytic converters.

Therefore it would be appreciated if the present law could be amended to authorize loans for biomass pellet fuel burning stoves or furnaces.

Steve Gilbertson, Juneau's Air Quality Control Officer, advised me that he and D.E.C. officials are in favor of this amendment.

I believe the law in question is included in A.S.45.88.010:500.

If you would like further information regarding this, I will be happy to discuss what I have with you.

Thanking you in advance for your consideration.

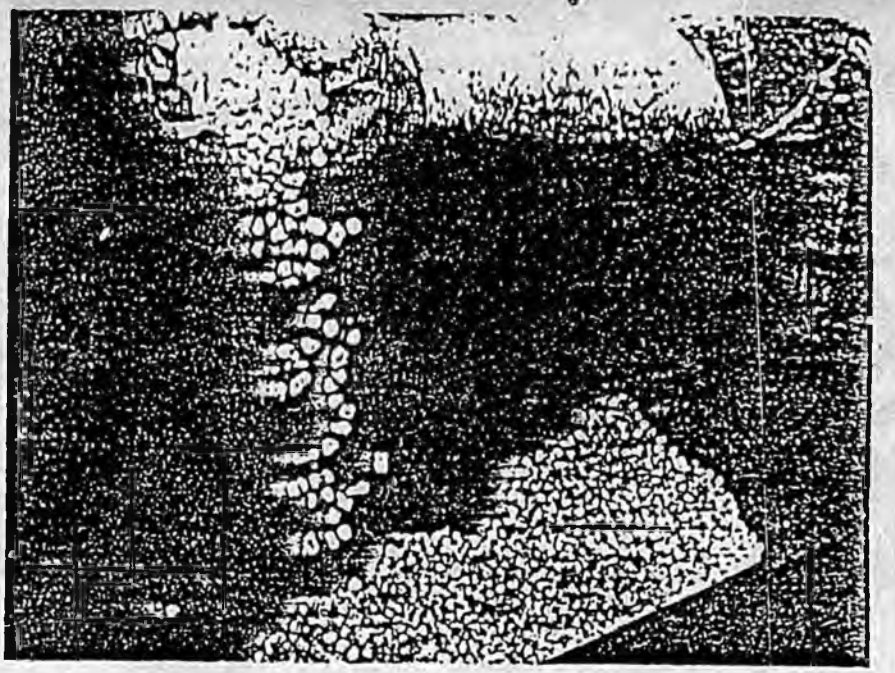
Very truly yours,

Larry Traeger

Larry Traeger
546 Hemlock
Juneau, Alaska 99801

Phone: 586 3250

BACK UP INFORMATION



Heating homes with pellets

Mount Angel manufacturer designs and sells innovative, affordable furnaces

By DALE STOWELL
Of the Independent

MOUNT ANGEL — Randy Traeger shrugs as he considers the complexity of his pelletized wood burning furnace designs.

"To me, it don't look like nothing super," he says. "Once you've horsed around with it for 15 years, it doesn't seem like that much."

But he seems to know he's on to something as he cites statistics that indicate his wood furnaces burn cleaner than do natural gas or oil furnaces for as little as half the cost for fuel.

Traeger, owner and president of Traeger Industries, has been designing woodstoves and furnaces for more than 20 years and is optimistic that his latest design will catch on.

The fuel source is the most novel aspect of the new furnaces, which have been on the market since fall. Biomass pellets, produced from waste products such as pine shavings or rye stubble, are what the newly designed heating devices consume.

One ton of pellets, which costs about $100, produces as much heat as two cords of wood but leaves substantially less waste. About .6 of one percent of the pellets remain as ash — approximately two gallons of ash per ton of fuel.

During cold weather, the average home requires about one 50 pound bag per day, Traeger estimated. Average yearly consumption would be in the neighborhood of four tons, he added.

Traeger's thermostatically-controlled stove and furnace designs also attempt to transfer all of the heat produced in the units to the space in the home to be heated.

And Traeger points out another advantage to the pellet-burning systems. "They burn clean. There isn't any smoke. You can stick your nose right in the (smoke)stack."

The major drawback is availability of fuel. Traeger has several hundred tons of it stockpiled to meet the needs of customers who have purchased pellet-burning equipment. It isn't readily available anywhere else in the area.

The fuel, which resembles rabbit food pellets, has existed for several decades, Traeger said. But companies producing it have come and gone due to a lack of demand.



Randy Traeger (above) has designed and is marketing heating systems which burn pine pellets (top photo). Traeger says the new heating units burn cleaner than gas or oil at nearly half the cost for fuel. (Photos by Dale Stowell)

"There's been several plants that have been around and gone broke," he said. "There's the concept of making pelletized fuel. That's fine. But you've got to have something to burn it in. Most of them are looking at commercial applications, but a commerical application can dry up on you very quickly — just a little change in price and they'll switch from one (fuel) to the other."

Before Traeger's design, availability of fuel wasn't the only problem in home-heating pellet applications. In earlier designs, the pellets didn't burn completely, and the furnace fire would sometimes burn back into the fuel hopper.

Traeger cured the problems without knowing what caused them in other furnaces. "I really didn't look at anybody's design," he said. "I never paid any attention to them. There's no use in reinventing the wheel over again. It was a matter of taking it apart and putting it together again, taking it apart and putting it together again."

After Traeger put it together again and it worked to his satisfaction, he began developing different home heating uses. His designs range from an indoor furnace that produces nothing but home heat, to an outdoor "pellet pump" that will provide heat for home, hot water and even clothes drying. All of the Traeger Industries products are built at the company's shop in Mount Angel.

The furnaces are also outside of Department of Environmental Quality regulations that apply to woodstoves. Traeger predicts that many wood stove manufacturers will be forced out of business by continued tightening of regulations for testing and emissions. However, he added, pellet-burning furnaces would pass even the most stringent DEQ requirements.

Traeger knows of only five other pelletized fuel furnace manufacturers in the country, but believes that the heat producing devices will increase in popularity in time.

He points to the state of Minnesota as an example of forward thinking about the new heating concept. Traeger as well as other pelletized-fuel furnace manufacturers recently donated equipment to the state as part of a Minnesota low-income heating assistance program. The state will pay for installation of the furnaces.

"The concept is, if they give people pelletized fuel, they can heat twice as many homes for the same cost as supplying them money to buy natural gas or oil," Traeger said.

According to Traeger, Minnesota also has state funds available for research and development of pelletized-fuel manufacturing and use. "They're just out after it," he said. "They're way ahead of everyone else."

Back home, Traeger said sales of the new furnaces have been good — almost better than he's wanted them to be. "I really want to go through the winter just testing it, getting a few out," he said. "It's kind of run away from us. It's been super good."





RECEIVED
JAN 1 9 1986

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M January 13, 1986

SUBJECT: Alternative energy loans for biomass fuel stoves (Work Order 14-1546)

TO: Representative Jim Duncan

FROM: George Utermohle
Legislative Counsel

I.

The draft bill that you requested is attached. The bill amends the definition of "alternative energy system" to expressly include stoves and furnaces that use biomass fuels. The effect of this amendment is to allow the Alternative Energy Revolving Loan Fund to make loans for the purchase of biomass fuel stoves and furnaces.

II.

You also asked whether the Alaska Industrial Development Authority (A.I.D.A.) can aid processors of biomass fuels.

In brief, A.I.D.A. does have the power to make loans, to insure loans, and to assist private lenders to make loans to processors of biomass fuels.

A.I.D.A. was created to provide means of financing and means of facilitating financing for

> the establishment, operation, and development of industrial, manufacturing, and business enterprises, including, without limitation, facilities for transportation, facilities for pollution control and waste disposal, facilities for the local furnishing of gas, facilities for water, facilities for industrial parks, mass commuting vehicles, facilities for local district heating or cooling, parking facilities, or a storage or training facility relating to a plant or facility. (AS 44.88.010(a)(5))

[redacted]
Drafter's Memorandum

The list of facilities eligible for assistance is only illustrative and in no way restricts the kinds of projects that A.I.D.A. can support.

Provided that a project is located in Alaska and will generate additional employment, A.I.D.A. has the authority to insure loans, to make loans, or to assist private lenders in making loans for the project (AS 44.88.080(12),(13), and (15)). A.I.D.A. defines "project" to include

> (A) a plant or facility used or intended for use
>
> (i) in connection with making, processing, preparing, or producing in any manner, goods, products or substances of any kind or nature or in connection with developing or utilizing a natural resource, or extracting, smelting, transporting, converting, assembling or producing in any manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and materials, products or substances of any kind or nature;
>
> (ii) as an industrial park; in connection with transportation; for the prevention, limitation or control of pollution; for the disposal of sewage or solid waste; for the local furnishing of gas; for the furnishing of water; as or in connection with mass commuting vehicles; for local district heating or cooling; as a parking facility; or as a storage or training facility directly related to a plant or facility described in this paragraph;
>
> (B) a plant or facility used or intended for use in connection with a business enterprise;
>
> (C) commercial activity by a small enterprise;
> (AS 44.88.220(8))

This definition is broad enough to cover the facilities and equipment necessary to manufacture or produce any form of biomass fuel.

Therefore, processors of biomass fuels are eligible to apply for loans from A.I.D.A. No amendment of the Alaska Industrial Development Authority statutes is necessary.

GU:mkr
M2:020
Enclosure

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 479: SUMMARY

This measure expands statutes on alternative energy systems to include catalytic fireplace inserts, stoves or furnaces that use biomass fuel, and does not include stoves that use only firewood, coal, or oil fuel unless the system has a catalytic converter or catalytic fireplace insert.

BILL SUMMARY

CHAIRMAN'S INFORMATION: CSHB 479(L&C)

1) BILL TITLE: "An act relating to biomass fuel systems"

a) Introduced: Rep Duncan

b) Co-sponsors:

2) INTENT: This measure expands the Alternative Energy Loan Fund to include loans for catalytic fireplace inserts, and stoves and furnaces which burn biomass fuels. Also defines what materials are burned in a biomass fuel stove.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

Larry Tracy

Offered: 1/31/86
Referred: House Special Committee on
State Loans and Finance

Original sponsor: Duncan

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE HOUSE

CS FOR HOUSE BILL NO. 479 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to biomass fuel systems."

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

* Section 1. AS 45.88.500(a) is amended to read:

(a) In this chapter, "alternative energy system"

(1) means a source of thermal, mechanical, or electrical energy which is not dependent on oil or gas or a nuclear fuel for the supply of energy for space heating and cooling, refrigeration and cold storage, electrical power, mechanical power, or the heating of water;

(2) includes

(A) an alternative energy property as defined by 26 U.S.C. 48 (1)(3)(A), (Sec. 301, P.L. 95-618, Internal Revenue Code);

(B) a method of architectural design and construction which provides for the collection, storage, and use of direct radiation from the sun;

(C) a woodstove with a catalytic converter, [OR] a catalytic converter for a wood stove, or a catalytic fireplace insert; [AND]

(D) a steam, hot water, or ducted hot air central heating system that uses wood or coal for fuel; and

(E) a stove or furnace that uses biomass fuel produced from any organic matter that is available on a renewable basis, including agricultural crops and agricultural waste and residue, wood waste residue, animal waste, municipal waste, and aquatic

plants;

(3) does not include, unless described in (2)(C) of this subsection,

(A) a stove that uses only firewood [WOOD], coal, or oil for fuel; or

(B) a fireplace or fireplace insert.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 01/28/86

REQUEST

Bill Resolution No. : HB 479
Title : An Act Relating to Biomass Fuel Systems

Sponsor : Representative Duncan
Requestor : House Labor & Commerce
Date of Request :

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev.
BRU : Investments

Components : Economic Development

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

It is anticipated that any new loan demand created as a result of HB 479 will be absorbed within the existing funding available under the Alternative Energy Loan Program. New loan application processing will also be absorbed by existing staff within the division.

Prepared by : Paul B. Arnoldt, Director — Phone : 465-2510
Division : Investments — Date : 1/28/86

Approved by Commissioner : for Loren H. Lounsbury — Date : 1/28/86
Agency : Commerce & Economic Development

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

10 25 85

FISCAL NOTE

ot know it. It's real easy
d with blasting caps," he

caps are small metalic
few inches in length, usu-
d to a length of electrical
ed is suggesting Juneau
p an eye open for such
heir homes. If a blasting
d, Windred recommends
olice to remove it.

led police to several
sting caps and containers
dynamite stored in the
l Windred. Other explo-
sive material was found following a search of a suspect's bedroom, he said.

According to Windred, the stolen blasting caps may be linked to a series of unexplained explosions in recent months. On Dec. 29, a door at Floyd Dryden Middle School was blown open with blasting caps. Several area mail boxes may also have been blown up with the stolen material, he said.

Police are investigating possible violations of laws regulating storage of explosives at the suspect contractor's work site. Police will not release the name of the contractor under investigation until charges are filed, Windred said.

Meanwhile, two Juneau teenagers are expected to be charged with misconduct involving a weapon in the first degree following the investigation into last Friday's bomb threat at the high school.

According to police, a 14-year-old student allegedly brought the explosive materials to the school to sell or give to a 17-year-old male student. Police have not identified the person who made the threat.

"Quite a few kids knew this transaction was going to take place," said Windred.

The threat resulted in the closure of the high school and adjoining Marie Drake Middle School. Students were sent home after a search located a bag containing four blasting caps and a two-and-a-half pound container of gelatine dynamite in an unassigned high school locker.

The material was removed from the school without incident.



ASSOCIATED PRESS

ion may be cut short.

launch window of only a
nents of the current mis-
mbitious schedule of 15

Please turn to Page 14

New law allows use of some wood stoves during air alert

Ordinance changes how burning bans are called

By BETSY LONGENBAUGH
THE JUNEAU EMPIRE

There's new hope on the horizon for local residents who want to keep their wood stoves burning all winter.

Beginning Wednesday, local residents who own stoves that meet Juneau City-Borough emission standards may keep their fires burning during wood smoke alerts.

In the belief that the approved stoves won't let smoke get in your eyes, the Juneau City-Borough Assembly recently approved an ordinance that allows the stoves to burn and sets up new criteria for declaring wood smoke bans.

That new criteria calls for two types of wood smoke bans – a wood smoke alert and a wood smoke emergency. Under an alert, owners of approved wood stoves who have municipal permits may continue to burn. Under an emergency, no wood stoves are allowed to burn.

Steve Gilbertson, the municipal lands and resources manager, is in charge of monitoring the air quality of Mendenhall Valley and enforcing the new ordinance. He said Friday he hopes that only air alerts will occur in the future, with air emergencies necessary in the event of extreme pollution in the valley.

"I think people have to realize this is at an experimental stage," he added.

Gilbertson also said his office now has applications for people who own approved wood stoves. In order to use those stoves during alerts, they must have permits

Please turn to Page 14

Lemon Creek vicinity to be monitored for wood smoke

THE JUNEAU EMPIRE

Lemon Creek residents may want to buy warm slippers for next winter, as their neighborhood will probably end up being subject to its own wood stove bans.

The Lemon Creek area is one place that will feel the impact of a comprehensive ordinance regulating wood stove use that was approved by the Juneau City-Borough Assembly several weeks ago.

At the urging of some assembly members, municipal staff agreed to begin monitoring the Lemon Creek area with an eye to regulating wood stove use. This winter, however, there isn't the necessary equipment in the area to effectively measure wood smoke pollution.

In next year's municipal budget, staff will be seeking $25,000 to buy a wood smoke monitor for the area. Once installed, the device will allow municipal officials to call for wood smoke bans in Lemon Creek, as well as the Mendenhall Valley.

Steve Gilbertson, lands and resources manager, said he expects the municipality may call separate wood smoke bans in each area, depending on weather conditions. He said it is now impossible to predict how often bans may be necessary in Lemon Creek.

"We do not have a lot of data for the area," said Gilbertson.

He added, however, that his office has received a lot of calls from Lemon Creek area residents who complained of wood smoke pollution.

The new proposed smoke alert area in Lemon Creek extends from the Juneau Christian School, including

Please turn to Page 14

.....Page 4
.....Pages 6-7
ocks.....Page 13

WEATHER

Rain showers continuing through Tuesday. Page 14

Juneau Empire 1-13-86

NCIL
ird of trustees of Juneau Arts
ities Council will meet at 7:30
Northern Light United Church.
nbers and interested persons
to attend.

STAR
leau Lodge No. 147, F. and
neet at 7:30 tonight. All Masons
are urged to attend.

ns of practically any skill level
e enthusiastic about forming a
of Alaska-Juneau pep band are
ntact the UAJ office of student
789-4528.

ESSURE
od pressure testing will be con-
e Mountain View Senior Cen-
:30 a.m. to 1:30 p.m. Tuesday.
nent is necessary. Call 586-3736
ormation.

S

set off in the Cedar Park area.
re set on fire.

ip

efighters are reminding resi-
very home should have at least
inguisher and everyone in the
ld know how to use it. The Gla-
eer Fire Department offers
s on use of fire extinguishers.
tion, call 789-7554.

nce calls

Volunteer Fire Department
services teams responded to
r the weekend:
l call: At 9:49 a.m. Friday,
ent, stable, transported to
orial Hospital.
ehicle accident: At 10:06 p.m.
an Drive and the Mendenhall
injuries minor, both patients
sport.
calls: At 2:29 a.m. Saturday,
no transport; at 11:51 a.m.
d choking, mother dislodged
e child was stable and taken
l by the family; at 2:01 a.m.
cuts, patient taken to the hos-

Volunteer Fire Department
services teams responded to
the weekend:
calls: At 9:34 a.m. Friday, a
nt, stable, transported to the
11:48 a.m. Sunday, no details
patient stable, transported to
at 2:50 p.m. Sunday, patient
inal pain, stable condition,
o hospital.

Woodsmoke...

Continued from Page 1

from the city. The free permits are good for two years.

Gilbertson said the approved wood stoves have two things in common – very low emission standards and certification from Oregon.

Because the municipality is basing its new ordinance on a similar law in Oregon, it is accepting that state's testing procedures for wood stoves.

Many of the approved stoves – there are now 10 on the list – have catalytic converters. Others use pellet fuel to reach the low emission standards.

Gilbertson said at least four other stoves, some of which are for sale locally, have gone through the tests, but are not yet certified. He said he expects a new list from Oregon by the end of this month.

Until then, he said he can only recommend the 10 stoves on the approved list. They are:

- Blaze King "King," a catalytic converter stove.
- Earth Stove 1000-C, a catalytic converter stove.
- Turbo 10, a catalytic converter stove.
- Fisher Tech IV, a catalytic fireplace insert.
- Timber Eze 477, a catalytic wood stove.
- Vista 640, a non-catalytic wood stove.
- Pellefier FS-1, a non-catalytic stove that burns pellet fuel.
- Whitfield, a non-catalytic stove that burns pellet fuel.
- Collins Hopper, an add-on devise that burns pellet fuel.

Those wood stoves that are on this list and sell locally cost about $1,000, not including installation.

The assembly hopes to eventually have all stoves in the city-borough meet the emission standards. To meet this goal, the new ordinance calls for all wood stoves installed and sold in Juneau to meet the Oregon emission standards beginning Aug. 1.

Gilbertson expects the most successful enforcement of this new regulation to come from the building department, which issues permits for wood stove installations.

Steve Shows, who assigns building inspections, said a building permit is required for any new installation, including replacement of an existing stove. The permits and their accompanying inspections are free and are designed to make sure wood stoves are safely installed, he said.

"Home owners are sometimes not getting a building permit and installing a stove, sometimes properly, sometimes not," he said.

During the past year, the municipality has been aided in its inspection effort by some insurance companies who now require proof of wood stove inspections before offering insurance, said Shows.

"This is the greatest plus we have seen," he said.

Shows said that "nine times out of 10," wood stoves that are inspected were installed incorrectly.

He said that currently he is able to schedule inspections with a day's notice. Those who want inspections should call a 24-hour recording phone 586-1703, before 7:30 a.m. on the day they want an inspection.

To receive a permit, they should come into the municipal building department and fill out a form. They will also receive a brochure on proper stove installation.

Lemon Creek...

Continued from Page 1

Sunny Point, back to Lemon Creek basin and to Vanderbilt Hill.

Gilbertson also said many Juneau residents remain unclear about where the boundaries are for the Mendenhall Valley wood smoke alert area.

They could be described as having a southern boundary of the airport area, an north boundary of the glacier recreational area, an east boundary running along the base of Thunder Mountain and a west boundary that bisects the Mendenhall Peninsula.

Not included in the ban are the Auke Lake area and Fritz Cove Road.

Shuttle...

Continued from Page 1

The flight plan today was devoted mainly to astronomy, and Steve Hawley spent the morning pointing two ultraviolet telescopes at star targets in a search for luminous clouds of ultraviolet radiation.

Mission Control awakened the astronauts today with the theme song from the movie "Animal House." The control center said several of the astronauts were fans of the movie, and commander Robert Gibson responded, "It sounds like our secret is out."

Columbia shed its postponement jinx with a spectacular predawn liftoff Sunday, and 9½ hours later the crew launched the world's most powerful commercial communications satellite, RCA's $50 million Satcom KU-1.

"It's on its way," Mission Control radioed after a rocket engine ignited to propel the satellite toward stationary orbit 22,300 miles above the Earth.

RCA, which paid the National Aeronautics and Space Administration $14.2 million for the delivery, said Satcom will be capable of providing video and audio communications for all of the United States except Alaska, transmitting a signal powerful enough to be received by dish antennas as small as three feet.

Nelson and Hawley will have an exclusive view of the comet as it nears the sun on its once-every-76-years swing through this part of the solar system.

"You can't observe Halley's from the ground as it makes its closest approach to the sun in January because of the sun's brightness," explained S. Alan Stern of the University of Colorado, who is principal investigator for an experiment named CHAMP, or Comet Halley

Nelson, who will operate the CHAMP cameras, said in an interview before the flight, "We'll be taking some photographs and spectral measurements for the purpose of documenting the comet, and we'll be doing it from above the atmosphere where we can get a real clear look at it. We're going to use the apparatus over the course of three flights, so we should be able to get a good consistent set of data on Halley's."

Stern said the instruments "primarily will be looking at water. The comet is basically an ice ball, and when the sun melts the ice, it breaks the water down into constituents. We'll study these to learn about the comet's atmosphere."

Hawley will use two telescopes to search the universe for sources of luminous clouds of ultraviolet radiation.

"Only in the last 10 years have we begun to look at the universe in the ultraviolet wavelength," he said before the mission. "The reason for that is that the observatories on Earth being beneath the atmosphere are not able to observe these wavelengths because the atmosphere is opaque to UV radiation. So we'll be getting some very fundamental data and will be dealing with questions as to where the UV emission comes from."

He said the knowledge would help astronomers mask out the UV background and thus improve the data from the $1.2 billion Hubble Space Telescope, which will be launched from a shuttle next October.

One of the telescopes also will be trained on the comet.

Rep. Bill Nelson, a Florida Democrat riding as a congressional observer, planned several medical experi-

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

4086

HB 486: "An act relating to financing expansion of the power plant on the Fairbanks campus of UAF; and providing for an effective date."

Measure has additional referrals to HESS, Finance, and Rules

Authorizes the UA Board of Regents to proceed thru the U of A Heating Corporation to issue revenue bonds or certificates of participation in an amount not to exceed $6.5 million to finance the expansion of the UAF power plant.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4217 SLAB HB 494 1697

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

494

HB 494
An Act relating to liens for labor or material furnished

COMPARISON TO EXISTING LAW

Existing Law	HB 494
AS 34.35.062	
Stop-payment notice expires 30 days after being received.	Changes reference to stop-payment notice to stop-lending notice. Notice does the same thing.
Claimant must wait 20-30 days after payment is overdue to file a stop-payment notice.	Stop-lending notice expires 90 days after being received.
Claimant must put up a bond equal to the amount on the stop-payment notice when taking a case to court.	A stop-lending notice may be filed anytime after a payment is overdue.
A certification of job progress is required from the owner to the lender prior to the disbursal of funds. The lender may prescribe the form of the certificate.	Deletes the bond requirement.
	Job progress certification is still required and certain items are specified that must be included in the certificate.
	New section. Details the lenders liability when they disburse funds that are the subject of a stop-lending notice.
	New section. Requires draw to be applied to it's stated purpose.
	New section. Makes it at least a class A misdemeanor when an owner misdirects a construction financing draw.
	New section. A lender may not disburse funds to pay for any debts that were not incurred to finance the cost of the project.

Existing Law	HB 494
AS 34.35.064(a) Details the requirements for giving a notice of right to lien.	Adds language stating that if one properly files a notice of right to lien the burden of proof is on the owner to show he did not know of nor consent to labor or material furnished.
AS 34.35.067 A person may record a notice of right to lien after entering a contract to furnish labor or material.	A person may record a notice of right to lien after entering a contract or furnishing labor or material.
AS 34.35.071(a)	Technical change.
AS 34.35.074 New section.	New section. Provides for civil actions being brought by persons injured in their business or property by a violation of any provision of the lien act.
AS 34.35.080(a)	Technical change.
AS 34.35.080(c) New subsection.	New subsection. Requires a claimant to record that he has brought suit to keep the lien active. Unless it is recorded the claimant could lose the claim to a subsequent good faith purchaser who doesn't know of the claimants action.
AS 34.35.112 Ranks priority of lien claims in a court judgement and foreclosure.	Ranks priority of lien claims in a court judgement and foreclosure and gives subcontractors equal status with materialmen.

Existing Law	HB 494
AS 34.35.112(c)	
New subsection.	When there are sufficient funds provided by a foreclosure sale to pay off all lien claims the balance will be paid to the person who owned the property.
AS 34.35.114(c)	
When a lender receives a stop-payment notice on a project for which they are not a lender they must notify the sender within five days.	When a lender receives a stop-lending notice or notice of right to lien on a project for which they are not a lender they must notify the claimant within 10 days.
AS 34.35.114(d)	
A lender who receives a notice of right to lien on a project for which they are not a lender must notify the sender within five days.	A claimant shall provide a written statement of the amount due and unpaid within 10 days of being requested to by an owner or lender to whom the claimant has given a stop-lending notice.
AS 34.35.117(a)	Technical change.
AS 35.35.069	
Requires a claimant to have an acknowledgement of right to lien from an owner in order for their claim of lien to be valid.	Repealed.
AS 34.35.080(b)	
A lien may not be continued in force for more than one year from the date of the filing of the original lien notice.	Repealed. (Conflicts with other parts of the statute).
AS 34.35.114(e)	
Provides for penalties to an owner for failing to provide information.	Repealed. (Covered by new civil suit section).
AS 34.35.118	
Provides for penalties to a claimant for filing an unjust excessive or premature stop-payment notice.	Repealed. (Incorporated into civil suit section).

CHAIRMAN'S INFORMATION: CSHB 494(Jud)

1) BILL TITLE: "An act relating to liens for labor or materials furnished."

a) Introduced: Rep Cotten

b) Co-sponsors:

2) INTENT: This measure seeks to strengthen and clarify the existing lien law, and addresses problems being experienced by suppliers and subcontractors with receiving payment for labor or materials furnished.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C SCS.

CS HB 494 (JUD)
SECTIONAL ANALYSIS

SECTION 1

page 1, ln 10
(a) Revises 34.35.062 to more clearly and accurately state the present "stop-payment" rule. "Stop-payment" is changed to "stop-lending."

Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before giving a stop payment notice to the lender.

page 1, ln 29
(b) Changes to 90 days (from 30) the time within which a claimant may bring suit after filing a stop-payment notice. Eliminates the present requirement that the claimant must provide a bond.

page 2, ln 10
(c) Addresses the lender's liabilities when they disburse funds that are the subject of a binding stop-lending notice.

page 2, ln 29
(d) Requires a lender to send a verified statement to the claimant showing all construction financing provided to the owner or owner's agent within ten days of receiving a certified copy of a judgment establishing the amount owed a claimant.

page 3, ln 9
(e) Allows a lender to bring an action requiring claimants to interplead their claims when there are two or more claimants and the lender is uncertain of the amount of its liability.

page 3, ln 14
(f) A lender may not provide a draw to the owner or an agent of the owner until the owner has provided a certification of job progress which must include the portion of the draw that the owner will pay to each listed prime contractor.

page 3, ln 27
(g) Requires draw to be applied pursuant to the required certificate. The lender is not required to verify the information and is not liable for any error in the certificate.

page 4, ln 2
(h) It is a class A misdemeanor for an owner to [illegible]tionally fail to apply construction financing draws in accor[illegible]e with the required certificate.

page 4, ln 7
(i) When requested a lender is required to provide a person who has given a notice of right to lien a copy of certificates submitted under subsection (f) and a verified certificate stating the undisbursed funds available for the project.

page 4, line 14
(j) A lender may not disburse funds to pay for any debts that were not incurred to finance the cost of the project.

Section 2

page 4, ln 17
(a) Notices of right to lien given to the owner shift the burden to the owner to prove that he was not aware of and did not consent to the improvements to his property. The notice may be given before furnishing labor or material.

Revises the required warning in the notice of Right to Lien to more correctly alert the owner of the significance of the notice.

Section 3

page 5, ln 24
Clarifies recording of notice of right to lien.

Section 4

page 6, ln 3
Technical change relating to section 3.

Section 5

page 6, ln 9
Technical change.

Section 6

page 6, ln 25
(a) Civil actions may be brought for actual damages and actual attorney fees by a person who is injured in its business or property by a violation of any provision of the lien act.

page 7, ln 5
(b) Penalizes a claimant who does not remove a lien or stop-lending notice once payment has been made in full or for not removing an erroneous, unjust, premature or excessive stop-lending notice or claim of lien.

Section 7

page 7, ln 13
Technical change.

Section 8

page 7, ln 24
Requires a claimant to record notice that he has brought suit to keep the lien alive. Unless it is recorded the claimant could lose his lien to a subsequent good faith purchaser who doesn't know of the claimant's action.

Section 9

page 8, ln 5
Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds.

Section 10

page 9, ln 9
When there are sufficient funds provided by a foreclosure sale to pay off all lien claims the balance will be payed to the person who owned the property.

Section 11

page 10, ln 15
Clarifies responsibility of a lender wrongly named in a stop-lending notice.

Section 12

page 9, ln 20
Clarifies claimants responsibility in providing information to an owner or lender who has been served a stop-lending notice.

Section 13

page 9, ln 25
Technical change.

Sections 14 - 17

page 10, ln 3
Definitions.

Section 18

page 11, ln 11
Repeals acknowledgement of right to lien.

Repeals penalty to owner for failing to provide information. (Is covered by Civil Suits, Section 6)

Repeals claimant liability for filing unjust or premature stop-payment notice. (Is incorporated into Civil Suits, Section 6(b))

ALASKANS

FOR

LIEN LAW REFORM

LIEN LAW HISTORY

In 1979 certain amendments were made to the Alaska Lien Laws which have caused large monetary losses to material suppliers and sub-contractors. The intent of these amendments was to expedite loan closings on the sale of real property and also to assure that no liens could be attached after the property was sold. In a joint meeting held between suppliers, sub-contractors, title companies, and lending institutions it was agreed that this new bill would allow the lending institutions to be secured by a first deed of trust on their interim construction financing which gave them priority over all liens or encumbrances which may be recorded by a material supplier or sub-contractor.

In exchange for giving up a historical priority position, suppliers and sub-contractors were to be provided a vehicle by which they could put the lending institution on notice that they were a supplier of record, and in so doing, protect the suppliers interest. The methods provided to material suppliers and sub-contractors under the new law were:

1. Notice of Right to Lien and
2. Stop Payment Notice

The intent of the "Notice of Right to Lien" was to inform the lending institution, and the property owner, that a supplier or sub-contractor had provided materials or services to a specific project and they may have a claim on the interim construction financing. The further intent of this notice was to guarantee that the lending institution would monitor the disbursing of interim construction funds to assure that persons who had given them a "Notice of Right to Lien" would be paid from each draw.

The "Stop Payment Notice" amendment was added as an additional method for securing a payment, when past due from interim construction financing. The intent of this ammendment was to cause the lending institution to withhold the amount claimed by the material supplier or sub-contractor from the next draw and to disburse the funds directly to the claimant.

Since there is no liability on the part of the lending institution for failing to disregard the intent of these amendments, they have been circumvented to a large degree. Interium construction draws are being disbursed directly to the contractor with no assurance that the material supplier or sub-contractor will be paid. In many instances the contractor will use these funds for purposes other than paying his suppliers or sub-contractors.

A "Stop Payment Notice" rarely accomplishes the purpose for which it was intended. The lending institutions in many instances interpret this notice as indication that the contractor is in financial trouble and they will call the loan; thereby stopping all draw requests until the liens are removed or the loan is satisfied. Or they may just hold the notice for a period of 30 days at which time the current law mandates that a law suit be instigated to collect the debt. In addition, the current law mandates that a claimant must provide a bond equal to the amount of the claim. With the current cost of bonding, legal fees and the length of time it takes to get a court date a claimant will rarely recover the amount owed to him. Interestingly enough the lending institutions continue making draws to satisfy their interest charges.

A "Claim of Lien" in many instances has no value. The lending institution has priority over all other encumbrances through their First Deed of Trust position. In the event of foreclosure the lending institutions First Deed of Trust must be paid in its entirety before any other claims can be satisfied, in spite of the fact that the lending institution may have disbursed construction funds directly to the contractor with no regard to a supplier, or sub-contractors "Notice of Right to Lien".

POSITION

The suppliers and sub-contractors position is really quite simple:

> We should have the right to reasonably expect to be compensated for the materials supplied and work performed that adds value to someone elses property, and in the event this does not occur we have equal opportunity for recovery under the law.

The trade off or "trust me legislation" of 1979 is simply not working.

Lending institutions are in the best position to review and determine a contractors financial capability. They have or can have complete access to a contractors financial information because they control the purse strings. However, loan officers have little or no incentive under existing law to control disbursements so as to assure that suppliers and sub-contractors are paid. At a minimum all they need do is assure that the materials are incorporated into the real estate before they disburse to the contractor. Whether the contractor pays the suppliers or the sub-contractors is really of little concern, because they (the lending institution) are always in first position. This enables them to foreclose and extinguish the liens of suppliers and sub-contractors in the event the contractor ultimately fails to perform. When an institution fails to exercise good control of funds, it is difficult to understand why their investment should be given priority at the expense of suppliers and sub-contractors.

There is no viable vehicle for a supplier or sub-contractor to compel a lending institution to disburse loan draws for materials purchased or work performed.

When the supplier or sub-contractor attempts to utilize a stop payment, or otherwise involve the loan officers, typically the lending institutions first reaction is to draw down available proceeds to cover interest and other charges or even to call the loan.

Conclusion. The make up of the lending institutions as well as the environment underwhich the legislation was drafted in 1979, differs from that of today and perhaps is one of the prime reasons requiring a change in this legislation.

It is evident that the current law is not working. The unusal large numbers of business failures, bankruptcy's, and foreclosures bear this out. If some form of protection for sub-contractors and material suppliers is not legislated, there will continue to be many bankruptcy's and foreclosures. In addition, the cost of construction will increase dramatically due to the increase in cost of materials and services to cover the loses sustained through the inequities in the existing law.

CASE HISTORY
EXAMPLE

PROJECT	Residential Units - Fairbanks
LENDER	Bank
ACCOUNT PROFILE	Customer for several years Slow payment record

HISTORY. Because of previous problems with this customer and before supplier would enter into an agreement to sell the project, the lending institution agreed to monitor the loan and disburse funds direct to the supplier. After the project was in process the account went 30 days past due and was closed. The supplier contacted the bank was told they (the bank) were working on the draws and payment would be sent in about 10 days. Additionally, the bank requested that the account be left open.

When the account was (45) days past due and no payment received, the supplier again called the bank and was told the loan officer was on vacation. Again the bank requested that the account remain open and that if the materials were allowed to go they would cover the purchases. The supplier was also told there were more than enough funds to cover the balance due. A check would be cut as soon as the loan officer returned.

When the account was (60) days past due the supplier closed the account. The bank was contacted. The loan officer met with supplier, who was again advised that they were working on draws that would bring the account current. The loan officer requested that the account still be left open. Supplier recorded claim of liens.

When the account was (70) days past due the bank filed foreclosure with no advance notice to supplier.

ACTION TAKEN. Timely recorded Notice of Right to Lien and notified lender. Filed Claim of Liens totaling $214,000.

RESULTS. Without notice bank filed foreclosure notices. Bank offered supplier $85,000 in settlement. Customer filed bankruptcy. Loan officer resigned from his position at the bank.

SUMMARY. Under the existing law supplier filed all proper documents, and additionally had the assurance of the lending institution that they would disburse directly to them. The supplier had no other recourse except to sue the lending institution or settle because of the first position given the bank under the present lien law.

1986 - PROPOSED AMENDMENTS TO THE LAW

- Abolishment of Acknowledgement of Right to Lien

- Adoption of a Direct-Payment Notice which requires the owner's construction lender to make a direct payment to the claimant from the next construction draw, unless the owner timely objects to the Notice, in which case the lender is required to make a joint payment to the claimant and owner and leave it up to them to work out their disputes.

- Claimants other than individual laborers are given equal priority with a prior-recorded deed of trust for constuction financing in cases of original construction. Individual laborers (excluding individual sub-contractors) and trustees of employment benefit trusts for such laborers continue to have priority over prior-recorded deeds of trust.

- The deadline is extended for recording a Notice of Right to Lien or Claim of Lien after a Notice of Completion is recorded to give the latter job trades more time to prepare their statements and determine if they have a payment problem.

ALASKANS FOR LIEN LAW REFORM

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Wi-Ak Mechanical
P.O. Box 874216
Wasilla, Alaska 99687

Wickham Plumbing
Box 44
Palmer, Alaska 99645

Wiker Roofing
P.O. Box 91687
Anchorage, Alaska 99509

Willow Hardware
P.O. Box 9
Willow, Alaska 99688

Winters Electric
P.O. Box 2540
Juneau, Alaska 99803

Wolverine Supply
1020 Edwards Street
Anchorage, Alaska 99504

Albertson Roofing
P.O. Box 91722
Anchorage, Alaska 99509

McDonald Roofing
1136 East 66th Avenue
Anchorage, Alaska 99507

Johnson Roofing
2921 Brandywine
Anchorage, Alaska 99502

Frontier Roofing
12201 Avion Street
Anchorage, Alaska 99516

Denali Roofing Co.
8903 Honeysuckle
Anchorage, Alaska 99502

Advanced Roofing
2009 Stonegate Circle
Anchorage, Alaska 99517

Big State Contracting
P.O. Box 111456
Anchorage, Alaska 99511

Alaska Shake and Shingle
3300 West Dimond Blvd.
Anchorage, Alaska 99502

General Roofing
119 East 54th Avenue
Anchorage, Alaska 99518

Antone Mechanical Inc.
5520 Lake Otis #104
Anchorage, Alaska 99507

Aurora Plumbing & Heating
2948 Kimberlie Court
Anchorage, Alaska 99508

Bay Mechanical
11711 South Gambell
Anchorage, Alaska 99515

Circle C Mechanical
2220 Cinnabar
Anchorage, Alaska 99507

D H Plumbing and Heating
7741 King Street
Anchorage, Alaska 99502

International Mechanical
646 East Dowling Road
Anchorage, Alaska 99518

Crown Plumbing and Heating
2411 East 88th Avenue
Anchorage, Alaska 99502

Warner Plumbing and Htg.
8361 East 5th Avenue
Anchorage, Alaska 99508

M & K Mechanical Inc.
1107 East 70th Avenue
Anchorage, Alaska 99518

Sears Sewer and Drain
2835 Rose
Anchorage, Alaska 99508

Price's Plumbing & Htg.
1524 East Dowling Road
Anchorage, Alaska 99507

R & R Plumbing & Heating
6303 Rosewood
Anchorage, Alaska 99518

M & H Plumbing & Heating
8901 Toloff
Anchorage, Alaska 99507

Skoglund Company, Inc.
301 East 56th Avenue
Anchorage, Alaska 99518

South Central Plumbing
4902 Kobuk Avenue
Anchorage, Alaska 99508

Stephens Mechanical Inc.
7339 Arctic Blvd.
Anchorage, Alaska 99515

Sunburst Plumbing Inc.
503 West 58th Avenue
Anchorage, Alaska 99518

Totem Plumbing
2031 Paxson Drive
Anchorage, Alaska 99508

Tri-State Plumbing Inc.
8031 Briarwood
Anchorage, Alaska 99507

Independent Electric Co.
150 West Dowling Road
Anchorage, Alaska 99518

Arctic Alaska Electric
6300 Petersburg
Anchorage, Alaska 99507

Northern Lights Electric
620 East 57th Place

Northern Lights Electric
620 East 57th Place
Anchorage, Alaska 99518

Shelton Electric Co. Inc.
1720 East 59th Avenue
Anchorage, Alaska 99507

Tsuanami Electric
2121 Abbott Road
Anchorage, Alaska 99507

Roberts Electric
3412 Wentworth Street
Anchorage, Alaska 99508

Commercial Electric
4425 East 6th Avenue
Anchorage, Alaska 99504

Fischbach and Moore of A
300 East 54th Avenue
Anchorage, Alaska 99518

Cochran Electric Co. Inc.
700 East 46th Street
Anchorage, Alaska 99503

Pioneer Door Inc.
310 East 1st Avenue
Anchorage, Alaska 99510

Northwest Door of Ancho
7120 Old Seward Highway
Anchorage, Alaska 99515

Overhead Door of Anchorage
2927 Doris Place
Anchorage, Alaska 99503

Stanley Door of Alaska
7348 Abbott Loop Road
Anchorage, Alaska 99507

Earls Custom Painting
541 East 25th Avenue
Anchorage, Alaska 99503

Anchorage Painting Co.
6642 Rosewood Street
Anchorage, Alaska 99502

Ahn's Enterprise-Painting
P.O. Box 200024
Anchorage, Alaska 99520

Asia Painting
5403 Arctic Blvd.
Anchorage, Alaska 99502

Hugo's Painting Co.
P.O. Box 101099
Anchorage, Alaska 99510

Final Touch
1528 East 14th Avenue #2
Anchorage, Alaska 99504

DLM Painting
3510 Tanglewood Place
Anchorage, Alaska 99503

Northern Painting Contr.
2900 Boniface #435
Anchorage, Alaska 99504

Superior Construction
2990 Brandywine Avenue
Anchorage, Alaska 99502

Maxim's Painting
P.O. Box 110823
Anchorage, Alaska 99511

Nordine Painting
8030 Northwind Unit A
Anchorage, Alaska 99504

Sunrise Drywall
33 Prince's Peace
Eagle River, Alaska 99577

R&T Construction, Inc.
7501 Cranberry Street
Anchorage, Alaska 99502

Alaskans for Lien Law Reform Mailing List

Unocal
Box 7600
Kenai, Alaska 99611

Superstructures Inc.
224 Kenai Ave.
Soldotna, Alaska 99669

Peninsula Welding Inst.
Route 1 Box 345
Kenai, Alaska 99611

Morgan Steel
P.O. Box 1889
Kenai, Alaska 99611

Marathon Oil Co.
Drawer 370
Kenai, Alaska 99611

Litwin Corp.
P.O. Box 710
Kenai, Alaska 99611

~~Kenai Supply~~
~~P.O. Box 1729~~
~~Kenai, Alaska 99611~~

Kenai Service & Repair
10819 Spur Highway #361
Kenai, Alaska 99611

Kenai Air Alaska
155 Granite Point Co.
Kenai, Alaska 99611

Herndon & Herndon INc.
P.O. Box 262
Homer, Alaska 99603

G. White & Son Co.
BOx 7143
Kenai, Alaska 99635

Buddy's Garage
P.O. Box 751
Soldotna, Alaska 99669

ARCO Oil & Gas
Box 1400
Kenai, Alaska 99611

The Welding Shop
P.O. Box 2028
Fairbanks, Alaska 99707

Seward Steel Works
P.O. Box 1954
Seward, Alaska 99664

H & H Contractors
P.O. Box 60610
Fairbanks, Alaska 99706

Brown Construction Co
P.O. Box 1313
Kenai, Alaska 99611

Fairbanks Machine
2250 Van Horne
Fairbanks, Alaska 99701

Shower Construction
218 S. Hoyt Street
Anchorage, Alaska 99504

Mid Valley Material
Attn: Rick Wike
P.O. Box 873809
Wasilla, Alaska 99687

Joe Hayes
P.O. Box 101821
Anchorage, Alaska 99510

Interpace Brick
1520 Elcadore Circle
Anchorage, Alaska 99507

Pacific Plumbing
Attn: Rick Bain
6260 Old Seward Highway
Anchorage, Alaska 99518

Yellow Electric Ltd.
Attn: Kent Lee Woodman
1658 East 59th Avenue
Anchorage, Alaska 99507

TESTIMONY OF

ALASKA CHAPTER

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO

SENATE LABOR AND COMMERCE COMMITTEE

ON

LIEN LAW REFORM

CS HB494

MAY 6, 1986

AGC-Alaska on behalf of our over 700 member firms appreciates the opportunity to comment on CS HB494.

AGC-Alaska members represent probably the widest cross section of the commercial construction industry besides individual members who are exclusively engaged as suppliers, subcontractors, engineers or architects. Many of our general contractor members are engaged as subcontractors or material suppliers on some projects.

Today AGC-Alaska is in the position of testifying on a bill, which many individuals in the construction industry favor. With reservation, AGC-Alaska supports CS HB494 in its present form; however we are of the belief that the solutions proposed in CS HB494 are merely "band-aids on major wounds" and that the problems created in some instances may equal the problems solved. AGC-Alaska believes that the entire lien law system should be rewritten after a study by an interim committee.

Our comments, including a summary of provisions in existing law and HB 494 follow.

THE FIRST VERSION OF THIS LEGISLATION (SUPPORTED BY A COALITION OF SUPPLIERS AND SUBCONTRACTORS) ADDRESSED THREE AREAS OF THE EXISTING LIEN LAW --

1) WHO CAN CLAIM A LIEN
2) THE ABILITY TO IMPACT CONSTRUCTION DRAWS
3) PRIORITY OF LIENS.

WHO CAN CLAIM A LIEN

EXISTING LAW. A PERSON WITHOUT A DIRECT CONTRACT WITH AN OWNER (MOST SUBCONCTRACTORS AND SUPPLIERS) MAY NOT CLAIM A LIEN UNLESS AN "ACKNOWLEDGMENT OF RIGHT TO LIEN" SIGNED BY THE OWNER IS OBTAINED BY THE OWNER (AN EXCEPTION TO THIS REQUIREMENT IS AN INDIVIDUAL CLAIMING A LABOR LIEN FOR WORK HE PERSONALLY PERFORMED). WITHOUT THE EXISTENCE OF A LIEN LAW THERE IS NO RIGHT TO SUE AN OWNER BECAUSE NO CONTRACT EXISTS BETWEEN THE OWNER AND A SUBCONTRACTOR OR SUPPLIER.

ORIGINAL PROPOSAL (HB494). THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" REQUIREMENT WAS ELIMINATED. THUS, ANYONE SUPPLYING LABOR, MATERIALS, SERVICES OR EQUIPMENT COULD FILE A LIEN. THERE WAS NO REQUIREMENT THAT THE OWNER EVEN KNOW THE CLAIMANT WAS ONE OF THE PERSONS SUPPLYING THE LABOR, MATERIALS, SERVICES OR EQUIPMENT. ALSO, THE ORIGINAL BILL ADDED AN OPTIONAL "NOTICE OF INTENT TO FURNISH LABOR, MATERIALS, SOURCES OR EQUIPMENT." THE PURPORTED

EFFECT IS TO SHIFT THE BURDEN OF PROOF IN ANY ACTION BASED ON A LIEN. HOWEVER, IT DID NOT LIMIT THE ABILITY OF ANYONE TO FILE A LIEN. FURTHER, THIS PROVISION DID NOT REQUIRE A LIEN CLAIMANT TO PROVE THAT THE OWNER KNEW OR CONSENTED TO THE CLAIMANT SUPPLYING THE MATERIALS, SERVICES OR EQUIPMENT.

CURRENT PROPOSAL (CSHB494). STILL ELIMINATES THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" REQUIREMENT. THUS, ANYONE WHO SUPPLIED LABOR, MATERIALS, SERVICES OR EQUIPMENT MAY FILE A LIEN. THERE IS NO REQUIREMENT THAT THE OWNER EVEN KNOW THE CLAIMANT WAS ONE OF THE PERSONS SUPPLYING THE LABOR, MATERIALS, SERVICES OR EQUIPMENT. THE ORIGINALLY PROPOSED "NOTICE OF INTENT TO FURNISH LABOR, MATERIALS, SOURCES OR EQUIPMENT" IS DROPPED. INSTEAD THE PROPOSAL AMENDS THE "NOTICE OF RIGHT TO LIEN" SECTION TO ACCOMPLISH MUCH THE SAME PURPOSE. THE SAME PROBLEMS REMAIN -- THE CURRENT VERSION DOES NOT LIMIT THE ABILITY OF ANYONE TO FILE A LIEN. FURTHER, THIS PROVISION DOES NOT REQUIRE A LIEN CLAIMANT TO PROVE THAT THE OWNER KNOW OR CONSENTED TO THE CLAIMANT SUPPLYING THE MATERIALS, SERVICES OR EQUIPMENT.

EFFECT OF CURRENT PROPOSAL. THE CURRENT PROPOSAL ELIMINATES ONE OF THE MORE UNFAIR ASPECTS OF EXISTING LAW -- THE "ACKNOWLEDGMENT OF RIGHT TO LIEN." UNFORTUNATELY, IT DOES NOT PROPOSE A SUBSTITUTE TO ADDRESS THE CONCERNS WHICH SPAWNED THE "ACKNOWLEDGMENT" IN 1979.

UNDER THE FORMER LAW PROPOSAL LIENS WERE VERY PREVALENT, LITIGATION FLOURISHED AND UNCERTAINTY REIGNED.

A MAJOR CAUSE WAS THE FORMER LAW'S FAILURE TO IDENTIFY POTENTIAL LIEN CLAIMANTS. LIEN CLAIMANTS WOULD LITERALLY COME OUT OF THE "WOOD WORK" 90 DAYS AFTER A JOB WAS FINISHED AND ALL KNOWN SUBCONTRACTORS AND SUPPLIERS WERE PAID. THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" WAS AN ATTEMPT TO SOLVE THIS PROBLEM. UNFORTUNATELY, IT WAS OVERREACTIVE LEGISLATION. UNDER THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" LIENS ARE NOT PREVALENT FOR THE MAIN REASON THAT NOBODY CAN FILE ONE. BY THE TIME MOST SUBCONTRACTORS OR SUPPLIERS ARE INVOLVED IN A PROJECT THERE IS LITTLE REASON WHY AN OWNER WOULD SIGN AN "ACKNOWLEDGMENT OF RIGHT TO LIEN."

ALTERNATIVE PROPOSAL

ELIMINATING THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" MERELY SWINGS THE PENDULUM BACK TO THE OTHER SIDE. AGC-ALASKA PROPOSES A SYSTEM WHICH MAY KEEP THE PENDULUM MORE CENTERED. AS A CONDITION OF FILING A LIEN, ANY SUBCONTRACTOR OR SUPPLIER MUST HAVE PROVIDED WRITTEN NOTICE TO THE OWNER WITHIN 10 DAYS OF FIRST STARTING WORK OR SUPPLYING MATERIALS. THIS NOTICE, SIMILAR TO THAT REQUIRED IN THE STATE OF WASHINGTON, WOULD BE BY CERTIFIED MAIL (SEE ATTACHED SAMPLE LETTER) AND RECORDING WOULD NOT BE REQUIRED. THE NOTICE WOULD FORM A CHECK LIST TO ENSURE THAT ALL POTENTIAL CLAIMANTS ARE PAID BEFORE FUNDS ARE DISBURSED. THE

SYSTEM IDENTIFIES ALL SUBCONTRACTORS AND SUPPLIERS AND ENCOURAGES PAYMENT TO AVOID THE LATTER FILING OF LIENS. THIS SYSTEM ADDRESSES SOME OF THE CONCERNS WHICH BROUGHT ABOUT THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" BUT IT DOES NOT REQUIRE THE OWNER'S OR ANYONE ELSE'S CONSENT.

WHY SUCH A SYSTEM IS NOT CONTAINED IN THE CURRENT PROPOSAL IS UNCLEAR. THE FEBRUARY 26, 1986 TESTIMONY TO THE HOUSE LABOR AND COMMERCE COMMITTEE BY THE COALITION OF SUBCONTRACTORS AND SUPPLIERS SUGGESTD AMENDING THE BILL TO REQUIRE A MANDATORY RECORDING OF A NOTICE OF RIGHT TO LIEN; AND LATER AMENDMENTS CONSIDERED BY HOUSE JUDICIARY CONSIDERED SUCH AMENDMENTS.

FOR WHATEVER REASON THE FACT REMAINS THAT THE PROPOSED LEGISLATION MERELY RETURNS US TO THE DAYS OF YESTERDAYS PROBLEMS AND PROVIDES YET ANOTHER "LAWYERS RELIEF ACT."

THE ABILITY TO IMPACT CONSTRUCTION DRAWS

<u>EXISTING LAWS.</u> UNDER EXISTING LAW A "STOP PAYMENT NOTICE" CAN BE GIVEN BY A LIEN CLAIMANT TO THE LENDING INSTITUTION, IF PAYMENT IS MORE THAN 20 DAYS OVERDUE. HOWEVER, TO STOP PAYMENT FOR MORE THAN 30 DAYS THE CLAIMANT MUST FILE SUIT WITHIN THAT 30 DAY PERIOD.

ORIGINAL PROPOSAL (HB 494). THE ORIGINAL HB 494 SUBSTITUTED A "DIRECT PAYMENT NOTICE" FOR THE EXISTING "STOP PAYMENT NOTICE." UNDER THE PROPOSED "DIRECT PAYMENT NOTICE" THE LENDING INSTITUTION MUST PAY THE CLAIMANT DIRECTLY UNLESS AN OBJECTION IS RECEIVED BY THE OWNER WITHIN 10 DAYS. IF AN OBJECTION IS RECEIVED THE LENDER MUST DISTRIBUTE THE MONEY DIRECTLY TO THE CLAIMANT AND THE OWNER.

CURRENT PROPOSAL (CS HB494). THE CURRENT PROPOSAL SUBSTITUTES A "STOP LENDING NOTICE" FOR THE EXISTING "STOP PAYMENT NOTICE" AND THE FORMERLY PROPOSED "DIRECT PAYMENT NOTICE." THE "STOP LENDING NOTICE" WHILE SIMILAR TO THE EXISTING "STOP PAYMENT NOTICE" PROVIDES A MORE WORKABLE FORMAT FOR THE UNPAID SUBCONTRACTOR AND SUPPLIER. THE 30 DAYS TO FILE SUIT IS EXTENDED TO 90 DAYS AND A PROCEDURE IS ESTABLISHED FOR THE OWNER TO CERTIFY CONSTRUCTION DRAWS.

PRIORITY OF LIENS

EXISTING LAW. UNDER EXISTING LAW A PRIOR ENCUMBRANCE IS PREFERRED TO A LIEN (EXCEPT A LIEN BY AN INDIVIDUAL ACTUALLY PERFORMING LABOR).

ORIGINAL PROPOSAL (HB 494). AMENDMENTS WERE PROPOSED TO GIVE EQUAL PRIORITY TO ALL LIENS FOR "ORIGINAL" CONSTRUCTION WITH A PRIOR RECORDED ENCUMBRANCE.

Current Proposal (CS HB494). No change in the existing law is proposed.

Effect of Current Law. A lender may make disbursements to owners who are in trouble because of the security provided by their deeds of trust. A failed construction project usually results in no equity for liens filed by subcontractors, suppliers or general contractors.

SUMMARY

Devising a system to address the concerns of the owners, bankers, general contractors, subcontractors, suppliers, and individual laborers involved in construction projects is not simple. There is little argument that the present system suffers in many areas. AGC-Alaska suggests a look at the entire system with the objective of devising a system that encourages prompt payment to all factors of the construction industry.

NOTICE BY MATERIALMEN TO OWNER AND GENERAL CONTRACTOR

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Date

ADDRESS (Owner)

RE: Materialmen's Notices to Owner on _____

Dear Mr. _____:

We are pleased to communicate that on DATE our firm commenced to furnish equipment for use upon your construction project known as PROJECT NAME which is located at the premises commonly described as STREET ADDRESS _____. Delivery was commenced at the request, and upon the order of, NAME OF SUBCONTRACTOR, a subcontractor on the project, whose address if ADDRESS OF SUBCONTRACTOR. Even though we do not have the opportunity of dealing with you directly, be assured that we are gratified to make a contribution to your project.

In order to preserve our lien rights, the laws of this state require that we advise you that we are furnishing materials for use upon your property, and that we may claim a lien for the value of those materials. We certainly have no reason to anticipate the necessity of making such a claim of lien, and trust that you will not construe this notification as any reflection upon either you or NAME OF SUBCONTRACTOR.

Our experience has been that everyone in the construction industry recognizes that it is simply good business practice to protect one's lien rights. We sincerely hope that you will be pleased with the materials we are furnishing, and trust that we may be of further services to you in the future.

Very truly yours,

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMO

TO: Senator Fred Zharoff, Chairman
Senate Labor & Commerce Committee

FROM: Rep. Sam Cotten SC

DATE: April 28, 1986

RE: HB 494, An Act relating to liens for labor or materials furnished.

I would greatly appreciate it if you could schedule HB 494 for a hearing in your committee as soon as possible.

The purpose of the bill is to clarify and strengthen the existing lien law. It was introduced at the request of a coalition of suppliers and subcontractors because of increasing problems they are having with being paid for labor or material they provide.

The Judiciary substitute represents a compromise between the suppliers and subcontractors, lending institutions and the builders.

Main points of the bill are:

1. Clarifies the existing procedure available to suppliers and subcontractors. Changes the "stop-payment" notice to a "stop-lending" notice.

2. Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before he can give a stop-lending notice to the lender.

3. Allows a claimant to bring suit within 90 days of filing a stop-lending notice rather than 30. Removes the requirement the claimant put up a bond when taking a case to court.

4. Before disbursing funds a lender must have a certificate from the owner involved with the project providing specific information on the project including where a draw is to be applied.

— SPONSOR'S INFORMATION —

5. An owner is guilty of class A misdeameanor for "intentionally" failing to apply financing draws to their stated purpose. This does not replace any other penalty that may be provided for by law for the same conduct.
6. Filing a notice of right to lien is optional.

   A notice may be given to the owner any time before furnishing labor, material, service or equipment for improvement of the property. If given properly the burden of proof is on the owner to show that he/she did not know of or consent to improvements on his/her property.

   A notice may be recorded anytime after the claimant enters into a contract or first furnishes labor, etc.

7. Civil actions may be brought for actual and consequential damages by a person who is injured in its business or property by a violation of any provision of the lien act.

   A claimant is liable for actual and consequential damages if they fail to remove a stop-lending notice or claim of lien when payment is made in full or an error is discovered.

8. Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds.

9. Clarifies definitions.

10. Repeals the acknowledgement of right to lien provision.

SCS CHANGES
P 3, LINE 28;
P 7, LINES 5 6 7 11
P 8, LINE 15

Cook
5/2/86

Original sponsors: Cotten, Szymanski, Phillips, et al

IN THE HOUSE

SENATE CS FOR CS FOR HOUSE BILL NO. 494 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liens for labor or material furnished."

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

* Section 1. AS 34.35.062 is repealed and reenacted to read:

Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom payment for the labor, material, service, or equipment furnished for a project is past due may give the lender a stop-lending notice. The claimant shall at the same time give a copy of the notice to the owner and to each prime contractor with whom or through whom the claimant or the claimant's debtor has contracted. A stop-lending notice shall

(1) instruct the lender to stop disbursing, advancing, or otherwise providing construction financing for the project;

(2) be verified by the claimant;

(3) state the claimant's name, address, and telephone number;

(4) describe the labor, material, service, or equipment furnished by the claimant and state the name of the person to whom furnished;

(5) describe the real property improved by the labor, material, service, or equipment and state the name of the person the claimant believes to be the owner of the real property;

(6) state the amount due and unpaid to the claimant for the labor, material, service, or equipment.

(b) A stop-lending notice is binding upon a lender from the time

the lender has received it and had a reasonable opportunity to act upon it until it expires or is revoked. A notice expires on the 91st day after it is received by the lender unless the claimant has commenced an action on the claim that is the subject of the notice before that day and the lender has received written notification of the action. A stop-lending notice may be revoked at any time in writing signed by the claimant. Expiration or revocation of a notice extinguishes the liability of the lender to the claimant under (c) of this subsection.

(c) A lender who disburses, advances, or otherwise provides construction financing for a project after it is the subject of a stop-lending notice is liable to the claimant in an amount equal to the lowest of the following amounts:

(1) the amount of construction financing disbursed, advanced, or otherwise provided by the lender after receipt of the claimant's stop-lending notice; if there are two or more stop-lending notices when the disbursement occurs, the lender's liability to each claimant is based on the claimant's ranking under AS 34.35.112;

(2) the amount owed to the claimant, including interest, costs, and attorney's fees, for labor, material, service, or equipment furnished for the project by the claimant as established by a written agreement signed on or after the date of the stop-lending notice by the claimant, the owner and the prime contractor with whom or through whom the claimant or the claimant's debtor has contracted or by a final judgment in an action in which the owner, the claimant and the claimant's debtor are named and, if necessary, served parties;

(3) 150 percent of the amount stated in the stop-lending notice.

(d) Within 10 days after receiving the written agreement or a

certified copy of the judgment under (c)(2) of this section establishing the amount owed to a claimant from whom it has a binding stop-lending notice, a lender shall send to the claimant a verified statement showing, by date and amount, all construction financing provided by the lender for the project. Except as provided in (e) of this section, the lender shall include with the statement payment in the amount of the lender's liability to the claimant under (c) of this section.

(e) If there are two or more claimants to whom a lender is or may be liable under (c) of this section and the lender is uncertain as to the amount of its liability or possible liability to each, the lender may bring an action to require the claimants to interplead their claims.

(f) A draw against construction financing may be made only after certification of job progress is delivered to the lender by the owner. The form of the certification may be prescribed by the lender and shall include

(1) a statement of the progress of the project, including the percentage of completion of the project;

(2) the name, address, and telephone number of each prime contractor who has furnished labor, material, service, or equipment for the project;

(3) the amount owed by the owner to each listed prime contractor; and

(4) the portion of the draw that the owner will pay to each listed prime contractor.

(g) The owner shall use each draw as indicated in the certificates given by the owner to the lender under (f) of this section. The lender may not be required to verify the information in a certificate

and is not liable for an error in a certificate.

(h) An owner who intentionally fails to apply construction financing proceeds as indicated by the certificate required under (f) of this section is guilty of a class A misdemeanor. The penalty provided under this subsection does not replace any other penalty that may be provided for by law for the same conduct.

(i) Within 10 days after being requested, a lender shall provide a person who has given the lender a stop-lending notice with a copy of

(1) each certificate received by the lender under (f) of this section; and

(2) a verified certificate stating the amount of construction financing proceeds committed by the lender for the project that have not been disbursed by the lender.

(j) The lender may not provide construction financing proceeds for payment of indebtedness of the owner that is not incurred for the project.

* Sec. 2. AS 34.35.064(a) is amended to read:

(a) Before furnishing labor, material, service, or equipment for a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may give a notice of right to lien to the owner or owner's agent [AND THE LENDER]. If the notice is given in accordance with this section, the owner has the burden of proof to show that the owner did not know of or consent to the furnishing of the labor, material, service, or equipment by the claimant in an action to foreclose the claimant's lien on the property under AS 34.35.050 - 34.35.120. Otherwise the claimant has the burden of proof to show that the owner knew of and consented to the furnishing of the labor, material, service, or equipment. The notice of right to lien shall be in writing, state that it is a notice of a right to assert a lien against real property [A

OTHER IMPROVEMENT]. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under AS 34.35.070.

* Sec. 4. AS 34.35.070(a) is amended to read:

(a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant may record a claim of lien after entering into a contract for a project [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVEMENT]. A claim of lien may not be recorded later than the time specified under AS 34.35.068.

* Sec. 5. AS 34.35.071(a) is amended to read:

(a) The owner of real property that may be subject to a lien under AS 34.35.050 - 34.35.120 may announce the date of completion of the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

(1) recording a notice of completion after completion of the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT] in the office of the recorder of the district in which the real property [BUILDING OR OTHER IMPROVEMENT] is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

* Sec. 6. AS 34.35 is amended by adding a new section to read:

Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a violation of AS 34.35.050 - 34.35.120 may bring a civil action

(1) except as provided in AS 34.35.062(c), for actual and consequential damages that are proximately caused by the violation

plus costs, including reasonable attorney's fees;

(2) to enjoin the violation, and if the person prevails, the person shall be awarded costs, including reasonable attorney's fees.

(b) A claimant who gives a stop-lending notice or has a claim of lien recorded under AS 34.35.075 and who fails to promptly revoke the stop-lending notice or remove the claim of lien from the record upon receiving payment in full on the claim or discovering that the stop-lending notice or claim of lien is in error, unjust, premature or excessive is liable for actual and consequential damages caused by giving the stop-lending notice or improperly recorded claim of lien plus costs, including reasonable attorney's fees.

* Sec. 7. AS 34.35.080(a) is amended to read:

(a) A lien provided for in AS 34.35.050 - 34.35.120 does not bind <u>real property</u> [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for more than six months after the <u>claim of</u> lien is <u>recorded</u> [FILED], unless <u>an action is commenced in</u> [SUIT IS BROUGHT BEFORE] the proper court to enforce the lien <u>within</u>

(1) [WITHIN] that time<u>;</u> [,] or

(2) [WITHIN] six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim <u>of lien</u>, and the balance owing.

* Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

(c) A lien whose duration is extended by commencement of an action under (a) of this section is void as against a person who, after the commencement of the action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith for valuable consideration, unless a notice of the

pendency of the action has been duly filed for record before the time the person's conveyance is duly filed for record. Notice of the pendency of the action shall conform to the requirements of AS 09.45.-790.

* Sec. 9. AS 34.35.112 is amended to read:

Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than one lien created under AS 34.35.050 - 34.35.120 is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under AS 34.35.050(1);

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen and subcontractors;

(4) persons described in AS 34.35.050(5) and [SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050(5)];

(5) the general contractor.

(b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are insufficient to pay the lien claims of all persons who have recorded claims [A CLAIM] of lien, the

(1) [THE] liens of all individuals with lien rights under AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) [THE] liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) [THE] liens of materialmen and subcontractors shall be paid in full or pro rata if the proceeds are insufficient to pay them

in full;

(4) liens of persons described in AS 34.35.050(5) and [OUT OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor, shall be paid in full [,] or pro rata if the remainder is insufficient to pay them in full; and

(5) lien of the general contractor [THE BALANCE] shall be paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTITLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

* Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

(c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are sufficient to pay the lien claims of all persons who have recorded claims of lien, the balance shall be paid to the person who owned the property before the foreclosure sale.

* Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

(c) A person who receives a stop-lending notice or notice of right to lien identifying a project for which the person is not the lender shall notify the claimant in writing within 10 days after receipt of the notice that the person is not the lender.

* Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

(d) A claimant shall, within 10 days after receipt of a request, provide an owner or lender to whom the claimant has given a stop-lending notice or notice of right to lien a written statement of the amount due to the claimant and unpaid.

* Sec. 13. AS 34.35.117(a) is amended to read:

(a) Except as provided under (b) of this section, a written waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created under AS 34.35.050 - 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this

section may not relate to labor, materials, services, or equipment furnished after the date the waiver is signed by the claimant.

* Sec. 14. AS 34.35.120(4) is amended to read:

(4) "construction financing" means [THAT PORTION OF] money loaned or other credit extended to an owner secured by an encumbrance on real property to finance a project on that [ORIGINAL CONSTRUCTION OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real property [, BUT DOES NOT INCLUDE

(A) FUNDS TO ACQUIRE REAL PROPERTY;

(B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUMBRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUCTION FINANCING;

(C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL, CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

* Sec. 15. AS 34.35.120(9) is amended to read:

(9) "give notice" means to mail a notice required under AS 34.35.050 - 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is effective when given or delivered to

(A) [TO] a lender at the address designated in the encumbrance securing that lender;

(B) [TO] an owner at the last known address of the owner;

(C) [TO] a prime contractor at the last known address of the prime contractor;

(D) [TO] a potential lien claimant at the address specified in a stop-lending [STOP-PAYMENT] notice or notice of right to lien or claim of lien;

* Sec. 16. AS 34.35.120(13) is amended to read:

(13) "owner" means a person who owns real property or a possessory interest in real property [THE BUILDING OR OTHER IMPROVEMENT] and who enters into a contract, express or implied, for a project on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR IMPROVEMENT];

* Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

(17) "project" means construction, alteration, or repair of an improvement on real property or work done to enhance the real property itself.

* Sec. 18. AS 34.35.069, 34.35.080(b), 34.35.114(e), and 34.35.118 are repealed.

Offered: 4/21/86
Referred: Rules

Original sponsors: Cotten, Szymanski, Phillips, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 494 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liens for labor or material furnished."

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

* Section 1. AS 34.35.062 is repealed and reenacted to read:

Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom payment for the labor, material, service, or equipment furnished for a project is past due may give the lender a stop-lending notice. The claimant shall at the same time give a copy of the notice to the owner and to each prime contractor with whom or through whom the claimant or the claimant's debtor has contracted. A stop-lending notice shall

(1) instruct the lender to stop disbursing, advancing, or otherwise providing construction financing for the project;

(2) be verified by the claimant;

(3) state the claimant's name, address, and telephone number;

(4) describe the labor, material, service, or equipment furnished by the claimant and state the name of the person to whom furnished;

(5) describe the real property improved by the labor, material, service, or equipment and state the name of the person the claimant believes to be the owner of the real property;

(6) state the amount due and unpaid to the claimant for the labor, material, service, or equipment.

(b) A stop-lending notice is binding upon a lender from the time

the lender has received it and had a reasonable opportunity to act upon it until it expires or is revoked. A notice expires on the 91st day after it is received by the lender unless the claimant has commenced an action on the claim that is the subject of the notice before that day and the lender has received written notification of the action. A stop-lending notice may be revoked at any time in writing signed by the claimant. Expiration or revocation of a notice extinguishes the liability of the lender to the claimant under (c) of this subsection.

(c) A lender who disburses, advances, or otherwise provides construction financing for a project after it is the subject of a stop-lending notice is liable to the claimant in an amount equal to the lowest of the following amounts:

(1) the amount of construction financing disbursed, advanced, or otherwise provided by the lender after receipt of the claimant's stop-lending notice; if there are two or more stop-lending notices when the disbursement occurs, the lender's liability to each claimant is based on the claimant's ranking under AS 34.35.112;

(2) the amount owed to the claimant, including interest, costs, and attorney's fees, for labor, material, service, or equipment furnished for the project by the claimant as established by a written agreement signed on or after the date of the stop-lending notice by the claimant, the owner and the prime contractor with whom or through whom the claimant or the claimant's debtor has contracted or by a final judgment in an action in which the owner, the claimant and the claimant's debtor are named and, if necessary, served parties;

(3) 150 percent of the amount stated in the stop-lending notice.

(d) Within 10 days after receiving the written agreement or a

certified copy of the judgment under (c)(2) of this section establishing the amount owed to a claimant from whom it has a binding stop-lending notice, a lender shall send to the claimant a verified statement showing, by date and amount, all construction financing provided by the lender for the project. Except as provided in (e) of this section, the lender shall include with the statement payment in the amount of the lender's liability to the claimant under (c) of this section.

(e) If there are two or more claimants to whom a lender is or may be liable under (c) of this section and the lender is uncertain as to the amount of its liability or possible liability to each, the lender may bring an action to require the claimants to interplead their claims.

(f) A draw against construction financing may be made only after certification of job progress is delivered to the lender by the owner. The form of the certification may be prescribed by the lender and shall include

(1) a statement of the progress of the project, including the percentage of completion of the project;

(2) the name, address, and telephone number of each prime contractor who has furnished labor, material, service, or equipment for the project;

(3) the amount owed by the owner to each listed prime contractor; and

(4) the portion of the draw that the owner will pay to each listed prime contractor.

(g) The owner shall use each draw as indicated in the certificates given by them to the lender under (f) of this section. The lender may not be required to verify the information in a certificate

and is not liable for an error in a certificate.

(h) An owner who intentionally fails to apply construction financing proceeds as indicated by the certificate required under (f) of this section is guilty of a class A misdemeanor. The penalty provided under this subsection does not replace any other penalty that may be provided for by law for the same conduct.

(i) Within 10 days after being requested, a lender shall provide a person who has given the lender a stop-lending notice with a copy of

(1) each certificate received by the lender under (f) of this section; and

(2) a verified certificate stating the amount of construction financing proceeds committed by the lender for the project that have not been disbursed by the lender.

(j) The lender may not provide construction financing proceeds for payment of indebtedness of the owner that is not incurred for the project.

* Sec. 2. AS 34.35.064(a) is amended to read:

(a) Before furnishing labor, material, service, or equipment for a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may give a notice of right to lien to the owner or owner's agent [AND THE LENDER]. If the notice is given in accordance with this section, the owner has the burden of proof to show that the owner did not know of or consent to the furnishing of the labor, material, service, or equipment by the claimant in an action to foreclose the claimant's lien on the property under AS 34.35.050 - 34.35.120. Otherwise the claimant has the burden of proof to show that the owner knew of and consented to the furnishing of the labor, material, service, or equipment. The notice of right to lien shall be in writing, state that it is a notice of a right to assert a lien against real property [A

BUILDING OR OTHER IMPROVEMENT] for labor, materials, services, or equipment furnished in connection with a project [CONSTRUCTION, ALTERATION, OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT], and contain

(1) a legal description sufficient for identification of the real property [UPON WHICH THE BUILDING OR OTHER IMPROVEMENT IS LOCATED];

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment provided or to be provided;

(6) a statement that the claimant may be entitled to record a claim of lien; and

(7) the following statement in type no smaller than that used in providing the information required by (1) - (6) of this subsection: WARNING: Unless provision is [HAS BEEN] made for payment of sums that may be due to the undersigned, your above property may be subject to foreclosure to satisfy those sums even though you may pay [THIS CLAIM, YOU MAY BE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT, NOTWITHSTANDING THE FACT THAT PAYMENT HAS BEEN MADE TO] a prime contractor or other person for the labor, material, service, or equipment furnished by the undersigned [PARTY].

* Sec. 3. AS 34.35.067 is amended to read:

Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of right to lien may be recorded by a claimant at any time after the claimant enters [ENTERING] into a contract for or first furnishes labor, material, service, or equipment [FURNISHED] in connection with a project [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR

OTHER IMPROVEMENT]. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under AS 34.35.070.

* Sec. 4. AS 34.35.070(a) is amended to read:

(a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant may record a claim of lien after entering into a contract for a project [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVEMENT]. A claim of lien may not be recorded later than the time specified under AS 34.35.068.

* Sec. 5. AS 34.35.071(a) is amended to read:

(a) The owner of real property that may be subject to a lien under AS 34.35.050 - 34.35.120 may announce the date of completion of the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

(1) recording a notice of completion after completion of the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT] in the office of the recorder of the district in which the real property [BUILDING OR OTHER IMPROVEMENT] is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

* Sec. 6. AS 34.35 is amended by adding a new section to read:

Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a violation of AS 34.35.050 - 34.35.120 may bring a civil action

(1) except as provided in AS 34.35.062(c), for actual and consequential damages that are proximately caused by the violation

plus costs, including reasonable attorney's fees;

(2) to enjoin the violation, and if the person prevails, the person shall be awarded costs, including reasonable attorney's fees.

(b) A claimant who files a stop-lending notice or has a claim of lien recorded under AS 34.35.075 and who fails to promptly remove the stop-lending notice or claim of lien from the record upon receiving payment in full on the claim or discovering that the stop-lending notice or claim of lien is in error, unjust, premature or excessive is liable for actual and consequential damages caused by the filing of the stop-lending notice or improperly recorded claim of lien plus costs, including reasonable attorney's fees.

* Sec. 7. AS 34.35.080(a) is amended to read:

(a) A lien provided for in AS 34.35.050 - 34.35.120 does not bind real property [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for more than six months after the claim of lien is recorded [FILED], unless an action is commenced in [SUIT IS BROUGHT BEFORE] the proper court to enforce the lien within

(1) [WITHIN] that time; [,] or

(2) [WITHIN] six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim of lien, and the balance owing.

* Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

(c) A lien whose duration is extended by commencement of an action under (a) of this section is void as against a person who, after the commencement of the action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith for valuable consideration, unless a notice of the

pendency of the action has been duly filed for record before the time the person's conveyance is duly filed for record. Notice of the pendency of the action shall conform to the requirements of AS 09.45.-790.

* Sec. 9. AS 34.35.112 is amended to read:

Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than one lien created under AS 34.35.050 - 34.35.120 is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under AS 34.35.050(1);

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen and subcontractors;

(4) [SUBCONTRACTORS, INCLUDING] prime contractors other than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050-(5)];

(5) the general contractor.

(b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are insufficient to pay the lien claims of all persons who have recorded claims [A CLAIM] of lien, the

(1) [THE] liens of all individuals with lien rights under AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) [THE] liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) [THE] liens of materialmen and subcontractors shall be paid in full or pro rata if the proceeds are insufficient to pay them

in full;

(4) liens of persons described in AS 34.35.050(5) and [OUT OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor, shall be paid in full [,] or pro rata if the remainder is insufficient to pay them in full; and

(5) lien of the general contractor [THE BALANCE] shall be paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTITLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

* Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

(c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are sufficient to pay the lien claims of all persons who have recorded claims of lien, the balance shall be paid to the person who owned the property before the foreclosure sale.

* Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

(c) A person who receives a stop-lending notice or notice of right to lien identifying a project for which the person is not the lender shall notify the claimant in writing within 10 days after receipt of the notice that the person is not the lender.

* Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

(d) A claimant shall, within 10 days after receipt of a request, provide an owner or lender to whom the claimant has given a stop-lending notice or notice of right to lien a written statement of the amount due to the claimant and unpaid.

* Sec. 13. AS 34.35.117(a) is amended to read:

(a) Except as provided under (b) of this section, a written waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created under AS 34.35.050 - 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this

section may not relate to labor, materials, services, or equipment furnished after the date the waiver is signed by the claimant.

* Sec. 14. AS 34.35.120(4) is amended to read:

(4) "construction financing" means [THAT PORTION OF] money loaned or other credit extended to an owner secured by an encumbrance on real property to finance a project on that [ORIGINAL CONSTRUCTION OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real property [, BUT DOES NOT INCLUDE

(A) FUNDS TO ACQUIRE REAL PROPERTY;

(B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUMBRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUCTION FINANCING;

(C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL, CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

* Sec. 15. AS 34.35.120(9) is amended to read:

(9) "give notice" means to mail a notice required under AS 34.35.050 - 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is effective when given or delivered to

(A) [TO] a lender at the address designated in the encumbrance securing that lender;

(B) [TO] an owner at the last known address of the owner;

(C) [TO] a prime contractor at the last known address of the prime contractor;

(D) [TO] a potential lien claimant at the address specified in a stop-lending [STOP-PAYMENT] notice or notice of right to lien or claim of lien;

* Sec. 16. AS 34.35.120(13) is amended to read:

(13) "owner" means a person who owns real property or a possessory interest in real property [THE BUILDING OR OTHER IMPROVEMENT] and who enters into a contract, express or implied, for a project on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR IMPROVEMENT];

* Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

(17) "project" means construction, alteration, or repair of an improvement on real property or work done to enhance the real property itself.

* Sec. 18. AS 34.35.069, 34.35.080(b), 34.35.114(e), and 34.35.118 are repealed.

025. **Parties to foreclosure.** In an action to foreclose a by AS 34.35.005 — 34.35.425, all persons personally lien holders whose claims have been filed, and all other sted in the matter in controversy or the property sought with the lien may be made parties. Persons who are not bound by the proceedings. (§ 26-9-6 ACLA 1949)

rences. — 53 Am. Jur.
ns, §§ 359-373.

030. **Lien claim against different properties.** If a lien or the same labor against two separate kinds of property ned by different persons, the court shall determine the ch kind of property and designate which shall be sold ge the amount of the lien claim. (§ 26-9-7 ACLA 1949)

035. **Several judgment for each claimant.** In an ce a lien judgment shall be given in favor of each person or the amount due the person, and the court shall order et to the lien to be sold by the peace officer in the same roperty is sold on execution, or in any manner that the proper. The proceeds of the sale shall be apportioned to each judgment pro rata, if the amount is insufficient to l. (§ 26-9-8 ACLA 1949)

040. Order of priority and payment. [Repealed, § 19 ch For current law see AS 34.35.112.]

045. **Lienor's action on contract.** Except as otherwise ded, nothing in AS 34.35.005 — 34.35.425 may be event a lienor under a contract from maintaining an lienor has no lien for the security of the debt and the action does not prejudice rights under AS 34.35.005 — 6-9-11 ACLA 1949)

NOTES TO DECISIONS

by statute create a y, and a lienor has the way of his lien or by an hell v. Beaver Dredg- 6 (1935).

Where the lien fails, the claimant may nevertheless have a personal judgment against the defendant personally liable in the cause. Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935).

Article 2. Mechanics and Materialmen.

Section
50. Lien for labor or materials furnished
55. Land subject to lien
60. Priorities
62. Construction financing
64. Notice of right to lien
65. Notice of nonresponsibility
67. Recording notice of right to lien
68. Time periods for claiming liens
69. Acknowledgment of right to lien
70. Claim of lien
71. Notice of completion
72. Bond
75. Record and index of claim
80. Duration of lien
85. Lien for improving lot or street
90. Payment to contractor
95. Amount of lien
100. Action against contractor on lien
105. Materials not subject to process
110. Actions to enforce liens
112. Payment of claimant's liens
114. Obligation of claimant and lender to provide information
115. Persons considered agent of owner
117. Waiver of lien rights
118. Claimant liability
119. Waiver of liens on unsold common interest community units
120. Definitions

Sec. 34.35.050. Lien for labor or materials furnished. A person has a lien, only to the extent provided under this chapter, to secure the payment of the contract price if the person

(1) performs labor upon real property at the request of the owner or the agent of the owner for the construction, alteration, or repair of a building or improvement;

(2) is a trustee of an employee benefit trust for the benefit of individuals performing labor on the building or improvement and has a direct contract with the owner or the agent of the owner for direct payments into the trust;

(3) furnishes materials that are delivered to real property under a contract with the owner or the agent of the owner that are incorporated in the construction, alteration or repair of a building or improvement;

(4) furnishes equipment that is delivered to and used upon real property under a contract with the owner or the agent of the owner for the construction, alteration or repair of a building or improvement;

(5) performs services under a contract with the owner or the agent of the owner in connection with the preparation of plans, surveys, or architectural or engineering plans or drawings for the construction, alteration or repair of a building or improvement, whether or not actually implemented on that property; or

(6) is a general contractor. (§ 26-1-1 ACLA 1949; am § 1 ch 20 SLA 1949; am § 1 ch 14 SLA 1953; am § 1 ch 57 SLA 1959; am § 1 ch 106 SLA 1967; am § 1 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — Many of the cases annotated below were decided under this section as it existed before the 1978 amendment.

Constitutionality of lien laws. — See Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska 210 (1915).

The mechanic's lien law of Alaska was adopted originally from the lien law of Oregon. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

Alaska mechanic's lien laws were derived from those of Oregon. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

The purpose of legislatures in enacting mechanic's and materialman's lien laws is for the protection of the mechanic, insuring to him the fruits of his labor and providing the materialman with a speedy and efficacious mode of collecting his pay for materials furnished. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

And to secure lien priority of payment. — It is the purpose of the lien law to secure priority of payment of the price and value of work performed and materials furnished in erecting and repairing a building or other structure. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

This article relating to mechanics' liens should be liberally construed. Russell v. Hayner, 130 F. 90 (9th Cir. 1904); Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914). But see Goldstein v. Noble, 6 Alaska 282 (1920).

The evident spirit and purpose of this article is to do substantial justice to all parties who may be affected by its provisions, and the courts should avoid unfriendly strictness and mere technicality. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Mechanic's lien statutes are to be liberally construed, with a view to effect substantial justice, and the fact that the lien claimant includes in his claim an item of his services for which the law gives him no lien will not defeat the lien if due to an honest mistake, and his lien in such a case may be enforced pro tanto if the true amount for which he is entitled to a lien may be segregated from the remainder. Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Except to protect against undue severity. — Where the particular enactment deals fairly and equitably with both the owner and the lienor, the liberal interpretation seems to be the rule adopted; but where the statute seems to be unnecessarily severe upon one, and in favor of the other, resulting in manifest injustice, the courts have endeavored to relieve the severity, holding the party favored to a strict compliance with the statute. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

And parts upon which existence of lien depends should be strictly construed. — The safe and proper rule of construction of mechanic's lien statutes is that, while the remedial portions of these statutes should be liberally construed, with a view to avoid defeating the purpose of the statute, yet those parts upon which the right to the existence of a lien depend, being in derogation of the common law, should be strictly construed. Morris v. Marsh, 3 Alaska 140 (1906).

They must be substantially complied with. — A mechanic's lien is purely of statutory creation, and can only be maintained by a substantial observance and compliance with the provisions of the statute. Whatever is made necessary to the existence of the lien must be performed, or the attempt to create it will be futile. A substantial adherence to the terms of the statute in the notice of the lien is indispensable. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Thus, this section should be strictly construed. Rivers v. Pastro, 11 Alaska 491 (1948).

A strained construction to bring a person within this section is not permissible. Rivers v. Pastro, 11 Alaska 491 (1948).

Prior law construed. — This section as it existed prior to 1978 prohibited the creation of a valid mechanic's lien prior to the commencement of work on the site and the effectuation of visible improvements to the property. Torkko/Korman/Engineers v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983). See now paragraph (5), which allows liens for work done in the preparation of plans "whether or not [they were] actually implemented."

This article is not, of its own terms, made applicable to public property. University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

The landowner must have actual knowledge of the construction before his interest can be subjected to a materialman's lien. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

If the materialman relies on both the credit of the purchaser and the security of the building, the materialman can assert a lien. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Materialperson must demonstrate that materials furnished were generally incorporated into the building or project. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

No requirement that materialman see that every piece used in structure. — In the foreclosure of a materialman's lien, the materialman should not be required to watch the progress of a structure to see that every piece of material supplied by him was used therein, and if some of the material has been used elsewhere, it rests with the defendant to show that fact. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A materialperson has a burden to show by a preponderance that its materials were generally used in a project, but it need not show that each and every item was incorporated. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A mechanic's lien will attach to property for an improvement not placed thereon if it has a physical or beneficial connection therewith and is essential to the convenient and comfortable use of the premises. Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Lots in a subdivision are liennable for an engineer's labor on the subdivision's water and sewerage system. Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Effect of agreement establishing partnership. — For the purposes of this section, an agreement establishing a partnership or joint venturership does not affect one party's standing to file a lien against the other party's land. Urban Dev. Co. v. Dekreon, Sup. Ct. Op. No. 1083 (File No. 2028), 526 P.2d 325 (1974).

The meaning properly attaching to the word "contractor" as used in this section is one who has charge of the construction of the building, alteration, or repair by direction of or contract with the owner or his agent duly authorized to contract for him. Morris v. Marsh, 3 Alaska 140 (1906).

A lien of a contractor may include an item for supervision and overhead. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), thru 369 P.2d 890 (1962).

Labor for which lien is claim must come within statute. — While mechanic's lien statutes are to be liberally construed, so that their purpose may not be frustrated, and with a view to effecting substantial justice, yet, unless the labor performed for which the lien is claimed is such as comes within the contemplation of the statute, there can be no valid lien. Noble v. Gustafson, 204 F. 69 (9th Cir. 1913).

This section and AS 34.35.070 must be read and construed together, and as applied to an original contractor, in computing the time from which he must file his claim of lien, they provide that he must file it within 90 days from the date of the completion of his contract or within 90 days from the date of the construction of the building, or any part of such construction, under the contract. Bloom v. McCluskey, 7 Alaska 349 (1925).

There must be employment by the owner of the building or his agent. — To authorize a lien under the provisions of this section, there must be an employment by the owner of the building, or his authorized agent, and the employment of contractors by one who was occupying the land under a contract of purchase, does not constitute the employment contemplated by this section. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Or owner must know of and fail to disclaim improvement. — If the person in charge is not in fact the agent of the owner, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge and he fails to post the required notice disclaiming responsibility. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Person in charge is prima facie owner's agent. — This section, AS 34.35.055 and 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the prop-

erty of the latter shall be charged with the lien under the express provisions of this section. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

Lessee is not owner's agent. — A lessee, contracting for improvements upon the demised premises, does not, merely by virtue of his relation as lessee, contract as the agent of the lessor, so as to subject the property to mechanics' liens therefor. Morris v. Marsh, 3 Alaska 140 (1906).

And lien is limited to leasehold unless owner fails to give notice of nonresponsibility. — If the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Or unless lease authorizes lessee to improve or improvements revert. — It is the general rule that where a lease contains a provision authorizing the lessee to make improvements by deducting the cost thereof from the rent, or where part of the consideration of the lease is the making by the lessee of improvements which become a part of the realty, or that the improvements made by the lessee shall revert to the lessor, a mechanic's lien may attach to the property for work done or materials furnished, pursuant to a contract with the lessee. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

It will attach to building erected by lessee that is to revert to lessor. — Where a lease provided that construction of a business building on the property by the lessee was a part of the consideration, but also provided that the building was to "attach to the said realty as a part thereof and become the property of lessor" upon the expiration or termination of the lease, as to a materialman's lien, the building had become an integral part of the leasehold estate, and was not an item of personal property to be considered separately from the realty upon which it was constructed and the lessee's interest in that realty. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

Breach of contract bars enforcement of lien for work performed. — Where a contractor fails to perform a considerable part of the work required by his contract, his failure, regardless of his intentions, constitutes a bar to his enforcement of a lien for the work performed. Gillis v. Gillette, 13 Alaska 55, 181 F.2d 872 (9th Cir. 1950).

As where contract is wilfully abandoned before completion. — See Gillis v. Gillette, 13 Alaska 55, 181 F.2d 872 (9th Cir. 1950).

Burden of proof on lien claimant to show compliance with statute. — Where the allegations of the complaint in regard to the work done upon a claim and the character thereof were put in issue by the answer, the burden of the proof is on the lien claimant to show by legally sufficient evidence the accrual of the lien under the terms of the statute which creates it, as well as under the terms of the contract under which the work was done. Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Bare statement that other projects were being completed by a construction company at the same time that a particular project's modular units were being manufactured is insufficient, under the supreme court's precedents, to raise a triable issue of fact as to whether the material furnished to the construction company was actually incorporated into the particular project. University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

A house builder's employee cannot recover back wages directly against the home buyers under a theory that the employee was a third-party beneficiary to a contract between the builder and the buyer. State v. Osborne, Sup. Ct. Op. No. 2034 (File No. 4385), 607 P.2d 369 (1980).

Applied in Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 575 (D. Alaska 1954).

Quoted in Irvine v. McDougal, 5 Alaska 220 (1915); Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935); Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 11541), 478 P.2d 829 (1970).

Cited in First Nat'l Bank v. Stout, 9 Alaska 400 (1939); Spalding v. Martin, 241 F. 372 (9th Cir. 1917).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 1 et seq.

"Owner" within meaning of mechanic's lien statutes. 2 ALR 791; 95 ALR 1095.

Lien for labor or material entering into rejected work. 16 ALR 981.

Right to mechanic's lien. 83 ALR 11.

Inception of lien. 83 ALR 925.

Mechanics' liens: mortgagee-lender's duty, in disbursing funds, to protect mortgagor against outstanding or potential mechanics' liens against the mortgaged property. 30 ALR4th 134.

Sec. 34.35.055. Land subject to lien. (a) The land upon which a building or other improvement described in AS 34.35.050 is constructed, together with a convenient space about the building or other improvement or so much as is required for the convenient use and occupation of it (to be determined by the judgment of the court at the time of the foreclosure of the lien), and the mine on which the work is performed or for which the material is furnished is also subject to the lien created by AS 34.35.050 — 34.35.120 if, at the time the work is started or the materials for the building or other improvements are first furnished, the land belongs to the person who causes the building or other improvement to be constructed, altered, or repaired.

(b) If the person owns less than a fee simple estate in the land, then only the interest of the person in it is subject to the lien.

(c) If the interest is a leasehold interest, and the holder forfeits the rights of the holder to it, the purchaser of the building or improvement and leasehold term, or so much of it as remains unexpired at a sale under AS 34.35.050 — 34.35.120 is considered to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease.

(d) If the lessor regains possession of the land and property, or obtains judgment for the possession of it before the commencement of the construction, alteration, or repair of the building or other improvement, the purchaser may only remove the building or other improvement within 30 days after the purchase, and the owner of the land shall receive the rent due payable out of the proceeds of the sale, according to the terms of the lease, down to the time of the removal. (§ 26-1-2 ACLA 1949)

NOTES TO DECISIONS

The object of this section is to declare to what land the lien shall extend. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

The legislature intended to confer the right of lien upon every laborer or mechanic whose work tends to improve lands or mines. Morris v. Marsh, 3 Alaska 140 (1906).

The purpose of extending a statutory lien to the land is because the value of the land is increased when a materialperson provides labor or material for a structure which is attached to the land. The lien should extend to the land, which is benefited by the materialperson. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Complaint is defective unless it alleges labor went to improvement. — The absence of an allegation that the labor went to the improvement of the owner's lands or mines is of itself fatal to the complaint. Morris v. Marsh, 3 Alaska 140 (1906).

And so is lien notice. — A lien notice simply to the effect that materials were

furnished and labor was done "in connection with the work done upon the claims" does not comply with the statute. Goldstein v. Noble, 6 Alaska 282 (1920).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration, and repairs of which some or all of the materials were employed or used. Burr v. House, 3 Alaska 641 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor thereof. Morris v. Marsh, 3 Alaska 140 (1906).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. Morris v. Marsh, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement. — This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaption to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 615 (1977).

Applied in Torkko Korman Engineers v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983).

Quoted in Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Stated in Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 28-48.

Public property as subject to lien. 26 ALR 326.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

Sec. 34.35.060. Priorities. (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) *[Repealed, § 19 ch 175 SLA 1978.]*

(c) A lien created by AS 34.35.050 — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (§ 26-1-3 ACLA 1949; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.120 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

Legislative intent. — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended to subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' lienors. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

This section protects the security of a mortgagee or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notice of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens in

several ways: They may require their contractors or borrowers to put up a cushion of perhaps a tenth of the loan to be disbursed by the construction lender before the loan funds are disbursed; they may make all payments directly to subcontractors and suppliers; they may make disbursements to the contractors only on production of receipts and lien waivers from the subcontractors and suppliers. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Prior encumbrancers who had loaned money on the security of bare land would not be substantially harmed if laborers and materialmen had priority when they made improvements, and construction lenders can protect themselves. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Priority under subsection (c). — Under subsection (c) a subsequent mechanic's lien is prior in right to a preexisting mortgage only if the work was "original construction." Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

A new addition to a building was not original construction within the intendment of subsection (c). Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Where the addition was an addition to a preexisting building, and was of relatively small size, and could not be removed without greatly damaging the premises as they were before the addition was added, the mechanics' liens were subordinate to the prior recorded deeds of trusts. Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Lynch v. McCann only case discussing "original construction". — Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) is the only case discussing "original construction," a term unique to Alaska's laws. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

But it established no clear test. — Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) established no clear test for original construction, but stated such standard "must await decisional delineation." Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

Suggested guideline for "original construction". — The supreme court in Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) suggested as a guideline for determining "original construction" where the construction preceded all other construction in and upon a given area of vacant or cleared land. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

Where a building was apparently a separate structure and not constructed as a part of a smaller existing building and on the building permit issued by the Greater Anchorage Area Borough, the construction was described as "new" as opposed to other boxes entitled "alteration," "addition," "repairs," and "other," although the building was designed architecturally to be connected to the existing peanut farm and to conform and blend with it architecturally, the federal district court concluded that the federal district building constituted "original construction." Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

The lien of a secured party was not treated as an "interest in the land" for purposes of AS 34.35.065, the nature of nonresponsibility section, since, if it were so treated, a secured party could attain priority over a mechanics' lienor on original construction. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Issue arising from a discrepancy in the amount of liens was not critical to determining the priority of such liens. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

The fluctuation of the market values of mortgage securities cannot alter the priorities between a lienor and mortgagee. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

A mechanic's lien, not perfected at the time a federal tax lien attaches, is inferior to the government lien. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

As against the United States, a mechanic's lien must be specific, and what is a specific lien is a federal question. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

And a lien is not specific until the lienor reduces it to possession. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

"Specificity" requires that the lien be attached to certain property by reducing it to possession, on the theory that the United States has no claim against property no longer in the possession of the debtor. Until such possession, it remains a general lien. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

Federal law controls when a lien of the United States is involved. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

Subsection (c) not adopted by federal district court. — In determining the content of federal common law in order to establish priority between a deed of trust assigned to and recorded by the Small Business Administration and a subsequent mechanic's lien by alleged actions of furnishing labor and materials for an improvement to the property in question, the federal district court would not adopt subsection (c) of this section, which is a distinctly minority codification of mechanic's lien laws and would grant nongovernment parties rights beyond the Federal Tax Lien Act. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

A mechanic has a lien upon the land paramount to all rights accruing after the commencement of his work. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

Formerly, a lien for alteration or repair, as well as original construction, took precedence even of a prior mortgage. Wagner v. Shaw, 6 Alaska 647 (1922). See First Nat'l Bank v. Vasey, 14 Alaska 414, 114 F. Supp. 913 (D. Alaska 1953).

Section is not intended to confiscate another's security. — Although the purpose of this section is to give a mechanic's lien to the full extent of the claim upon the property improved, the legislature did not intend in accomplishing that result to confiscate security already belonging to another. Wagner v. Shaw, 6 Alaska 647 (1922).

So prior recorded mortgage prevails as to land. — A mechanic's lien cannot attach to the land on which a prior mortgage, duly recorded, exists at the time the lumber was furnished for the building. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

But section dissevers building subject to lien from land subject to prior mortgage. — A lien is given, not on the materials as such, but on the buildings or improvements in the construction of which the materials are used. The operation of the statute, in case there is a prior mortgage of the land, is to dissever the improvements from the land or realty by giving a superior lien on such improvements and conferring on the purchaser the right to remove them. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

Where all parties seek sale, severability of building is immaterial. — Where all mortgagees and holders of materialmen's liens pray that the property be sold to satisfy their liens, the question of severability of the building is not material. First Nat'l Bank v. Vasey, 14 Alaska 414, 114 F. Supp. 913 (D. Alaska 1953).

Applied in Bank of Wrangell v. Alaska Asiatic Lumber Mills, Inc., 12 Alaska 338, 84 F. Supp. 1 (D. Alaska 1949).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 263-283.

Sec. 34.35.062. Construction financing. (a) A lender providing construction financing where there is not a payment bond of at least 50 per cent of the amount of construction financing shall observe the following procedures:

(1) Draws against construction financing shall be made only after certification of job progress to the lender by the general contractor, if any, and the owner. The form of the certification may be prescribed by the lender.

(2) A claimant described in AS 34.35.050 who has not received payment within 20 days after the date for payment required by the contract or employee benefit trust agreement or, if no date for payment is specified, then 30 days after the labor, materials, services, or equipment are first furnished, may within 20 days thereafter give a stop-payment notice of the sums due for which the claimant may claim a lien under AS 34.35.095.

(3) The stop-payment notice shall be given to the lender and to the owner. The stop-payment notice shall state in substance

(A) the name of the person ordering the labor, materials, services, or equipment;

(B) a sufficient legal description of the real property being improved or developed;

(C) a description of the labor, materials, services or equipment furnished, or obligation owed to an employee benefit trust;

(D) the name, business address and telephone number of the claimant; and

(E) the sum due and not yet paid under the claimant's contract which may include an amount not to exceed 50 per cent of the principal amount of the claim for interest, reasonable costs, and attorney fees.

(4) After receipt of a stop-payment notice under this section, the lender shall withhold from the next and subsequent draws sufficient money to pay the amount claimed in the stop-payment notice.

(5) Sums withheld under a stop-payment notice may not be disbursed by the lender except under the terms of a written agreement signed by the claimant, owner and general contractor or by order of a court of competent jurisdiction.

(b) If a lender fails to comply with the provisions of (a)(4) or (5) of this section, the lender shall be liable to the claimant for an amount equal to the sum disbursed in violation of those subsections or the sum ultimately determined to be due the claimant by a court of competent jurisdiction, whichever is less.

(c) Within 30 days after filing a stop-payment notice the claimant may file an action in a court of competent jurisdiction to obtain the sums claimed in the stop-payment notice. The complaint shall be accompanied by a bond in an amount equal to the amount claimed with sufficient sureties as approved by the court. The claimant shall give notice to the lender that the action has been filed and include a copy of the bond filed with the action. If a claimant fails to file an action under this subsection and to serve notice of the filing and a copy of the bond upon the lender within 30 days after filing the stop notice, or to execute a written agreement under (a)(5) of this section, the lender may disburse the money withheld under the claimant's stop-payment notice without incurring liability to the claimant. (§ 4 ch 175 SLA 1978)

Sec. 34.35.064. Notice of right to lien. (a) After entering into a contract, a claimant may give a notice of right to lien to the owner and the lender. The notice of right to lien shall be in writing, state that it is a notice of a right to assert a lien against a building or other improvement for labor, materials, services, or equipment furnished in connection with construction, alteration, or repair of the building or other improvement, and contain

(1) a legal description sufficient for identification of the real property upon which the building or other improvement is located;

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment provided or to be provided;

(6) a statement that the claimant may be entitled to record a claim of lien; and

(7) the following statement in type no smaller than that used in providing the information required by (1) — (6) of this subsection:

WARNING: Unless provision has been made for payment of this claim, you may be liable for payment directly to this claimant, notwithstanding the fact that payment has been made to a prime contractor or other party.

(b) Upon request from an owner, lender, or prime contractor, a claimant who has given a notice of right to lien under this section shall disclose to the requester within five days the most recent accounting of the amount due and unpaid to that claimant under the terms of the contract and a description of labor, materials, services, or equipment which the claimant reasonably anticipates furnishing. (§ 4 ch 175 SLA 1978; am § 1 ch 61 SLA 1979)

Sec. 34.35.065. Notice of nonresponsibility. (a) A building or improvement mentioned in AS 34.35.050 constructed with the knowledge of the owner of the land or the person having or claiming an interest in the land is considered to be constructed at the instance of the owner or person having or claiming the interest.

(b) The interest owned or claimed is subject to a lien filed in accordance with AS 34.35.050 — 34.35.120, unless (1) the owner or person having or claiming an interest in the land gives notice within three days after the owner or other person obtains knowledge of the construction, alteration or repair that the owner or other person will not be responsible for it, by posting a notice to that effect in writing in some conspicuous place upon the land or upon the building or other improvement located on the land; (2) the notice is signed by the owner

or person having or claiming an interest in the land in the presence of two attesting witnesses or acknowledged by the owner or other person before a notary public; (3) the posting of notice is attested to by a witness; and (4) an attested or notarized copy of the notice is recorded with the recorder of the recording district in which the land, building or other improvement is located within three days after the posting of the notice. (§ 26-1-4 ACLA 1949; am § 1 ch 71 SLA 1961)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided before revision of much of this chapter in 1978 and 1979.

Alaska mechanic's lien laws were derived from those of Oregon. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Section enacted for protection of owner. — The notice of nonresponsibility section is designed to protect owners who do not instigate work done on the land, such as lessors whose lessees independently instigate the furnishing of labor or materials. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The landowner must have actual knowledge of the construction before his interest can be subjected to a materialman's lien. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

As yet undetermined in this jurisdiction is whether knowledge of intended construction would be sufficient to bring into operation the provisions of subsections (a) and (b). Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Owner is protected if work is not done at his instance. — The provisions of this section are for the benefit and protection of the owner in cases where the work is not done and the material is not furnished at his instance, or at the instance of his agent. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

But he may not post notice if work is so done. — It is not the intention of the law, nor is it the purport thereof, that when in fact the work is done, and the material is furnished at the owner's instance, he may prevent a lien upon his property by posting the notice referred to in this section. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

The words "at the instance" of the owner signify at the motion of, consent, at least, knowledge of Cribb v. Caskey, 4 Alaska 250 (1910).

Employment by owner of his agent is necessary. — To bind the building under a mechanic's lien for labor and materials furnished, there must be an employment by the owner of the building or his authorized agent. Cribb v. Caskey, 4 Alaska 250 (1910).

Person in charge of work must be employed by owner to be statutory agent. — To constitute the contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of any building, the statutory agent of the owner, such person must have been employed directly or indirectly at the instance of the owner, or his conventional agent. Cribb v. Caskey, 4 Alaska 250 (1910).

But such person is prima facie owner's agent. — This section, AS 34.35.050 and 34.35.055, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

And if he is not, knowledge and failure to post notice made owner liable. — If the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge and he fails to post notice disclaiming responsibility. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Complaint must allege such knowledge. — Allegation of a complaint fails to meet the requirement of this section that does not impute knowledge of the construction of any building or improvement. Morris v. Marsh, 3 Alaska 140 (1905).

Knowledge of the contract of employment and consent to its terms is not tantamount to knowledge of the actual construction of the improvement, even though the terms of the agreement may have contemplated its construction. Morris v. Marsh, 3 Alaska 140 (1905).

However, actual or positive knowledge is not required by this section. Lalay v. Northern Mining & Trading Co., 5 Alaska 134 (1914).

Since knowledge may be implied. Knowledge in a legal sense may be positive or implied. The implication of knowledge arises when the party to be charged is shown to have had knowledge of such facts and circumstances as would lead him by the exercise of due diligence to a knowledge of the principal fact. Lalay v. Northern Mining & Trading Co., 5 Alaska 134 (1914).

Lien attaches to building constructed by lessee as part of leasehold. — Where a lease provided that construction of a business building on the property by the lessee was a part of the consideration, but also provided that the building was to "attach to the said realty as a part thereof and become the property of lessor" upon the expiration or termination of the lease, as to a materialman's lien, the building had become an integral part of the leasehold estate, and was not an item of personal property to be considered separately from the realty upon which it was constructed and the lessee's interest in that realty. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

But is confined to leasehold if owner posts notice. — If the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Mortgagees and beneficiaries of deeds of trust are not required to post notices of nonresponsibility in order to protect a given statutory priority. Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

A beneficiary of a deed of trust is not a "person having or claiming an interest in the land" within the intend-

ment of this section. Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

The beneficiary of a deed of trust is not a "person having or claiming an interest in the land" for purposes of this section, so is not protected against superior mechanics' liens by posting and recording notices of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagee and beneficiaries of deeds of trust need not post notices of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in AS 34.35.060. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under AS 34.35.060 (a) regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in AS 34.35.060 (a), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The lien of a secured party was not treated as an "interest in the land" for purposes of this section, the notice of nonresponsibility section, since if it were so treated a secured party could attain priority over a mechanics' lienor on original construction. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Sufficiency of posting of notice. — See Turner v. Enstrom, 5 Alaska 118 (1914).

Applied in Russell v. Hayner, 130 F. 90 (9th Cir. 1904); Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Quoted in Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Stated in Donaldson v. Henning, 4 Alaska 642 (1913).

Cited in Spalding v. Martin, 241 F. 372 (9th Cir. 1917).

Collateral references. — Notice of nonresponsibility, 123 ALR 7.

Sufficiency of notice under statute making notice by owner of nonresponsibility necessary to prevent mechanic's lien, 85 ALR2d 949.

Sec. 34.35.067. Recording notice of right to lien. A notice of right to lien may be recorded by a claimant at any time after entering into a contract for labor, material, service or equipment furnished in connection with the construction, alteration or repair of a building or other improvement. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under AS 34.35.070. (§ 4 ch 175 SLA 1978)

Sec. 34.35.068. Time periods for claiming liens. (a) If a notice of completion is not recorded by the owner as provided in AS 34.35.071, a claim of lien shall be recorded not later than 90 days after the claimant

(1) completes the construction contract; or

(2) ceases to furnish labor, material, services or equipment for the construction, alteration or repair of the owner's property.

(b) If a notice of completion is recorded by the owner as provided in AS 34.35.071,

(1) the following shall record a claim of lien or a notice of right to lien not later than 15 days after the notice of completion is recorded:

(A) a claimant who has received advance notification of the date that the notice of completion is recorded as provided in AS 34.35.071(a)(2);

(B) a claimant who has not given a notice of right to lien as permitted in AS 34.35.064;

(2) the following shall record a claim of lien not later than the time specified in (a) of this section:

(A) a claimant who records a notice of right to lien before or within the period specified in (1) of this subsection;

(B) a claimant who has given a notice of right to lien but who has not received advance notice of the date that the notice of completion is recorded by the owner as provided in AS 34.35.071(a)(2).

(c) A claim of lien is enforceable only if recorded by a claimant within the time specified in (a) or (b) of this section. (§ 2 ch 61 SLA 1979)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under AS 34.35.070 as it existed prior to the 1978 amendment. Former subsection (b) of that section concerned the time period for claiming liens.

Time for filing is mandatory. — No liberal construction is permitted to be applied to the mandatory requirement that the claim of lien must be filed within the specified time, in order that it may become an actual lien, instead of a claim, and may charge the property with a special statutory liability. Irvine v. McDougall, 5 Alaska 300 (1915), rev'd on other grounds, 4 Alaska Fed. 430, 245 F. 888 (9th Cir. 1916).

A notice of lien must show that it was filed within the time prescribed by statute. Bloom v. McCluskey, 7 Alaska 349 (1925).

A lien is not effective or valid until a written claim of lien has been filed for record with the recorder of the recording district in which the property is situated, within 90 days from completion of the service or delivery of supplies. Brooks v. R & M Consultants, Inc., Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

Time for filing contractor's lien may run from construction of part of building. — This section and AS 34.35.050 must be read and construed together, and as applied to an original contractor, in computing the time from which he must file his claim of lien, they provide that he must file it within 90 days from the date of the completion of his contract or within 90 days from the date the construction of the building, or any part of such construction, under the contract. Bloom v. McCluskey, 7 Alaska 349 (1925).

And lien for materials may be filed before building is completed. — There is no prejudice to any substantial right of the owner of the building in the filing of a lien at any time after the material is furnished, and before the completion of the building, and a lien filed before the completion of the building is not filed prematurely. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 701, 35 S. Ct. 209, 59 L. Ed. 431 (1914).

The fact that the cost of the last items furnished is small in comparison with the overall cost of a building does not defeat a lien, where it appears that the furnishing of the materials was done in good faith and in the normal course of business, and not for the purpose of extending the time to file a claim of lien. Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Lien for extra labor and materials must be filed 90 days after furnishing.

A lien for extra labor and materials supplied under an agreement separate from the original contract is required to be filed within 90 days after cessation of the labor and the furnishing of the materials described in the claim of lien. Gillis v. Gillette, 13 Alaska 55, 184 F.2d 872 (9th Cir. 1950).

After filing, lien dates back to commencement of work. — Although the exact time the lien arises is not spelled out, the clear import of this section is that after the mechanic's claim is filed a lien arises which dates back to the commencement of the work and is to be given preference over any encumbrance or lien attaching after work commences. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

Initial recordation of mechanic's lien claim constitutes inquiry notice of the lien to a subsequent purchaser; a mechanic's lien claimant, in order to protect his lien, does not have to record a notice of lis pendens when he later files suit to foreclose the lien. First Nat'l Bank v. Dent, Sup. Ct. Op. No. 2839 (File No. 7728), 683 P.2d 722 (1984).

Lien claim held to have been timely filed. — See Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Sec. 34.35.069. Acknowledgment of right to lien. (a) A person other than an individual as defined in AS 34.35.120 may not claim a lien under AS 34.35.050 — 34.35.120 for furnishing labor, materials, services, or equipment to a person other than the owner of the real property being improved unless at the time the person records a claim of lien as provided in AS 34.35.070 or a notice of right to lien as provided in AS 34.35.067, the person also records an authenticated

copy of an acknowledgment of right to lien received from the owner.

(b) An acknowledgment of right to lien must be signed by the owner, be denominated "acknowledgment of right to lien," and state:

(1) the effective date of the acknowledgment;

(2) the name of the person to whom the acknowledgment is directed;

(3) the name and address of the owner;

(4) the name and address of the lender providing construction financing;

(5) the name and address of the person who is to furnish labor, materials, services, or equipment;

(6) the real property being or intended to be improved or directly benefited, with a legal description sufficient for identification;

(7) a brief description of the labor, materials, services, or equipment to be furnished to the person named in (5) of this subsection;

(8) that the owner acknowledges the right of the person to claim a lien to secure payment for the cost of labor, materials, services, or equipment furnished by the person named in (5) of this subsection for the construction, alteration, or repair of improvements on the owner's real property.

(c) An acknowledgment of right to lien may state its duration. If no duration is stated, the duration of an acknowledgment of right to lien is one year from the effective date stated in the acknowledgment.

(d) Unless an acknowledgment of right to lien states that the owner will acknowledge lien rights only for certain types or quantities of labor, materials, services, or equipment, the acknowledgment applies to all labor, services, materials, or equipment furnished to the person named in the acknowledgment and used in the construction, alteration or repair of the owner's real property. (§ 2 ch 61 SLA 1979)

Sec. 34.35.070. Claim of lien. (a) Subject to the provisions of AS 34.35.069(a), a claimant may record a claim of lien after entering into a contract for the construction, alteration, or repair of a building or improvement. A claim of lien may not be recorded later than the time specified under AS 34.35.068.

(b) *[Repealed, § 9 ch 61 SLA 1979.]*

(c) The lien shall be verified by the oath of the claimant or another person having knowledge of the facts and state

(1) the real property subject to the lien, with a legal description sufficient for identification;

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment furnished for the construction, alteration, or repair, and the contract price of the labor, materials, services, or equipment;

(6) the amount due to the claimant for the labor, materials, services, or equipment; and

(7) the date the last labor, materials, services, or equipment were furnished.

(d) *[Repealed, § 19 ch 175 SLA 1978.]*

(e) *[Repealed, § 19 ch 175 SLA 1978.]*

(f) A violation of the provisions of this section places the violator in the position of guarantor regarding another person who suffers damages which are proximately caused by the violation. (§ 26-1-5 ACLA 1949; am § 1 ch 89 SLA 1974; am §§ 1, 2 ch 123 SLA 1977; am §§ 5, 6, 19 ch 175 SLA 1978; am §§ 3, 9 ch 61 SLA 1979)

NOTES TO DECISIONS

Editor's notes. — Many of the cases annotated in the notes below were decided under this section as it existed prior to the 1978 amendment.

No lien exists until the claim of lien is filed as prescribed by this section. Irvine v. McDougall, 5 Alaska 300 (1915), rev'd on other grounds, 4 Alaska Fed. 430, 245 F. 888 (9th Cir. 1916).

Construction of introductory language of subsection (c) mandated. — A construction of subsection (c)(5) as it existed prior to the 1978 amendment [now the introductory language of subsection (c)] which requires that the claim of lien be verified by the oath of the claimant or another person having knowledge of the facts as essential to the existence of the lien, is mandated. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Policy considerations underlying verification requirement. — The requirement of verification is reflective of the legislature's awareness that a claim of lien adversely affects the title to the property and its alienability; that the claim of lien can have an injurious impact on the credit of the owner of the property which is subjected to the lien; and that the claim of lien can be used as a vehicle to coerce settlement from the owner of the property. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977); Brooks v. R & M Consultants, Inc., Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

Reasonable basis exists for verification requirement. — In light of the important policy considerations underlying the verification requirement, there exists a reasonable basis for the legislature's determination that the significance of filing a lien claim be made clear to the lien claimant through the requirement of verification and the possibility of perjury prosecution for verifying a false lien claim. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977); Brooks v. R & M Consultants, Inc., Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

And no latitude is permitted concerning such requirement. — Generally, some latitude is permitted by statutes as to the form in which the oath or affirmation as to the truth of the contents of the lien claim may be administered, and substantial compliance with such form is often sufficient. However, there is a significant distinction between those portions of Alaska mechanics' liens statutes which are remedial in nature, and those portions which articulate mandatory conditions precedent to the very creation and existence of the lien. It is the latter aspect of Alaska's mechanics' and materialmen's lien statutory provisions which is at issue in a case concerning whether an affiant or claimant must swear to the truth of the contents of the

claim. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

The operative, substantive requirement of subsection (c) is that the claim be verified; that the verification be "by oath of the claimant" simply describes the means or procedure to be followed in verifying the claim. Therefore, substantial compliance with the formal requirement of an oath is sufficient. Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

Verification requirement substantially unchanged. — Although Alaska's mechanics' and materialmen's statutes have been substantially revised in recent years, the verification requirement of subsection (c) of this section has remained substantially unchanged. Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

Claims of lien are not valid liens where there is failure to meet the verification requirements — of subsection (c)(5) as it existed prior to the 1978 amendment (now the introductory language of subsection (c)). H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

No particular form of oath or affirmation is required — by Alaska law, other than that when a notary certifies an oath or affirmation, the oath or affirmation must be made in the notary's presence. Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

What is verification. — A verification is a sworn statement of the truth of the facts stated in the instrument which is verified. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

When a lien claimant, in the presence of a notary, affixes his signature to a written statement incorporating the necessary elements of a claim of lien, and the notary certifies this act, claimant has substantially complied with the requirement of an "oath." Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

A verification differs from an acknowledgment —in that the latter is a method of authenticating an instrument by showing that it was the act of the person executing it. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

An acknowledgment is not sufficient to satisfy a mechanics' lien statute which requires verification of the claim of lien by the claimant. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Corporate acknowledgments affixed to the claims of lien do not constitute substantial compliance with the verification requirement of subsection (c)(5) of this section as it existed prior to the 1978 amendment (now the introductory language of subsection (c)) under AS 34.35.020. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Lien claim need not contain a statement that the labor and materials were furnished at the request of the owner. Cutting v. Bullerdick, 13 Alaska 269, 188 F.2d 837 (9th Cir. 1951).

Statement of demand must be true. — It is necessary that the statement of the lienors' demand contained in the notices should be the true amount due, after making deductions for all just credits and offsets, but it is not necessary that such shall be expressly stated in the notices filed. Irvine v. McDougall, 4 Alaska 702 (1913).

Inclusion of improper item voids lien. — Where a lien claimant includes in his lien statement an item not embraced in the statutory lien, for labor, such as for expenses of transportation, he loses his lien. Bloom v. McCluskey, 7 Alaska 349 (1925).

Unless mistake is honest and items may be separated. — The fact that a lien claimant includes in his claim, through an honest mistake, a claim for services for which the statute gives him no lien, will not defeat the lien for other services within the statute also claimed, if the two can be separated. Irvine v. McDougall, 5 Alaska 220 (1915), citing Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Failure to include names of all owners does not invalidate notice. — While this section requires that the notice of lien recorded shall contain the names of the owners, or reputed owners, of the ground upon which the lien is claimed, it is well established that failure to include all of the owners does not render the notice invalid, but that it may be enforced against the owners named. Turner v. Enstrom, 5 Alaska 118 (1914).

The only effect of the omission of the name of any owner is to exempt his interest from the operation of the lien. Turner v. Enstrom, 5 Alaska 118 (1914).

Nor does failure to include district where property is located void notice. — It must appear somewhere in the complaint that the property sought to be charged with the lien is situated within the jurisdiction of the court, but it does not necessarily follow that the notices of lien are absolutely void, simply because they do not contain the name of the mining district or political division in which the mining claim is situated. Irvine v. McDougall, 4 Alaska 702 (1913).

To hold that notices of lien are absolutely void for the reason that they do not contain the name of the precinct in which a quartz mining claim is located, when the precinct is named in the complaint to which the several notices are attached as exhibits, would be a fail[illegible]'g give to the notices of lien the liberal [illegible]nstruction to which they are entitled in order that the very purpose of the statute may not be defeated. Irvine v. McDougall, 5 Alaska 220 (1915).

If description is otherwise sufficient. — It is not absolutely necessary that the name of the state or territory, or of the legal subdivision thereof, wherein the premises to be charged are situated, be contained in the notice of lien, provided there is sufficient in the notice, taken in connection with all the circumstances and the place where the notice is filed or recorded, to apprise parties dealing with the property that a lien is claimed thereon. Irvine v. McDougall, 4 Alaska 702 (1913).

Description of property sought to be charged with lien held sufficient. — See Peca v. Huddleston, 5 Alaska 241 (1915).

Complaint must show notice complies with this section. — Since this section requires that the notice of lien filed with the recorder set up certain facts, where the plaintiff's allegation as to the notice of the lien fails to show that the notice filed contains these statements, such statements would not even substantially comply with the statute, and hence the lien would not be created. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Or notice should be pleaded verbatim. — Not only should plaintiffs state the essential facts, as required by this section, but the better practice would be to plead the notice verbatim, or attach a copy thereof and make it a part of the complaint. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Substantial compliance with the verification requirement is sufficient. Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

The form of oath followed by the words "subscribed and sworn to before me," and the notary public's signature, amounts in substance to a certificate by the notary that the claim of lien was verified by the oath of the claimant. Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Lack of claimant's signature on line following form of oath held not to invalidate lien. — See Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Rule for testing sufficiency of complaint is stricter than for testing notice itself. — While mechanic's lien statutes are to be liberally construed, with a view to effecting substantial justice, a different rule should be followed in determining the effect of the pleading in an action to foreclose a lien, especially where the pleading is questioned at an early stage of the action, from the rule to be followed in determining the sufficiency of a notice of lien, which the lienor cannot correct or amend after the time limited for filing has expired. The complaint in an action of this kind should state all the ultimate facts necessary to be established upon the trial. Irvine v. McDougall, 4 Alaska 702 (1913).

Burden is on lien claimant to prove compliance with section. — The claimant of a mechanic's or laborer's lien has the burden of proof to show by legally sufficient evidence the accrual of the lien under the terms of the statute which creates it as well as under the terms of the contract under which the work was done. Irvine v. McDougall, 5 Alaska 220 (1915), citing Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Cases to which verification requirement applicable. — The decision in H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258 (1977), requiring verification

that the facts stated in lien claims are true, will be otherwise applicable only to the following cases: 1. Cases in which trial was commenced prior to May 6, 1977, but which have not been submitted to the trier of fact for decision; 2. Cases in which prior to submission to the trier of fact for decision there has been an express objection that the verification attached to a lien claim fails to meet the requirements of subsection (e)(5) as it existed prior to the 1978 amendment [now the introductory language of subsection (e)]. 3. Cases in which the trial commences after the date of our opinion; and 4. Cases pending on direct appeal on the date of our opinion, in which objection was made in the trial court and thereafter asserted as an issue on appeal that the verification attached to a lien claim fails to meet the requirements of subsection (e)(5) as it existed prior to the 1978 amendment. H A M S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1115 (File No. 2871), 566 P.2d 1012 (1977).

Subsection (f) contains only the language of guarantee, not of [illegible] liability. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

Intent of subsection (f). — If the legislature had meant subsection (f) to encompass claims in the nature of disparagement of title free from the defense of privilege, that intention would have been more directly expressed and language of guaranty would not have been utilized. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

The term "guarantor" as used in the statute does not express the liability of a wrongdoer to his victim except in the special case where the victim is prevented from collecting a debt owed by another because of the wrongdoer's act. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

Applicability of subsection (f). — With the repeal in 1978 of subsections (d) and (e) of this section, the supreme court of Alaska recognizes that it is difficult, though perhaps not impossible, to imagine a situation to which subsection (f) would apply. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

Construction of former subsections (b) and (d). — See Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc., Sup. Ct. Op. No. 2029 (File No. 1000), 607 P.2d 361 (1980).

Quoted in Johnson v. State, Sup. Ct. Op. No. 1609 (File No. 3235), 577 P.2d 706 (1978).

Cited in Tuckko Korman Engineers v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6189), 673 P.2d 769 (1983).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 167-247.

Sec. 34.35.071. Notice of completion. (a) The owner of real property that may be subject to a lien under AS 34.35.050 — 34.35.120 may announce the date of completion of a building or other improvement on the property by

(1) recording a notice of completion after completion of the construction, alteration or repair of the building or other improvement in the office of the recorder of the district in which the building or other improvement is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-payment notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

(b) The notice of completion shall be signed and verified by the owner, and must state

(1) the date of completion of the building or other improvement;

(2) the name and address of the owner;

(3) the nature of the interest or estate of the owner;

(4) the legal description of the property sufficient for identification; and

(5) the name of the general contractor.

(c) *[Repealed, § 9 ch 61 SLA 1979.]*

(d) A notice of completion is not effective if recorded before completion.

(e) Labor, materials, services, or equipment furnished after a notice of completion is recorded to satisfy warranty obligations or to remedy defective or unsatisfactory construction, alterations or repairs for which no additional consideration is owed to the person furnishing the additional labor, materials, services, or equipment does not result in lien liability under AS 34.35.050 — 34.35.120.

(f) [Effective January 1, 1986] After recording a common interest community declaration under AS 34.08, an owner may record a notice of completion under this section as to each unit after completion of the original construction of each unit of the common interest community. (§ 7 ch 175 SLA 1978; am § 9 ch 61 SLA 1979; am § 2 ch 95 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, in subsection (f) substituted "common interest community" for "condominium," "under AS 34.08" for "as provided in AS 34.07.010 — 34.07.460 (Horizontal Property Regimes Act)," "unit" for "apartment," and "unit of the common interest community" for "condominium apartment."

Editor's notes. — Prior to January 1, 1986, subsection (f) reads: "After recording a condominium declaration as provided in AS 34.07 (Horizontal Property Regimes Act), an owner may record a notice of completion under this section as to each apartment after completion of the original construction of each condominium apartment."

Sec. 34.35.072. Bond. If the owner of the property sought to be charged with a claim of lien under AS 34.35.050 — 34.35.120, or a prime contractor or subcontractor disputes the correctness or validity of the claim of lien brought under AS 34.35.050 — 34.35.120, the owner or contractor may record either before or after the commencement of an action to enforce the claim of lien, in the office of the recorder in which district the claim of lien was recorded, a bond executed by a person authorized to issue surety bonds in this state under AS 21, a financial institution licensed under AS 06, or a national bank authorized under the federal banking laws, in the penal sum equal to one and one-half times the amount of the claim of lien, which bond shall guarantee the payment of the sum which the lien claimant has claimed, together with the lien claimant's reasonable cost of suit in the action, if the claimant recovers on the claim of lien.

If the owner records a bond under this section, the property described in the bond is freed from the effect of a claim of lien under AS 34.35.050 — 34.35.120 and an action brought to foreclose the claim of lien. The principal on the bond may be the owner of the property, the prime contractor or a subcontractor who is affected by the claim of lien. (§ 2 ch 89 SLA 1974; am § 8 ch 175 SLA 1978)

Sec. 34.35.075. Record and index of claim. The recorder shall record the claim in a book kept for that purpose. The records shall be indexed as deeds and other conveyances are required by law to be indexed. The recorder is entitled to the same fees allowed by law for recording deeds and other instruments. (§ 26-16 ACLA 1949)

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 186.

Sec. 34.35.080. Duration of lien. (a) A lien provided for in AS 34.35.050 — 34.35.120 does not bind a building, structure, or other improvement for more than six months after the lien is filed, unless suit is brought before the proper court to enforce the lien

(1) within that time, or

(2) within six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim, and the balance owing.

(b) A lien may not be continued in force for more than one year from the date of the filing of the original lien notice. (§ 26-1-7 ACLA 1949; am § 1 ch 50 SLA 1955; am § 3 ch 123 SLA 1977)

NOTES TO DECISIONS

Protection of lien. — A mechanic's lien claimant, in order to protect his lien, does not have to record a notice of lis pendens when he later files suit to foreclose the lien; the initial recordation of the mechanic's lien claim constitutes inquiry notice of the lien to a subsequent purchaser; and the lien claimant may amend his complaint to add, as a defendant in the action, the subsequent purchaser of the burdened real property under Civ. R. 25(c). First Nat'l Bank v. Dent, Sup. Ct. Op. No. 2839 (File No. 7729), 683 P.2d 722 (1984).

Applied in Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc., Sup. Ct. Op. No. 2029 (File No. 4000), 607 P.2d 361 (1980).

Quoted in State v. Osborne, Sup. Ct. Op. No. 2034 (File No. 4385), 607 P.2d 369 (1980).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 251.

Sec. 34.35.085. Lien for improving lot or street. A person who, at the request of the owner of a lot in the state, grades, fills in, or improves the lot or the street in front of or adjoining the lot has a lien upon the lot for work done and materials furnished. The provisions of AS 34.35.050 — 34.35.120 for securing and enforcing the mechanic's lien apply to the lien provided by this section. (§ 26-1-8 ACLA 1949)

NOTES TO DECISIONS

A municipal corporation is a person under the provisions of this section. Town of Nome v. Lang, 1 Alaska 593 (1902).

Sec. 34.35.090. Payment to contractor. A payment by the owner of a building or structure to a prime contractor or subcontractor, made before 90 days from the completion of the building, is not valid to defeat or discharge a lien created by AS 34.35.050 — 34.35.120 in favor of other claimants, unless the payment is distributed among the other claimants. If a payment is distributed in part only, then the payment is valid only to the extent it is distributed. (§ 26-1-9 ACLA 1949; am § 9 ch 175 SLA 1978)

NOTES TO DECISIONS

Applied in Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc., Sup. Ct. Op. No. 2029 (File No. 4000), 607 P.2d 361 (1980).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 325 et seq.

Sec. 34.35.095. Amount of lien. (a) Except as provided in (c) of this section, a claimant may recover upon a lien recorded by the claimant only the amount due to the claimant according to the terms of the contract, after deducting all claims of other persons claiming through the claimant for work done and materials furnished.

(b) *[Repealed, § 9 ch 61 SLA 1979.]*

(c) An individual described in AS 34.35.120(10) may recover upon a lien recorded by the individual only the amount due according to the terms of the employment. (§ 26-1-10 ACLA 1949; am § 10 ch 175 SLA 1978; am §§ 4, 9 ch 61 SLA 1979)

NOTES TO DECISIONS

Insurance during working period may be lienable item. — Cost of fire insurance to cover the premises during the working period was properly a lienable item where by the terms of the construction contract the contractor was to furnish all labor and materials, including subcontractor's services, with the exception of plumbing and heating. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

As may subcontractor's services if contractor is bound to furnish them. — Provision of this section that a contractor is entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract limits a contractor's lien recovery to the amount called for by his contract, but would include subcontractor's services if, by the terms of his contract, the contractor was responsible for the furnishing of such services. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

In absence of contract, limit of recovery is reasonable value of labor and material. — By this section the maximum a contractor may establish as a lien cannot exceed the amount due to him under the terms of his contract, but there must be a contract with the person from whom the contractor's recovery is sought or someone privy to him, otherwise the contractor's lien recovery may be limited to the reasonable value of the labor and material furnished. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962); Meares v. Alaska Metal Bldgs., Inc., Sup. Ct. Op. No. 515 (File No. 962), 448 P.2d 581 (1968).

Collateral references. — Contractor as party to suit to enforce mechanic's lien. 100 ALR 128.

Sec. 34.35.100. Action against contractor on lien. (a) Where a lien is recorded under AS 34.35.050 — 34.35.120 for work done or materials furnished to a prime contractor, the prime contractor shall defend an action at the expense of the prime contractor, and during the pendency of the action the owner may withhold from the prime contractor the amount of money for which the lien is recorded.

(b) If judgment is given against the owner or the property of the owner upon the liens, the owner may deduct from the amount due or to become due by the owner to the prime contractor the amount of the judgment and costs.

(c) If the amount of the judgment and costs exceeds the amount due by the owner to the prime contractor, or the owner settles with that contractor in full, the owner may recover back from the prime contractor an amount paid by the owner in excess of the contract price, and for which the prime contractor was originally liable. (§ 26-1-10 ACLA 1949; am §§ 11 — 13 ch 175 SLA 1978)

Sec. 34.35.105. Materials not subject to process. When a mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person furnishes or procures materials for use in the construction, alteration, or repair of a building or other improvement, the materials are not subject to attachment, execution, or other legal process to enforce a debt due by the purchaser of the materials except a debt due for the purchase money thereof, so long as the materials have been or are about to be applied in good faith to the construction,

alteration, or repair of the building, or other improvement. (§ 26-1-11 ACLA 1949)

Sec. 34.35.110. Actions to enforce liens. (a) An action to enforce a lien created by AS 34.35.050 — 34.35.120 shall be brought in the superior court. The pleadings, process, practice, and procedure are the same as in other cases. Each claimant is entitled to execution for the balance due after distribution. The clerk of the superior court, upon demand, shall issue the execution after the return of the officer making the execution showing the balance due.

(b) In an action under AS 34.35.050 — 34.35.120 the court shall, upon entering judgment for the plaintiff, allow as a part of the costs all money paid for the filing and recording of the lien and a reasonable amount as attorney fees. An action to enforce a lien created by AS 34.35.050 — 34.35.120 has preference upon the calendar of civil actions of the court and shall be tried without unnecessary delay.

(c) In an action to enforce a lien created by AS 34.35.050 — 34.35.120 all persons personally liable and all lienholders whose claims have been filed for record under AS 34.35.070 shall be made parties; all other persons interested in the matter in controversy or in the property sought to be charged with the lien may be made parties. However, those persons who are not made parties are not bound by the proceedings. The proceedings upon the foreclosure of a lien created by AS 34.35.050 — 34.35.120 shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage lien upon real property. (§ 26-1-13 ACLA 1949; am § 14 ch 175 SLA 1978)

NOTES TO DECISIONS

Constitutionality. — The Ninth Circuit has held that provision for the award of costs and attorney's fees only to lien claimants was constitutionally permissible. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

There is no ground for saying that the allowance of reasonable attorney fees in the lien law is unconstitutional. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Origin. — This section was taken, without significant change, from the laws of Oregon. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

At the time this section was adopted for the Territory of Alaska, and subsequent thereto, the courts of Oregon had consistently held that the lien claimant carried the burden of both alleging and proving the reasonable amount of attorney's fees he was entitled to on foreclosure. Absent these prerequisites, it was held that the claimant was not entitled to an award of attorney's fees. It further appears that the statutes were construed as granting some discretion in the courts in regard to the determination of a reasonable attorney's fee. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The apparent purpose of this section is to facilitate enforcement by mechanics' lienors of their rights by giving them an assurance of costs and attorney's fees if they prevail in their foreclosure actions. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

AS 34.35.005 (b) applies to liens provided for in AS 34.35.050 — 34.35.425. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

While subsection (b) of this section applies only to mechanics' liens provided for in AS 34.35.050 — 34.35.120, Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Constructive notice of lien. — A bank given a deed of trust on property against which a mechanic's lien is claimed does not have constructive notice of the lien unless the claimant has recorded a notice of lis pendens. First Nat'l Bank v. Dent, Sup. Ct. Op. No. 2839 (File No. 7720), 683 P.2d 722 (1984).

Provisions as to parties; state law generally applicable. — The provisions of this section as to parties seem to be only a statement of the law applicable to all actions. Donaldson v. Henning, 4 Alaska 642 (1913).

Grantee of deed recorded after foreclosure suit is commenced is not indispensable party. — Where, when suit to foreclose a mechanic's lien was commenced, the trial court had before it the record owner and the reputed owner, and had jurisdiction to proceed to hear and determine the questions presented as to the rights and obligations of the parties properly before it, the subsequent recording of a deed of the property to a minor, not served with process, could not divest the court of such jurisdiction as had already attached. Cutting v. Bullerdick, 13 Alaska 269, 188 F.2d 837 (9th Cir. 1951).

Proper parties. — All persons personally liable, all lienholders whose claims have been duly filed, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien, may, under this section, be made parties. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Set off. — In an action to enforce a mechanic's lien, the plaintiff was not entitled to costs and an attorney's fee because he only prevailed on one count of his complaint, and costs and attorney's fees for his successful count were set off against those costs and attorney's fees to which the defendant was entitled under AS 09.60.010 because of its successful defense against the other counts of the complaint. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Quoted in Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska 210 (1915); Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 3.39 et seq.

Sec. 34.35.112. Payment of claimant's liens. (a) If more than one lien created under AS 34.35.050 — 34.35.120 is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under AS 34.35.050(1);

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen;

(4) subcontractors, including prime contractors other than the general contractor and persons described in AS 34.35.050(5);

(5) the general contractor.

(b) For purposes of AS 34.35.050 — 34.35.120, if the proceeds of sale of the property are insufficient to pay the lien claims of all persons who have recorded a claim of lien,

(1) the liens of all individuals with lien rights under AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) the liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) the liens of materialmen shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(4) out of the remainder the subcontractors, including prime contractors other than the general contractor, shall be paid in full, or pro rata if the remainder is insufficient to pay them in full; and

(5) the balance shall be paid to the general contractor; a general contractor is entitled to execution for the balance due after distribution. (§ 15 ch 175 SLA 1978; am § 5 ch 61 SLA 1979)

Sec. 34.35.114. Obligation of claimant and lender to provide information. (a) A prime contractor, on request, shall provide the following information within five days to any person entitled to claim a lien through the prime contractor:

(1) a description of the real property being improved sufficient to identify the property;

(2) the name and address of the owner with whom the prime contractor contracted;

(3) the name and address of the lender providing construction financing; and

(4) whether there is a payment bond and, if so, the name of the surety.

(b) At the request of any person who may claim a lien through a claimant other than a prime contractor, the claimant shall provide, within five days, the name of the person who contracted for the furnishing by the claimant of the labor, materials, services or equipment from which a lien claim may arise.

(c) A lender who receives a notice of right to lien which contains a legal description of the owner's real property different from that on file with the lender shall, within five working days after receiving the notice, advise the sender in writing of the deficiencies in the notice of right to lien.

(d) A lender who receives a notice of right to lien which designates a person as an owner who is not receiving construction financing from the lender shall, within five working days after receiving the notice, advise the sender in writing that the lender is not providing construction financing to the owner named in the notice of right to lien.

(e) An owner or an agent of the owner who fails to provide information as required by this section or who furnishes incorrect information which causes a claimant to fail to realize on a lien is liable to the requesting party for actual damages or $200, whichever is greater. (§ 6 ch 61 SLA 1979)

Sec. 34.35.115. Persons considered agent of owner. Every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration or repair, in whole or in part, of a building or other improvement as provided in AS 34.35.050 and 34.35.085, is considered to be the agent of the owner for the purposes of AS 34.35.050 — 34.35.120. (§ 26-1-14 ACLA 1949)

NOTES TO DECISIONS

Applied in Mallard v. Proce, 353 F.2d 550 (9th Cir. 1965).

Sec. 34.35.117. Waiver of lien rights. (a) Except as provided under (b) of this section, a written waiver of lien or stop-payment notice rights created under AS 34.35.050 -- 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this section may not relate to labor, materials, services or equipment furnished after the date the waiver is signed by the claimant.

(b) An individual described in AS 34.35.120(10) may not waive right to claim a lien under AS 34.35.050 — 34.35.120. A waiver which purports to waive the lien rights of that individual or class of individuals is void. (§ 15 ch 175 SLA 1978)

Sec. 34.35.118. Claimant liability. A claimant shall be liable for any loss, cost or expense, including reasonable attorney fees, to any persons injured by an unjust, excessive or premature stop-payment notice or claim of lien. (§ 15 ch 175 SLA 1978)

Sec. 34.35.119. Waiver of liens on unsold common interest community units [Effective January 1, 1986]. (a) A lien created under AS 34.35.050 — 34.35.120 arising out of original construction that becomes subject to AS 34.07 or AS 34.08 before the first sale of a unit within a common interest community after commencement of construction shall be subject to the provisions of this section.

(b) Subject to (c) of this section, a claimant who claims a lien against an entire common interest community shall release that portion of the lien claim that relates to a particular unit within a common interest community selected by the owner of the unsold common interest community units after the claimant receives a partial payment of the lien claim that is equal to 115 percent of the amount determined

(1) if the common interest community has been established under AS 34.07 by

(A) dividing the surface area of the common areas and facilities attendant to the common interest community unit by the surface area of all common areas and facilities of the common interest community building; and

(B) multiplying the result obtained in (A) of this subsection by the total amount of the claimant's lien claim;

(2) by the allocated interest in the common expenses if the common interest community has been established under AS 34.08.

(c) A lien claimant is not required to waive a portion of the lien claim under this section unless the amount of indebtedness secured by a prior encumbrance against the common interest community building held by a construction lender is also reduced by an amount calculated in the same manner as provided in (b) of this section. (§ 15 ch 175 SLA 1978; am § 3 ch 95 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, rewrote this section.

Editor's notes. — Prior to January 1, 1986, this section reads: "(a) Liens created under AS 34.35.050 — 34.35.120 arising out of original construction which becomes subject to the Horizontal Property Regimes Act (AS 34.07) before the first sale of any portion of the property after commencement of construction shall be subject to the provisions of this section.

(b) Subject to (c) of this section, a claimant who claims a lien against the entire building shall release that portion of his lien claim which relates to a particular condominium apartment selected by the owner of the unsold condominium apartments after the claimant receives a partial payment of his lien claim which is equal to 115 per cent of the amount determined by

(1) dividing the surface area of the common areas and facilities attendant to the condominium apartment by the surface area of all common areas and facilities of the building; and

(2) multiplying the result obtained in (1) of this subsection by the total amount of the claimant's lien claim.

(c) A lien claimant is not required to waive a portion of his lien claim under this section unless the amount of indebtedness secured by a prior encumbrance against the building held by a construction lender is also reduced by an amount calculated in the same manner as provided in (b) of this section."

Sec. 34.35.120. Definitions. In AS 34.35.050 — 34.35.120

(1) "building or other improvement," includes a wharf, bridge, ditch, flume, tunnel, fence, well, land clearing, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures;

(2) "completion" means the cessation of the performance of labor or services or the furnishing of material or equipment on the building or other improvement to be constructed, altered or repaired and includes, but is not limited to, the following:

(A) the occupation or use by the owner or an agent of the owner of the building or other improvement constructed, altered or repaired accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(B) the acceptance by the owner or an agent of the owner of the construction, alteration or repair after labor, service, material, or equipment is furnished; or

(C) the issuance of a certificate of occupancy for a building by a general law or home rule municipality empowered to issue that certificate accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(3) "construction, alteration, or repair", includes partial construction, and all repairs done in and upon a building or other improvement;

(4) "construction financing" means that portion of money secured by an encumbrance to finance original construction of a building or other improvement on, or development of, real property, but does not include

(A) funds to acquire real property;

(B) funds to pay principal amortization of encumbrances with priority over the encumbrance securing the construction financing;

(C) funds to pay loan, commitment, title, legal, closing, recording or appraisal fees on the construction loan;

(5) "contract price" means the amount agreed upon by the contracting parties for furnishing services, labor, materials or equipment covered by the contract, increased or diminished by the price of change orders, extras, or amounts attributable to altered specifications; if no price is agreed upon by the contracting parties, "contract price" means the reasonable value of all services, labor, materials, or equipment covered by the contract;

(6) "Draws" means periodic disbursements of construction financing by a lender;

(7) "encumbrance" means a mortgage, deed of trust, or lien arising other than under AS 34.35.050 — 34.35.120;

(8) "general contractor" means a person who is a prime contractor and who has the responsibility for supervising all other contractors furnishing labor, materials, services or equipment in connection with the construction, alteration or repair of a building or other improvement;

(9) "give notice" means to mail a notice required under AS 34.35.050 — 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is effective when given or delivered

(A) to a lender at the address designated in the encumbrance securing that lender;

(B) to an owner at the last known address of the owner;

(C) to a prime contractor at the last known address of the prime contractor;

(D) to a potential lien claimant at the address specified in a stop-payment notice or notice of right to lien or claim of lien;

(10) "individual" means a natural person who actually performs labor upon a building or other improvement as an employee of the owner or any contractor furnishing labor, materials, services, or equipment for the construction, alteration or repair of a building or other improvement;

(11) "lender" means any person providing construction financing;

(12) "materialman" means a person who furnishes materials used in the construction, alteration or repair of the owner's real property;

(13) "owner" means a person who owns the building or other improvement and who enters into a contract, express or implied, for the construction, alteration or repair of a building or improvement;

(14) "potential lien claimant" or "claimant" means any person entitled to assert lien rights under AS 34.35.050 — 34.35.120;

(15) "prime contractor" means a person who enters into a contract directly with an owner to furnish labor, materials, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property;

(16) "subcontractor" means a person who enters into a contract with a prime contractor to furnish labor, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property and does not include a materialman. (§ 26-1-12 ACLA 1949; am § 2 ch 57 SLA 1959; am § 16 ch 175 SLA 1978; am §§ 7, 8 ch 61 SLA 1979)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

NOTES TO DECISIONS

Quoted in Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Cited in Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Collateral references. — Canals, ditches and wells as within term of Mechanic's Lien Law descriptive of improvement. 92 ALR 753

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 494 (L&C)
Title : "An Act relating to liens for labor or material furnished"

Sponsor : Cotten, Szymanski, et al.
Requestor : Labor & Commerce
Date of Request : 3/19/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Wage and Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert J. Bacolas, Director — Phone : 465-4870
Division : Labor Standards & Safety — Date : 3/21/86

Approved by Commissioner : for Jim Robison — Date : 3/21/86
Agency : Labor

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

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4218 SLAB HB 517 - HB 562

1098

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

517

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4968

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

Memorandum

From: Representative Max F. Gruenberg, Jr.

Re: CSHB 517 (JUD), relating to the private sale and consignment of works of art

Date; April 17, 1986

This bill is modeled after two New York statutes passed in 1966, and is designed to offer protections to Alaskan artists in their business relationships with art dealers and their rights to reproduction.

SECTION 1 Provides that works of art on consignment are not subject to the claims of an art dealer's creditors, and that a sign must be posted in a gallery where art is sold on consignmnet stating that works of art for sale are on consignment.

SECTION 2 Provides that works of art delivered to an art dealer are trust property in the hands of the art dealer for the benefit of the artist.

Provides that subsection (a)(3) of 45.67.020 may be waived if the agreement is clear and agreed to in writing, however, under a waiver the proceeds of a sale are still not subject to a lien against an art dealer.

Provides that unsold artwork must be returned to the artist on demand consistent with any written agreement.

Also provides that the provisions of 45.67.010 - 020 may not be construed to effect an existing contract. Subsection (b) provides that this law will apply to all future dealings between an artist and art dealer

SECTIONAL ANALYSIS

Protection of Ownership Rights of Artists Act

Artists often find themselves in a complicated and disadvantageous business situation when conveying rights to a work of art. An artist will frequently make an agreement for reproduction rights to an artwork, but is unable to reacquire the original artwork after it has been reproduced if the agreement was oral or the contract was complex and signed without benefit of counsel. This 1983 New York law overcomes these problems and protects the interests of the individual artists involved.

Under this bill, even if an artist or owner sells reproduction rights for a work of art, the ownership of the actual work remains with the creator or owner unless the ownership is transferred in writing and signed by the artist or owner. In addition, any contracts selling reproduction rights must be in plain language. If a purchaser does not comply with this requirement the contract could be unenforceable and any right not conveyed would remain with the artist or owner.

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This act may be cited as the Protection of Ownership Rights of Artists Act.

Section 2. [*Definitions.*] As used in this act:

(1) "Work of Art" means any visual or graphic art of any medium.

(2) "Artist" means the creator or creators of a work of art.

(3) "Reproduction Right" means a right to reproduce, prepare derivative works of, distribute copies of, publicly perform or publicly display a work of art.

Section 3. [*Right to Reproduce Works of Art.*]

(a) Whenever a work of art is sold or otherwise transferred by or on behalf of the artist who created it, or his heirs or personal representatives, the right of reproduction thereof is reserved to the grantor until it passes into the public domain by act or operation of law unless such right is sooner expressly transferred by an instrument, note or memorandum in writing, signed by the owner of the rights conveyed or his duly authorized agent.

(b) Whenever an exclusive or non-exclusive conveyance of any reproduction right is made by the holder of such right, or his duly authorized agent, ownership of the physical art work shall be presumed to remain with and be reserved to the grantor unless expressly transferred in writing by an instrument, note, memorandum or by other written means, signed by the grantor or his duly authorized agent.

(c) Nothing herein contained, however, shall be construed to prohibit the fair use of such work of art.

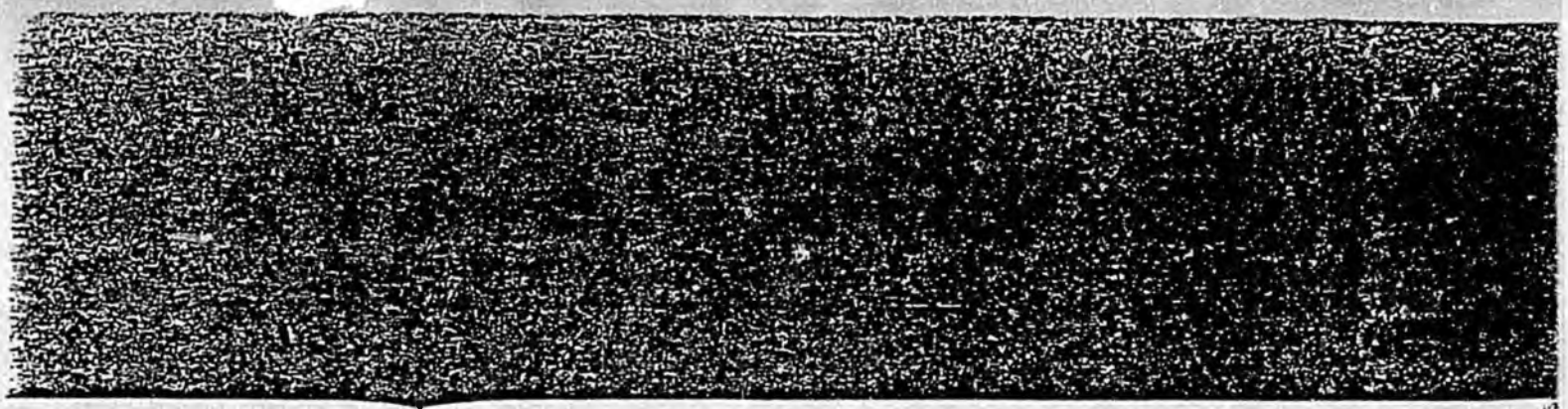
(d) Nothing in this article shall operate or be construed to conflict with any rights or liabilities under federal copyright law.

Section 4 . [*Severability.*] [Insert severability clause.]

Section 5 . [*Repealer.*] [Insert repealer clause.]

Section 6. [*Effective Date.*] [Insert effective date.]

INFORMATION



of Artists Act

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clause.]

Protection of Artists Whose Work Has Been Altered Act

Several well-known cases of mutilated, altered or defaced artwork have led to a drive to balance the property rights of owners against the creative rights of the artists and the general rights of society. The following legislation was enacted by New York in 1983 to protect the reputation of an artist after an artwork has been sold.

The bill gives a legal cause of action if a work which an artist created was defaced, altered or mutilated (without the artist's consent) and damage to the artist's reputation could result. The artist could also claim or disclaim authorship of work. Exceptions are made when: an artist consents to changes in writing; the nature of the materials used causes a change in the work; a change occurs because of the reproduction process or when work is professionally framed or restored. An aggrieved artist is afforded a cause of action for damages, exemplary damages where appropriate, equitable relief, and reasonable attorney and witness fees.

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This act may be cited as the Protection of Artists Act.

Section 2. [*Definitions.*] As used in this act:

(1) "Artist" means the creator of a work of fine art.

(2) "Conservation" means acts taken to correct deterioration and alteration and acts taken to prevent, stop or retard deterioration.

(3) "Person" means an individual, partnership, corporation, association or other group, however organized.

(4) "Reproduction" means a copy, in any medium, of a work of fine art that is displayed or published under circumstances that, reasonably construed, evinces an intent that it be taken as a representation of a work of fine art as created by the artist.

(5) "Work of Fine Art" means any original work of visual or graphic art of any medium which includes, but is not limited to, the following: painting; drawing; print; photographic print or sculpture of a limited edition of not more than 300 copies; provided however, that "work of fine art" shall not include sequential imagery such as that in motion pictures.

Section 3. [*Public Display, Publication and Reproduction of Works of Fine Art.*] Except as limited by Section 5 of this act, no person other than the artist or a person acting with the artist's consent shall knowingly publicly display or publish a work of fine art of that artist or a reproduction thereof in an altered, defaced, mutilated or modified form if the work is displayed, published or reproduced as being the work of the artist, or under circumstances under which it would reasonably be regarded as being the work of the artist, and damage to the artist's reputation could result therefrom.

Section 4. [*Artists' Authorship Rights.*]

(a) Except as limited by Section 5 of this act, the artist shall retain at all times the right to claim authorship, or, for just and valid reason, to disclaim

authorship of his or her work of fine art. The right to claim authorship shall include the right of the artist to have his of her name appear on or in connection with the work of fine art as the artist. The right to disclaim authorship shall include the right of the artist to prevent his or her name from appearing on or in connection with the work of fine art as the artist. Just and valid reasons for disclaiming authorship shall include that the work of fine art has been altered, defaced, mutilated or modified other than by the artist, without the artist's consent, and damage to the artist's reputation could result or has resulted therefrom.

(b) The rights created by this section shall exist in addition to any other rights and duties which may now or in the future be applicable.

Section 5. [*Limitations of Applicability.*]

(a) Alteration, defacement, mutilation or modification of a work of fine art resulting from the passage of time or the inherent nature of the materials will not by itself create a violation of Section 3 or a right to disclaim authorship under Section 4(a), provided such alteration, defacement, mutilation or modification was not the result of gross negligence in maintaining or protecting the work of fine art.

(b) In the case of a reproduction, a change that is an ordinary result of the medium of reproduction does not by itself create a violation of Section 3 or a right to disclaim authorship under Section 4(a).

(c) Conservation shall not constitute an alteration, defacement, mutilation or modification within the meaning of this act, unless the conservation work can be shown to be negligent.

(d) In the case of work prepared under contract for advertising or trade use, the rights granted by this article may be waived contractually or otherwise at any time.

(e) The provisions of this article shall apply only to works of fine art knowingly publicly displayed, published or reproduced in this state.

Section 6. [*Relief.*]

(a) An artist aggrieved under Sections 3 or 4 shall have a cause of action for damages, exemplary damages where appropriate, equitable relief and reasonable attorney's and expert witness's fees, provided, the court may, in its discretion, award attorney's and expert witness's fees to the defendant upon dismissal of any action on the grounds such action was frivolous and malicious.

(b) No action may be maintained to enforce any liability under this article unless brought within three years of the act complained of or one year after the constructive discovery of such act, whichever is longer.

Section 7. [*Severability.*] [Insert severability clause.]

Section 8. [*Repealer.*] [Insert repealer clause.]

Section 9. [*Effective Date.*] [Insert effective date.]

Alaska Arts Southeast INC
P.O. BOX 2133, SITKA, ALASKA 99835 · PHONE (907) 747-8177

February 7th, 1986

Representative Peter Goll
Box 581
Haines, AK 99827

Dear Peter:

I would like to express my support of House Bill No. 517, which you co-sponsored in the State Legislature. I believe that this bill would be fair to all parties concerned, and codifies honest and prudent practice between artists and those who maintain galleries.

Thank you for returning my call this week concerning the possibility of a teleconference this spring. As I stated in our conversation I conducted a survey of Arts Organizations in Southeast in an attempt to gauge interest in a consortium of presentors in our region. Such a consortium could save money for all organizations and increase the range of choices for many of the smaller communities. A by product would be the facilitation of planning an entire season of events for Southeast.

I have enclosed copies of Presenter Survey forms from those who responded favorably. Five communities from District two are represented: Skagway, Haines, Metlakatla, Hoonah, and Angoon. A sixth organization has since expressed interest in Gustavus. Keep in mind that the interest has been expressed by organizations which ultimately represent and impact hundreds of individuals. Ten other organizations have also expressed an interest within the following communities: Juneau, Sitka, Ketchikan, Port Alexander, Pelican, and Petersburg. It would appear then, that at least half of the communities expressing an interest in talking further about a consortium are in District 2.

If we are to be effective in our efforts to begin planning and discussing booking for next year we should begin our dialogue soon. I don't know what your schedule will allow but I would suggest sometime between the last week in March and mid May. Early May would be ideal for me since I am on the road in Southeast recruiting for Camp during most of April.

I realize, however, that teleconferences are difficult to schedule. I would appreciate any efforts that you could make in securing one for the arts communities in our region.

Sincerely,

Gordon M. Bolar

Gordon M. Bolar
Executive Director
Alaska Arts Southeast



R. T. Wallen
P. O. Box 1063
Juneau, Alaska, 99802

Rep. Max Gruenberg
Pouch V
State Capitol
Juneau, Alaska, 99811

February 9, 1986

Dear Max,

I very much appreciate the efforts of the sponsors of this arts bill. I think it is going to clarify some rather vague areas concerning the rights and responsibilities of artists, art dealers and art patrons. The section of the bill in which I am most interested is 45. 67. 020, the section dealing with the right to reproduce works of art.

Whenever an artist creates a series of original prints, from a stone or metal plate, for example, or when he reproduces a painting with a series of prints, or makes a series of castings from a mold, the artist may elect to mark these original prints, or reproductions, or castings with the letter "c" enclosed in a circle, followed by his intitials and the year date. This copyright symbol and initials and date proclaim his "intent to copyright" and proclaim his rights under Federal Copyright Law. The system functions well with works of art which appear as multiple images or forms since everyone, artist, dealer and buyer understand, by the fact of the copyright signal appearing on the art that certain rights to the reproduction of that work have been established.

Original works, however, one of a kind works, whether they be paintings, or drawings or sculptures, often do not bear the copyright symbol because the artist has not reproduced them, and does not intend that they be reproduced. In fact, the artist, although he has the option of marking the work with the copyright symbol, often will not do so because the appearance of the copyright symbol on an original work implies that it has been reproduced, or might be reproduced in the future, and the mark might thus affect the value of the work both aesthetically and commercially. As I understand Federal Copyright Law, the artist has sole rights to reproduction of an original work of his own art regardless of whether he has marked it with the copyright symbol. However, the lack of such a symbol on a work of art can create an area of uncertainty in the mind of a buyer or art dealer.

For this and other reasons I think that there is value in a state law which addresses the problem and spells out the legal rights of artists in regards to the reproduction of their works of art. I think the fairness of the theory of this section of of the bill is reflected in Federal Copyright Law, in the legal rights of authors to their printed works, and in the legal rights that pertain to many kinds of design work, such as achitecture, boat design and so on.

As a state law, this is close to home, and every person seriously involved in the art world here in the state will be familiar with it. As an artist who has had to deal with copyright related issues a number of times in my career, and who has business with many different art dealers, and who is often asked by patrons about their rights in regard to a work of art, I see great value in this bill and benefits to artist, dealer and buyer alike. It goes a long way in clearly establishing the ground rules.

Sincerely,

R T Wallen

R. T. Wallen

CHAIRMAN'S INFORMATION: CSHB 517 (Jud)am

1) BILL TITLE: "An act relating to the private sale and consignment of works of art."

a) Introduced: Gruenberg

b) Co-sponsors:

2) INTENT: This measure clarifies the relationship between artists and art dealers concerning art work being sold on consignment.

N.B. Rep Gruenberg may be offering an amendment which would require the drafting of an SCS

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to Adopt LFC SCS

L&C SCS deleted subsection (c) pg 3 lines 23-25 of CSHB 517(Jud)

Original sponsors: Gruenberg, Goll, Koponen, et al

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 517 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the private sale and consignment of works of art."

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

* Section 1. AS 45.02.326(e) is repealed and reenacted to read:

(e) When an artist delivers a work of art to an art dealer as described in AS 45.67.010, the art dealer shall prominently display a sign stating substantially, "Works of art for sale are on consignment." Works of art on consignment are not subject to the claims of the art dealer's creditors.

* Sec. 2. AS 45 is amended by adding a new chapter to read:

CHAPTER 67. ARTISTS AND WORKS OF ART.

Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When an artist delivers or causes to be delivered a work of art of the artist's own creation to an art dealer for the purpose of sale, or exhibition and sale, on a commission, fee, or other basis of compensation, the acceptance of the work of art by the art dealer is a consignment, and

(1) the art dealer is, with respect to the work of art, the agent of the artist;

(2) the work of art is trust property in the hands of the art dealer for the benefit of the artist; and

(3) proceeds from the sale of the work of art are trust funds in the hands of the art dealer for the benefit of the artist, and the dealer shall transmit the proceeds to the artist within 30

days of the sale of the work of art.

(b) A work of art initially received as a consignment remains trust property notwithstanding the subsequent purchase of the artwork by the art dealer directly or indirectly for the art dealer's own account until the consignment price due to the artist is paid in full. If the work of art is resold to a bona fide third party before the artist has been paid in full, the proceeds of the resale are trust funds in the hands of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

Sec. 45.67.020. WAIVER. (a) A provision of a contract or agreement whereby the artist waives a provision of AS 45.67.010 is void except as provided in this subsection. An artist may waive the provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous, and agreed to in writing by the artist. A waiver under this subsection is not valid with respect to the proceeds of a work of art initially received as a consignment but subsequently purchased by the art dealer directly or indirectly for the art dealer's own account.

(b) A waiver under (a) of this section may not inure to the benefit of the art dealer's creditors in a manner that is inconsistent with the artist's rights under AS 45.67.010.

Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art dealer have otherwise agreed in writing, the art dealer shall return an unsold work of art on demand of the artist.

Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.67.010, 45.67.020, and 45.67.030 may not be construed to have an effect upon a written or oral contract or arrangement in existence on the effective date of this section, except by the mutual written

consent of the parties.

(b) The provisions of AS 45.67.010 and 45.67.020 apply notwithstanding the absence of, or a conflict with, a written agreement between the artist and the art dealer concerning any matter covered by AS 45.67.010 and 45.67.020. In the event of a conflict between AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform Commercial Code) or other provision of law, the provisions of AS 45.67.010, 45.67.020, and 45.67.030 govern.

Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a work of art is sold or otherwise transferred by or on behalf of the artist who created it, or the heirs or personal representatives of the artist, the right of reproduction is reserved to the grantor until it passes into the public domain by act or operation of law, unless the right is sooner expressly transferred by an instrument, note, or memorandum in writing signed by the owner of the right or an authorized agent of the owner.

(b) When an exclusive or nonexclusive conveyance of a right of reproduction is made by the holder of the right, or the holder's authorized agent, ownership of the physical art work is presumed to remain with and be reserved to the grantor unless expressly transferred in writing signed by the grantor or the grantor's authorized agent.

(c) This section may not be construed to prohibit the fair use of a work of art or to conflict with federal copyright law.

Sec. 45.67.100. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "artist" means the creator of a work of art or, if deceased, the heirs or personal representatives of the creator;

(2) "art dealer" means a person engaged in the business of

selling works of art, other than a person exclusively engaged in the business of selling goods at public auction;

(3) "consignment" means that no title to or estate in the goods or right to possession superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey, to third person, all of the right, title and interest of the consignor, in and to the goods;

(4) "creditor" has the meaning given in AS 45.01.201;

(5) "right of reproduction" means a right to reproduce, prepare derivative works of, distribute copies of, or publicly display a work of art;

(6) "work of art" means a painting, sculpture, drawing, work of graphic art, photograph, or craft work, in any medium.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 517 (L&C)
Title : "An Act relating to the private sale and consignment of works of art."

Sponsor : Repr. Gruenberg
Requestor : House Labor & Commerce
Date of Request : February 11, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Legal Services

Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS :

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

Richard L. Pegues

Prepared by : Richard I. Pegues, Director — Phone : 465-3672
Division : Administrative Services Division — Date : 2/12/86

Richard L. Pegues/for/

Approved by Commissioner : Harold M. Brown, Attorney General — Date : 2/12/86
Agency : Department of Law

FISCAL NTOE

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

522

CHAIRMAN'S INFORMATION: SCS CSHB 522(L&C)

1) BILL TITLE: "An act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and provision of medical malpractice insurance for nurses and nurse midwives."

a) Introduced: Rep Sund

b) Co-sponsors:

2) INTENT: This measure contains portions of various insurance "reform" proposals which have been heard in committee this year. Among these are payments to brokers, cancellation notifications, and notification for nonrenewal of insurance policies. It also expands MICA provisions to offer insurance to nurses and nurse midwives. The version which passed the House contained language which would provide for a nurse or nurse midwife to hold a seat on the MICA Board, and I have deleted that provision in the SCS.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Judiciary and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C SCS, plus the title change; An SCR was introduced this morning to effect that change.

CS HB 522 (Judiciary)

OVERVIEW

Prepared by Rep. John Sund's office.
April 27, 1986

OBJECTIVE OF THE BILL

The purpose of House Bill 522 is to approach the effects of the insurance crisis through tightening various insurance regulations and expanding the Medical Indemnity Corporation of Alaska.

WHAT THIS BILL DOES

1. Regards premium payments to insurance brokers as payments directly to the insurance company. This will prevent alleged nonpayment of premium cancellations because a broker walked off with the payment.

2. Clarifies accepted reasons for canceling a personal line (auto and homeowner's) insurance policy and increases the time requirement for notification of cancellation from 20 days to 60 days with certain exceptions. It also requires a stated reason for the cancellation.

3. Establishes criteria for canceling a business or commercial insurance policy and requires 60 days notice of cancellation with certain exceptions. It also requires a stated reason for the cancellation.

4. Establishes a 45 day notice of nonrenewal for business and commercial policies.

5. Expands the Medical Indemnity Corporation of Alaska (MICA) to offer insurance to nurses and nurse midwives and adds a nurse or nurse midwife to the MICA board of directors.

WHY THIS BILL IS NEEDED

While we have been attacking the insurance crisis primarily from the tort reform angle and the pooling concept, we can also help the situation through insurance regulation reform.

Not only is it traumatic to have your insurance canceled, it is worse to have it canceled without adequate notice so that other coverage can be sought. We now have no law that requires advance notice of cancellation of business or commercial insurance. This bill would give the insured 60 days to find alternate coverage.

This bill also helps those nurses who are working in high-risk fields, such as childbirth, and cannot find insurance coverage. MICA would now be available to them.

The bill carries a zero fiscal note and is supported by the Division of Insurance.

CS HB 522 (Judiciary)

SECTIONAL ANALYSIS
Prepared by Rep. John Sund's office.

Section 1; Page 1, line 13: amends AS 21.27.200 (a) by stating that a broker is not an agent for the insurer, except as provided in (c) (see Section 2 below). Nothing in this section is intended to change common law on agency.

Section 2; Page 1, line 22: adds the new subsection (c) referred to above. This makes the broker the agent of the insurer for the purpose of collecting premiums.

This is important to the Division of Insurance and gives the insured more latitude in premium payments. When the broker receives a premium payment, it is treated as if the insurance company has received it. This protects the insured and prevents policy cancellation due to nonpayment of premiums because an unscrupulous broker walked off with the cash. According to the division, this section could save many thousands of dollars per year for the consumer.

Section 3; Page 1, line 28: amends present statute on limits on cancellation by clarifying that insurers cannot cancel a personal automobile insurance policy unless premiums aren't paid or the insured's license is revoked or suspended.

Section 4; Page 2, line 11: amends the reasons for which limits on cancellation in this section don't apply:

1) failure to renew a policy unless it was in force for less than 12 months. (This is already in statute.)
2) a policy that is less than 60 days old, unless it is a renewal.
3) an automobile assigned risk or automobile insurance plan.
4) a policy insuring more than four vehicles.
5) a policy covering a business related to automobiles.

Section 5; Page 2, line 28: amends present statute on limits on cancellation by specifying that the following limits apply only to personal insurance other than personal auto insurance:

1) nonpayment of premiums.
2) conviction of a crime that increases insured's risk.
3) discovery of fraud or misrepresentation by insured.
4) discovery of negligent act or omission that increases insured's risk.
5) physical change in insured's property making it

uninsurable.

Section 6; Page 3, line 18: places limits on cancellation of a business or commercial policy. No provisions now exist in law to limit commercial insurance cancellation. The limits are the same as in Section 6 (personal insurance), but additional reasons specific to commercial insurance are added.

This section also provides in (b), Page 4, line 23, for the director of the Division of Insurance to determine on a case by case basis whether a reason for cancellation not listed in this section is justified.

Section 7; Page 4, line 25: increases the notice of cancellation of a personal insurance policy from 20 days to 60 days before the cancellation date. If nonpayment of premium is the reason for cancellation, however, notice must be served within 10 days, which is present law.

This section also requires that the notice include a statement of the reason for cancellation.

Section 8; Page 5, line 9: requires the same time frame for cancellation of business or commercial insurance as that for personal lines as cited above.

Unearned premium must be returned or credited before the cancellation effective date unless the cancellation is for nonpayment. In that case, the unearned premium must be returned or credited within 45 days after the cancellation date.

Policy premiums subject to audit are also exempt from the above refund requirement. The audit must be done within 30 days of the cancellation date and the unearned premium must be returned or credited within 30 days of the audit completion.

Section 9; Page 6, line 2: clarifies that the present law requiring renewal of policies that are in force less than 12 months pertains only to personal lines.

This section also adds business and commercial lines to the requirements for notice of nonrenewal with a 45 day notice period. Personal lines require only 20 days notice of nonrenewal.

This section doesn't apply if the insurer in good faith was willing to renew, if premiums weren't paid on the expiring

policy, or if premiums weren't paid as required for renewal.

Section 10; Page 6, line 19: is housekeeping on the requirement to notify those denied auto liability insurance of the auto assigned risk plan.

Section 11; Page 6, line 29: Definitions.

Section 12; Page 8, line 24: amends the makeup of the Medical Indemnity Corporation of Alaska (MICA) board of directors by reducing the number of physicians from four to three and adding a licensed nurse or nurse midwife to the board. The reason for the change is that under this bill, nurses would be eligible for coverage through MICA (see section 14).

Section 13; Page 9, line 15: amends MICA statute by allowing nurses and nurse midwives to be a separate entity for coverage.

Section 14; Page 12, line 10: Definitions.

Section 15; Page 12, line 16: repeals statutes the intent of which are covered elsewhere in this bill.

Department of Commerce & Economic Development / POSITION PAPER

CSHB 522(L&C): "An Act relating to payment of insurance premiums, cancellation of insurance policies, and the provision of medical malpractice insurance for nurse midwives; and providing for an effective date."

The Department favors passage of this proposed legislation.

Sections 1 & 2 of this bill would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority. The insurance agent has a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. While it is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, this must be done in court on a case by case basis.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.

Sections 3 - 10 and 14 address cancellation of commercial insurance policies. Under existing law, there is a limitation on cancellation of personal lines policies such as automobile insurance policies and homeowners insurance policies. A part of this law also establishes minimum amounts of time when a cancellation is issued and requires a reason for any cancellation or nonrenewal of coverage. These minimums and reasons do not currently apply to business or commercial policies.

This proposal will provide for a 60 day notice time that a company must give when it cancels an insurance policy, other than personal lines of insurance. It also requires that any unearned premium shall be returned prior to the effective date of cancellation unless cancellation is for nonpayment of premium.

The need for this request arises from the tightening insurance markets. As companies are reducing the amount of insurance they are writing, they are eliminating entire classes of insurance from their book of business and they are often cancelling policies of those insureds who have suffered losses. The Alaskan consumer needs adequate notice in order to be able to find an alternate insurer in the event that his policy is cancelled.

To accomplish this, it is necessary to substantially rearrange AS 21.36.210 - AS 21.36.310. The changes do not revise the impact of those sections of law on personal lines. It does make some of those provisions applicable to business or commercial insurance.

We recommend that the notice period for a nonpayment cancellation remain unchanged. This means removing the change made on page 3, line 24. and changing the 20 days on page 4, line 4 to read 10 days. The logic for this is that a person about to receive notice for nonpayment generally knows that payment has not been made. 10 days is adequate.

Sections 11 - 13 provide that nurse midwives can purchase medical malpractice insurance from the Medical Indemnity Corporation of Alaska (MICA). This will provide an additional market that the nurse midwife would have available if required. We would recommend that Section 11 on page 7, lines 9 - 29 be omitted. There are 1200 physicians licensed by the state who are conceivably eligible for coverage from MICA while there are only 21 licensed nurse midwives who might be eligible for coverage from MICA with passage of this bill. That is not a reasonable basis for changing the makeup of the governing board of MICA. This feature should remain unchanged.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 4/14/86

John L. George, Director of Insurance

Date: 4/14/86

AMERICAN COLLEGE OF NURSE-MIDWIVES,
ALASKA CHAPTER

April 30, 1986

Senator Bettye Fahrenkamp
Chairman, Senate HESS Committee
Alaska State Legislature
Pouch U (MS 3100)
Juneau, Alaska 99811

MAY 7 1986

Dear Senator Fahrenkamp:

As a follow-up of my March letter, I am writing to inform you that an amendment for the MICA statute has been incorporated into House Bill 522, Judiciary version and is now on its way to the Senate. This bill would make it possible for certified nurse-midwives (CNM's) to obtain liability insurance from the Medical Indemnity Corporation of Alaska (MICA). Thank you for referring my request to the appropriate House committee.

I am now requesting that you spearhead a campaign to move it through the necessary channels in the Senate prior to the end of this legislative session.

As you know, certified nurse-midwives lost their liability insurance nationwide as of July 1985. (See enclosed congressional testimony entitled "Professional Liability Insurance for Certified Nurse-Midwives - Cost and Availability.") The national organization, the American College of Nurse-Midwives (ACNM) is trying to form its own insurance company but faces many obstacles. It is clearly going to take many months before a new program is in place. The certified nurse-midwives in Alaska do not have 'many months' before current policies expire.

Of the 29 certified nurse-midwives in Alaska, 13 are in clinical practices that include deliveries. Eight percent (1,048) of Alaskan births were attended by CNM's in 1985. Practices vary with one CNM attending 28% of the births at the Alaska Native Medical Center and four CNM's attending 20% of the births at Humana Hospital in Anchorage.

BACK UP INFORMATION

Three of the four CNM's with privileges at Humana face an uncertain future as their temporary liability policies will expire by September 30th. Their collaborative physicians do not carry liability insurance so these nurse-midwives do not have the option of being covered under the physician's 'umbrella' policy.

Two CNM's in Homer and a new CNM in Kenai are 'going bare' because they have no other options.

The Juneau CNM plans to close her practice this July unless an alternative liability policy becomes available.

Certified nurse-midwives did not lose their master policy due to high lawsuit rates among the membership. As I am sure you are aware, there is a general crisis in the entire liability insurance industry and we have simply become one of its victims. In the last 10 years, only six percent of the national membership has been sued. In contrast, 60% of the nations's obstetricians have had suits brought against them.

Insurance companies view us as a risk because we deliver babies and the long statute of limitations (21 years) makes it impossible for a company to predict its losses. In our favor is the fact that we are the experts of 'normal' childbirth. We have stringent criteria upon which we base our selection of clients and we consult and refer to collaborative physicians as needed. We are held to the highest medical standards or face de-certification if we do not meet them.

I find it ironic that certified nurse-midwives are being 'penalized' for their expertise in obstetrics and midwifery while the State passes legislation sanctioning lay midwifery that essentially allows lay midwives to practice with little interference or supervision.

Certified nurse-midwives have been providing Alaskan consumers a valuable, safe service for over 10 years. We want to continue to serve Alaskan women and infants but are facing our greatest professional challenge as the lack of liability insurance threatens our very existance. We find it practical and in the best interest of clients to cover ourselves with liability insurance. Please give your support to HB 522, Judiciary version when it reaches the Senate and prouide for an immediate effective date. Our clients will thank you!

Sincerely,

Marilyn Pierce-Bulger

Marilyn Pierce-Bulger, RN, CNM
Chairman, Alaska Chapter, ACNM
Box 9416 Hiland Road
Eagle River, Alaska 99577
wk 265-9245 hm 694-6076

Enclosures & Petitions

cc: Members, Alaska State Senate

Professional Liability Insurance for Certified Nurse-Midwives: Cost and Availability

United States Senate
Committee on Commerce, Science
and Transportation
March 4, 1986

Good morning. My name is Karen Ehrnman and I represent the American College of Nurse-Midwives (ACNM). I have been invited to share with you the difficulties which certified nurse-midwives have in obtaining professional liability insurance coverage.

This testimony will chronicle the extensive yet unsuccessful steps the College has taken on behalf of its members to obtain professional liability insurance. Additionally, I shall describe the obstacles resulting from the decision made by the College to study our options to assist nurse-midwives in establishing an independent mutual insurance company.

The impact of this situation on America's small business community is twofold: approximately one-third of our members are in private practice; another segment of our membership either owns or provides most of the health care in the nation's 140 birth centers. Until now, accredited birth centers have been a success story in the small business world. During the first three years of their operation, only eight to ten percent of these centers fail. By contrast, twelve centers have closed in 1985 -- largely as a result of an inability to obtain professional liability insurance.

As a result of the unavailability of insurance from the private sector, the establishment of an insurance company providing professional liability coverage is the only option available to nurse-midwives. Without this company, nurse-midwives will be forced to end their services to mothers and children across the United States. Birth centers will close and private practitioners will seek other livelihoods.

Background on ACNM

The American College of Nurse-Midwives (ACNM) is the professional organization for nationally certified nurse-midwives (CNMs) in the United States. There are approximately 2,500 members of the ACNM, representing close to 85% of the profession. A full 95% of the members carry some type of professional liability insurance coverage.

Certified nurse-midwives are highly trained health professionals. Educated in both nursing and midwifery, they are specialists in maternal and child health care. They are licensed in all fifty states and provide care to the healthy woman before, during and after childbirth. They are experts in normal gynecologic and family planning care. Each member of the College has been officially certified through a national written examination.

The nurse-midwives work in a variety of settings -- such as private practices, university teaching hospitals, city hospitals, rural outreach centers, group health maintenance organizations, and health departments. Nurse-midwives deliver about three percent of the births in the United States. Approximately 75% of the births attended by certified nurse-midwives occur in hospitals, and another 15% occur in accredited birth centers.

Certified nurse-midwives work in clinical collaboration with physicians. ACNM standards require members to have an alliance agreement and health care protocols with a physician in order to practice. These agreements and protocols establish mechanisms for consultation and referral when complications arise.

ACNM also has reached a formal agreement outlining acceptable guidelines for working relationships with the American College of Obstetricians and Gynecologists.

Details of the Current Insurance Crisis

Since July, 1984, about 1400 CNMs have had professional liability insurance under a blanket ACNM policy written by the Mutual Fire, Marine and Inland Insurance Company. The remaining 1100 members of the College are

insured by their employers -- hospitals, health maintenance organizations, etc.

Mutual Fire notified ACNM in May, 1985 that the policy would not be renewed on July 1, 1985. ACNM's insurance was not renewed because of general conditions in the insurance industry -- the unavailability of reinsurance -- and not because of its members' professional performance. Suits have been filed against only six percent of all nurse-midwives -- a number not considered high among medical professionals. By comparison, 66.9 percent of obstetricians have been sued at least once according to the American College of Obstetricians and Gynecologists. In addition to the non-renewal of the blanket policy, over 300 individual certificates of insurance were cancelled this past July. These cancellations accounted for all of the individual certificates of insurance written after December 31, 1984; the remaining 1100 policies expired by December, 1985.

History of Insurance Coverage

Since the early 1970's, the American College of Nurse-Midwives has been able to obtain for its members a group policy that would pay up to one million dollars per claim. This one million dollar amount of insurance is the

amount which many hospitals require nurse-midwives to purchase in order to qualify for hospital privileges. It is this amount of insurance we want to make available to our members today.

Mutual Fire Marine and Inland Insurance was the third insurance carrier the ACNM has worked with in the past three years. The change in companies has been the result of three separate situations: 1) the inadequacy of the premium rate charged by one company; 2) the second company's withdrawal from the medical malpractice market; and 3) the nonrenewal of the reinsurance treaties for our most recent policy.

Steps Taken to Obtain New Insurance Policy

Early this year when ACNM received word that obtaining the master insurance policy might be difficult, we selected a "seasoned" broker with an excellent history of obtaining professional medical liability insurance. We believed that our broker understood what nurse-midwives are and that he would "market" us appropriately to the insurance industry. In search of a replacement for Mutual Fire we contacted 17 insurance companies in the United States. We were told that this represented most carriers in the U.S. who write professional liability

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presidents. We did this for
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large numbers of claims and skyrocketing awards. What was never actually said -- but implied -- was that the premium levels necessary to cover CNMs would be beyond the reach of professionals making an annual salary of $25,000. Therefore, they offered no coverage at all.

But consumer groups, such as the National Insurance Consumer Organization (NICO), have accused the insurance industry of using misleading statistics in claiming a loss in 1985. Instead, NICO suggests the insurers have earned $6.6 billion. The ACNM is not an insurance analyst; we do know that nurse-midwives are not part of the malpractice insurance problem because of our very low rate of suits. We believe that it would have been possible for an insurance company to write a policy for nurse-midwives at a reasonable rate and based upon sound actuarial data. In fact, as I shall discuss later in this testimony, our plan is to do just that -- to establish an independent mutual insurance company which will underwrite CNMs at a reasonable rate.

State Level Initiatives

Our next course of action was to send nurse-midwives to talk with professional liability insurance companies in their states. The response was still "no". Nurse-

midwives talked to governors, state legislators, and state insurance commissioners. To date only one state out of fifty -- New Jersey -- has been able to offer insurance from a private carrier.

Still focusing at the state level, nurse-midwives investigated joint underwriting authority (JUA) and lobbied state legislators to extend joint underwriting authority to include nurse-midwives. We have been successful in implementing this in a number of states. However, for the most part, either the premiums for this coverage have been excessive or the amount of insurance offered has been less than required.

Other Considerations

As we evaluated the situation, nurse-midwives had little hope of obtaining affordable insurance from either the traditional insurers or the state JUAs. While these two options had been under consideration, the College's Board of Directors also commissioned a feasibility study on various options for self-insuring. Although this study indicated that it would be "feasible" for nurse-midwives to form an insurance company, the Board of Directors decided last summer that the insurance business

was beyond the limited resources of nurse-midwives. The Board directed the staff of ACNM to look into working with other groups to self-insure or to join another group's self-insure program. The response to these inquiries was also "no", although ACNM continues to communicate with the American Nurses' Association (ANA) about forming a company for all nurses.

Another option involved asking Congress to consider establishing a nurse-midwife sponsored insurance program. At that time we had interested a primary insurer in writing the first layer of insurance coverage. That company would have written the first $100,000 of coverage and the federal government would have provided the excess coverage from $100,000 to one million dollars. Even as we discussed this with members of Congress, however, the primary insurer had a change of heart.

The Re-examination of Self-Insure

Consideration of all of the options discussed up to this point utilized an enormous amount of resources. The process also strengthened the resolve of the leaders of the profession that searching for insurance could not become an annual event. Therefore the College's Board of

Directors sought a second opinion on the self-insure options. This second evaluation confirmed the earlier one. In December, 1985, the Board of Directors decided to further study this option.

Forming an Insurance Company

The emotion which accompanied the decision to study helping certified nurse-midwives form an independent mutual insurance company was short-lived. Even after hiring consultants and attorneys, the road blocks before us are enormous.

Disregarding the very difficult financial problems, the following are some of the legal and technical complications which hinder the establishment of a company.

The Claims-Made Policy

One technical problem is the type of policy currently being written -- a claims-made policy. In the past professionals have been able to purchase occurrence policies. There is a very important distinction between these two types of policies -- a distinction which is critical to nurse-midwives as well as physicians.

An occurrence policy insures for all claims arising out of events which occurred during the covered

period regardless of when the claim is filed. A claims-made policy insures only those claims which are filed during the policy year no matter when the event occurred. Does it matter? Yes.

For example, under an occurrence policy issued in February 1986 - February 1987, the nurse-midwife would be covered for any claim related to a delivery during this calendar year, even if the family did not file the claim until the child entered elementary school or even college. A claims-made policy, on the other hand, would only cover those claims filed during the February 86 - February 87 calendar year. To be covered for claims filed after this time period the professional must purchase "tail coverage".
What further complicates all of this is that in this insurance market it is impossible to buy a "tail" for 21 years -- the coverage that nurse-midwives and obstetricians need. In addition, insurance companies will not quote a price on a "tail" until it is needed, but we have been told it is likely to be two to three times the cost of a one year premium -- and can be more. We have been told by the insurance industry that primary insurers are switching to claims-made policies be-

cause reinsurers will not write occurrence policies. Reinsurers argue that it is easier to anticipate costs with a claims-made policy.

Regulatory Roadblocks in Forming an Insurance Company

Simply stated, we have been informed by our legal counsel that under the insurance laws of virtually all of the states, a new insurance company could not write insurance unless it became licensed in each of these states. This is a costly and time-consuming process that takes several years -- time we simply do not have. Also, the capital requirements of a few of the states exceed even our collective resources. Our legal counsel has reviewed the situation to see if exemptions from this licensing process exist, but none is available to us due to the number, size and geographic spread of our membership.

In 1981, Congress realized that this almost identical problem existed for small businessmen affected by the lack of product liability insurance, when it enacted the Risk Retention Act. This Act allowed groups of business to form risk retention groups to collectively insure the product liability risks of the members of the group without first becoming licensed as an insurer in any

jurisdiction other than that of the domicile of the risk retention group itself. In 1985, Congress again realized that a similar problem existed when the House and the Senate passed an almost identical bill (which is part of the Super Fund legislation now before Congress) to provide for risk retention groups for environmental impairment liability insurance.

We ask you to provide us with the same type of legislation to permit formation of a risk retention group for professional liability insurance for nurse-midwives and birthing centers.

Nurse-midwives Current Status: Temporary Insurance Coverage

In considering practicing without insurance, most CNMs, as well as most physicians, feel both a moral and practical obligation to protect their patients and themselves from any unintentional human error. In addition, many CNMs must carry professional liability insurance to retain their employment and/or hospital privileges.

In an attempt to keep practicing, most of our members purchased insurance during this past year from one of two

nursing groups whose policies did not include an exclusion of nurse-midwives. These organizations are the American Nurses' Association (ANA) and the Nurses' Association of the American College of Obstetricians and Gynecologists (NAACOG). The insurers of both of the groups have subsequently written into the policies exclusions of nurse-midwives. An informal survey of our membership indicates that this temporary coverage will begin to run out this spring and by next December no CNMs will have insurance if not provided by their employers or state JUA.

Requested Actions

I am certain you will agree with us that the formation of the insurance company over the next few months is critical. Congress can help. We urge Congress to: amend the 1981 Risk Retention Act; address the problem of the unavailability of reinsurance; and establish the availability of occurrence-type policies.

1) Amend the 1981 Risk Retention Act:

An expansion of this law to allow groups such as ours to establish an insurance company is essential. The idea we seek to implement is after meeting the requirements in a selected state for establishing the company, the company would be able to write insurance in all fifty states. This is the

only way that we will be able to offer insurance to our members in all fifty states.

2) Address the problem of reinsurance unavailability:

Our problem began when Mutual Fire's reinsurance treaties were not renewed. Since then we have heard many insurers state that their capacity to write insurance is limited by the unavailability of reinsurance. A new company also cannot get reinsurance and this substantially increases both short and long term financial risks.

In this regard, the American College of Nurse-Midwives urges you to make reinsurance available. This could be done by legislating the plan for federally-based reinsurance which has been drafted by the National Insurance Consumers Organization, investigating U.S. business practices and legislating changes to encourage the establishment of U.S. owned reinsurance companies.

3) Make occurrence policies available.

Nurse-midwives cannot purchase an occurrence policy. Additionally, in studying the possible formation of a new company, we have been advised that

this company would also have to write a claims-made policy. The reason is that reinsurers will only reinsure the claim-made type policy. This situation must be changed.

Lastly, we need this assistance quickly. Although some private practices and birthing centers have already gone out of business, by spring the vast majority of these small businesses will be vulnerable. Thank you for your support and interest in this problem.

PAGE 8, LINE 8 - PAGE 9 - LINE 14;
SEC. 12 AS 21.58.030
CSHB 522
DELETED

WORK DRAFT WORK DRAFT WORK DRAFT

Bannister ✓
5/7/86

Original sponsors: Sund, Koponen, Gruenberg and Taylor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 522 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and the provision of medical malpractice insurance for nurses and nurse midwives."

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

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [. NOTHING] in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of personal [AN] automobile insurance [POLICY] except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

* Sec. 4. AS 21.36.210(d) is amended to read:

(d) This section does not apply to

(1) the failure to renew a policy, except as to coverage in force for less than 12 months;

(2) a policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy;

(3) a policy issued under an automobile assigned risk plan or automobile insurance plan;

(4) a policy insuring more than four motor vehicles;

(5) a policy covering the operation of a garage; automobile sales agency, repair shop, or service station; or public parking place;

(6) a policy providing insurance only on an excess basis;

(7) any other contract providing insurance to the named insured, even though the contract may incidentally provide insurance with respect to motor vehicles.

* Sec. 5. AS 21.36.210(f) is amended to read:

(f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons [THE

TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDITIONS OR CIRCUMSTANCES ARISES]:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against; or

(5) physical changes in the insured property that result in the property becoming uninsurable.

* Sec. 6. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COMMERCIAL INSURANCE POLICES. (a) Except as allowed by the director under (b) of this section, an insurer may exercise its right to cancel a policy of business or commercial insurance only for the following reasons:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the

insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against;

(5) physical changes in the insured property that result in the property becoming uninsurable;

(6) physical changes in the operations of the insured that result in the property becoming uninsurable;

(7) changes in the reinsurance program of the insurer that results in an increase of the insurer's retention of risk on a subject of insurance;

(8) changes in the financial condition of the insurer resulting in a violation of AS 21.12.010;

(9) a material change in the law that affects the coverage provided under the policy; or

(10) an excessive number of claims by the insured.

(b) Before issuing a notice of cancellation, an insurer may request the director to determine in a particular case whether a reason for cancellation not specified in (a) of this section is a valid reason for cancellation. The director may allow the insurer to exercise its right to cancel if the director finds that the cancellation is justified. The insurer may not implement the requested cancellation before receiving the approval of the director.

* Sec. 7. AS 21.36.220 is amended to read:

Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not exercise its right to cancel a <u>personal insurance</u> policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least <u>60</u> [20] days before the effective date of cancellation. <u>However, if</u> [, EXCEPT THAT WHEN] cancellation is for nonpayment of premium, the notice <u>must</u>

[SHALL] be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation, and must [SHALL] include or be accompanied by a statement of the reason for the cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12 MONTHS.]

* Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

(b) An insurer may not exercise its right to cancel a policy of business or commercial insurance unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, and to the agent or broker of record, at least ~~(60)~~ 45 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, the notice must be mailed or delivered to the named insured at the address shown in the policy and to the agent or broker of record at least 10 days before the effective date of cancellation, and must include or be accompanied by a statement of the reason for the cancellation.

(c) If an insurer cancels a policy under (b) of this section, it shall return or credit any unearned premium to the agent or broker of record or directly to the insured or premium finance company, if applicable, before the effective date of cancellation, except that

(1) if cancellation is for nonpayment of premium, any unearned premium must be returned or credited within 45 days after the notice of cancellation is given;

(2) if the policy premium is subject to audit the insurer shall perform an audit within 30 days of the effective date of the cancellation and return or credit any unearned premium within 30 days of the completion of the audit.

* Sec. 9. AS 21.36.240 is amended to read:

Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to renew a personal insurance policy in force for less than 12 months. An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR MORE] unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days for a personal insurance policy, and at least 45 days for a business or commercial insurance policy, before the expiration date of the policy [,] or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

* Sec. 10. AS 21.36.250 is amended to read:

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [APPLIES], the insurer shall notify the named insured of possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification must [SHALL] accompany or be included in the notice of cancellation or nonrenewal required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

* Sec. 11. AS 21.36.310 is amended to read:

Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

(1) "business or commercial insurance" means insurance

other than personal insurance, life insurance, disability insurance, fidelity and surety insurance, title insurance, or an annuity contract;

(2) "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(3) "personal automobile insurance" means insurance not related to business or commercial activities, covering [(2) "POLICY" MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile liability, uninsured/underinsured motorists [COVERAGE, UNINSURED MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automobile physical damage [COVERAGE], that is delivered or issued for delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

(4) "personal insurance" does not include an annuity contract or a policy of life insurance, disability insurance, or title insurance; the term means personal automobile insurance, or insurance

covering

(A) loss of or damage to real property that is used predominantly for residential purposes and that does not consist of more than four dwelling units;

(B) loss of or damage to personal property, including personal effects, household furniture, fixtures and equipment located in not more than four dwelling units; or

(C) legal liability of natural persons for loss of, damage to or injury to persons or property if the insurance does not cover liability arising from or in connection with business or commercial activities;

(5) [(3)] "renewal" or "renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium.

* Sec. 12. AS 21.88.050 is amended to read:

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians, nurses, nurse midwives, and hospitals who are found to be acceptable risks under standards developed under (5) of this subsection, and who pay the premiums for it, a contract or contracts indemnifying physicians, nurses, nurse midwives, and hospitals and their

employees who are health care providers against loss by reason of liability for covered claims for an act or omission in the delivery of professional health care in this state, and agreeing to tender on behalf of the physicians, nurses, nurse midwives, and hospitals and their employees who are health care providers a defense to a covered claim in a proceeding brought under AS 09.55.530 - 09.55.560; the limits of liability for policies issued by the corporation shall be approved by the director; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims against the physician, nurse, nurse midwife, or hospital that arise out of professional services performed by the physician, nurse, nurse midwife, or hospital for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the physician, nurse, nurse midwife, or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with AS 21.86.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250, 21.09.280, AS 21.12.020(b)-(c), AS 21.18, AS 21.21, AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured

health care providers and by paying all liabilities that [WHICH] are finally adjudicated against the insured health care provider or that [WHICH] may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant for insurance based on individual risk selection factors, but may not exclude an applicant based only on the classification of the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) provide coverage to insureds for other hazards customarily included in medical malpractice insurance policies when there is a finding by the director that this coverage is not available to insureds of the Medical Indemnity Corporation of Alaska in the private insurance market at a competitive price;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to

hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to carry out the duties of the corporation;

(10) in a form approved by the director and for an additional premium determined under AS 21.88.080, issue endorsements which provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians, nurses, nurse midwives, and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year;

(11) subject to approval by the director, extend coverage to a person, entity, or facility that renders health care services in the state under the supervision of a physician.

* Sec. 13. AS 21.88.900 is amended by adding new paragraphs to read:

(17) "nurse" means a nurse licensed under AS 08.68;

(18) "nurse midwife" means a registered professional nurse who is certified as an advanced nurse practitioner under AS 08.68.-410(1) and authorized to practice as a nurse midwife under regulations adopted under AS 08.68.

* Sec. 14. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.

Offered: 4/28/86
Referred: Rules

Original sponsors: Sund, Koponen, and Gruenberg

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 522 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, the composition of the board of the Medical Indemnity Corporation of Alaska, and the provision of medical malpractice insurance for nurses and nurse midwives."

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

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [. NOTHING] in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of

personal [AN] automobile insurance [POLICY] except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

* Sec. 4. AS 21.36.210(d) is amended to read:

(d) This section does not apply to

(1) the failure to renew a policy, except as to coverage in force for less than 12 months;

(2) a policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy;

(3) a policy issued under an automobile assigned risk plan or automobile insurance plan;

(4) a policy insuring more than four motor vehicles;

(5) a policy covering the operation of a garage; automobile sales agency, repair shop, or service station; or public parking place;

(6) a policy providing insurance only on an excess basis;

(7) any other contract providing insurance to the named insured, even though the contract may incidentally provide insurance with respect to motor vehicles.

* Sec. 5. AS 21.36.210(f) is amended to read:

(f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not

exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons [THE TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDITIONS OR CIRCUMSTANCES ARISES]:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against; or

(5) physical changes in the insured property that result in the property becoming uninsurable.

* Sec. 6. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COMMERCIAL INSURANCE POLICES. (a) Except as allowed by the director under (b) of this section, an insurer may exercise its right to cancel a policy of business or commercial insurance only for the following reasons:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against;

(5) physical changes in the insured property that result in the property becoming uninsurable;

(6) physical changes in the operations of the insured that result in the property becoming uninsurable;

(7) changes in the reinsurance program of the insurer that results in an increase of the insurer's retention of risk on a subject of insurance;

(8) changes in the financial condition of the insurer resulting in a violation of AS 21.12.010;

(9) a material change in the law that affects the coverage provided under the policy; or

(10) an excessive number of claims by the insured.

(b) Before issuing a notice of cancellation, an insurer may request the director to determine in a particular case whether a reason for cancellation not specified in (a) of this section is a valid reason for cancellation. The director may allow the insurer to exercise its right to cancel if the director finds that the cancellation is justified. The insurer may not implement the requested cancellation before receiving the approval of the director.

* Sec. 7. AS 21.36.220 is amended to read:

Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not exercise its right to cancel a <u>personal insurance</u> policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least <u>60</u> [20] days

before the effective date of cancellation. However, if [, EXCEPT THAT WHEN] cancellation is for nonpayment of premium, the notice must [SHALL] be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation, and must [SHALL] include or be accompanied by a statement of the reason for the cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12 MONTHS.]

* Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

(b) An insurer may not exercise its right to cancel a policy of business or commercial insurance unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, and to the agent or broker of record, at least 60 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, the notice must be mailed or delivered to the named insured at the address shown in the policy and to the agent or broker of record at least 10 days before the effective date of cancellation, and must include or be accompanied by a statement of the reason for the cancellation.

(c) If an insurer cancels a policy under (b) of this section, it shall return or credit any unearned premium to the agent or broker of record or directly to the insured or premium finance company, if applicable, before the effective date of cancellation, except that

(1) if cancellation is for nonpayment of premium, any unearned premium must be returned or credited within 45 days after the notice of cancellation is given;

(2) if the policy premium is subject to audit the insurer shall perform an audit within 30 days of the effective date of the cancellation and return or credit any unearned premium within 30 days

of the completion of the audit.

* Sec. 9. AS 21.36.240 is amended to read:

Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to renew a personal insurance policy in force for less than 12 months. An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR MORE] unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days for a personal insurance policy, and at least 45 days for a business or commercial insurance policy, before the expiration date of the policy [,] or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

* Sec. 10. AS 21.36.250 is amended to read:

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [APPLIES], the insurer shall notify the named insured of possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification must [SHALL] accompany or be included in the notice of cancellation or nonrenewal required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

* Sec. 11. AS 21.36.310 is amended to read:

Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

(1) "business or commercial insurance" means insurance other than personal insurance, life insurance, disability insurance, fidelity and surety insurance, title insurance, or an annuity contract;

(2) "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(3) "personal automobile insurance" means insurance not related to business or commercial activities, covering [(2) "POLICY" MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile liability, uninsured/underinsured motorists [COVERAGE, UNINSURED MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automobile physical damage [COVERAGE], that is delivered or issued for delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

(4) "personal insurance" does not include an annuity con-

tract or a policy of life insurance, disability insurance, or title insurance; the term means personal automobile insurance, or insurance covering

(A) loss of or damage to real property that is used predominantly for residential purposes and that does not consist of more than four dwelling units;

(B) loss of or damage to personal property, including personal effects, household furniture, fixtures and equipment located in not more than four dwelling units; or

(C) legal liability of natural persons for loss of, damage to or injury to persons or property if the insurance does not cover liability arising from or in connection with business or commercial activities;

(5) [(3)] "renewal" or "renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium.

* Sec. 12. AS 21.88.030(a) is amended to read:

(a) The corporation shall exercise its powers through a board of governors that [WHICH] is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) three [FOUR] physicians licensed in the state and

engaged in private practice in the state; no more than two of the physicians shall practice or live in a municipality having a population of more than 100,000, and two of the physicians must be indemnified against loss by reason of liability for an act or omission in the delivery of professional health care by the Medical Indemnity Corporation of Alaska;

(2) one nurse or nurse midwife;

(3) an administrator or senior executive officer employed by a hospital licensed in the state;

(4) [(3)] two professionals from the insurance industry who are authorized or licensed to do business in the state;

(5) [(4)] two persons who are not health care providers or financially interested in the field of health care or representatives of the insurance industry.

* Sec. 13. AS 21.88.050 is amended to read:

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians, nurses, nurse midwives, and hospitals who are found to be acceptable risks under standards developed under (5) of this subsection, and who pay the premiums for it, a contract or contracts indemnifying physicians, nurses, nurse midwives, and hospitals and their employees who are health care providers against loss by reason of liability for covered claims for an act or omission in the delivery of professional health care in this state, and agreeing to tender on behalf of the physicians, nurses, nurse midwives, and hospitals and their employees who are health care providers a defense to a covered claim in a proceeding brought under AS 09.55.530 - 09.55.560; the limits of liability for policies issued by the corporation shall be

approved by the director; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims against the physician, nurse, nurse midwife, or hospital that arise out of professional services performed by the physician, nurse, nurse midwife, or hospital for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the physician, nurse, nurse midwife, or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with AS 21.88.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250, 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured health care providers and by paying all liabilities that [WHICH] are finally adjudicated against the insured health care provider or that [WHICH] may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant

for insurance based on individual risk selection factors, but may not exclude an applicant based only on the classification of the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) provide coverage to insureds for other hazards customarily included in medical malpractice insurance policies when there is a finding by the director that this coverage is not available to insureds of the Medical Indemnity Corporation of Alaska in the private insurance market at a competitive price;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to carry out the duties of the corporation;

(10) in a form approved by the director and for an additional premium determined under AS 21.88.080, issue endorsements which

provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians, nurses, nurse midwives, and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year;

(11) subject to approval by the director, extend coverage to a person, entity, or facility that renders health care services in the state under the supervision of a physician.

* Sec. 14. AS 21.88.900 is amended by adding new paragraphs to read:

(17) "nurse" means a nurse licensed under AS 08.68;

(18) "nurse midwife" means a registered professional nurse who is certified as an advanced nurse practitioner under AS 08.68.-410(1) and authorized to practice as a nurse midwife under regulations adopted under AS 08.68.

* Sec. 15. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 522 (L&C)
Title: Relating to payment of premiums, cancellation of policies, and medical malpractice insurance for nurse midwives
Sponsor: Labor & Commerce
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: April 14, 1986

Approved by Commissioner: Lowell L. Lounsbury
Agency: Commerce and Economic Development
Date: April 14, 1986

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

FISCAL NOTE

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

562

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

Dick

February 4, 1986

Representative Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Dick:

Pursuant to your request in our telephone conversation today, I would submit the proposed statutory amendment below. This amendment would permit cooperatives like Alaska Village Electric Cooperative or Middle Kuskokwim Electric Cooperative which are scattered over areas not connected by a road system to continue acting on their bylaws through delegates while requiring cooperatives which are connected by roads to act on their bylaws through a vote of their members as you indicated is your desire.

AS 10.25.070 Bylaws. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the [MEMBERS OR] district delegates in cooperatives having three or more districts which are not connected by a road system [SHALL] may adopt, amend or repeal the bylaws by the affirmative vote of a majority of those [MEMBERS OR] district delegates voting on the adoption, amendment or repeal at a meeting of the [MEMBERS OR] district delegates. In all other cooperatives, the members shall adopt, amend or repeal the bylaws by the affirmative vote of a majority of those members voting on the adoption, amendment or repeal at a meeting of the members. The bylaws shall set forth the rights and duties of members, district delegates and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistant with this chapter or with its articles of incorporation.

Sincerely,

Dave

David Hutchens
Executive Director

DH/cf

HOGE AND LEKISCH
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
437 'E' STREET, SUITE 500 • ANCHORAGE, ALASKA 99501-2366
(907) 276-1726

ANDREW P. HOGE
PETER A. LEKISCH
ROBERT L. VASQUEZ
DAVID B. JOHNSON
GORDON D. LEE
JOHN W. COLVER

April 2, 1986

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

Re: House Bill 562

Dear Mr. Chairman:

This letter which is written at the request of this firm's client Copper Valley Electric Association, Inc. (CVEA), will explain the background that led in part to the introduction of House Bill No. 562.

CVEA is divided into two (2) districts: the Copper River Basin and the Valdez Districts. The cooperative uses a delegate system for amending its Bylaws. Pursuant to the existing Bylaws, three out of 18 delegates can call a special meeting. Recently, three delegates attempted to call a special meeting. One of the items on the agenda was a possible move of the headquarters of CVEA from Glennallen to Valdez. No member notice was given. A great deal of concern arose from some of the residents of Glennallen that Glennallen would lose a major employer in the area. CVEA's staff was also concerned because of commitments made by them for housing in Glennallen and family considerations. Further, some CVEA Board members were concerned that it would not be economically wise for the move to be made. Finally, there was a general concern that the members were not even notified of the proposed move.

CVEA has 1755 voting members. Because of the way the delegate system works, ten members, as delegates, could vote to move the headquarters without membership notice or approval or input and consideration by the Board.

The purpose of House Bill 562 is to leave that kind of decisionmaking up to a majority of the members. The advantage to membership voting is that ballot propositions would be placed before the membership, an opportunity would be given for the membership to hear the pros and cons of the propositions, and a considered vote could be made by the membership.

The district delegate method of voting does not seem appropriate when only three out of 1755 members could call for such a proposition and, with the concurrence of seven other delegate members, make such a decision for the cooperative.

The proposed law will still allow basic majority control by the membership for changes; in this manner, all members will have the opportunity to vote and not just a select few delegates.

Very truly yours,

HOGE and LEKISCH
Attorneys for Copper Valley
Electric Association, Inc.

Andrew E. Hoge

AEH/ms/AHVIII26
cc: Copper Valley Electric Association, Inc.
Alaska Rural Electric Cooperatives Association, Inc.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 562(L&C) Summary

This measure requires cooperatives which encompass 3 or more districts, and are not connected by the road system, to retain the delegate system of representation. These cooperatives may change bylaws by an affirmative vote of the delegates attending a meeting of the district delegates.

All other cooperatives may change bylaws by an affirmative vote of the majority of those members voting. This provision extends to voting at a meeting of the members or votes cast by mail ballot without a meeting.

CHAIRMAN'S INFORMATION: CSHB 562(L&C)

1) BILL TITLE: "An act relating to the adoption of bylaws by cooperatives."

a) Introduced: Rep Schultz

b) Co-sponsors:

2) INTENT: This measure concerns the adoption of bylaws by cooperatives.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 562
Title: An act relating to the adoption of cooperative bylaws

Sponsor: Shultz
Requester:
Date of Request:

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
BRU: APUC

Components:

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: Carolyn Guess — Phone: 276-6222
Division: Commissioner, APUC — Date: April 7, 1986

Approved by Commissioner: Brian H. Kennedy — Date: April 7, 1986
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
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- Impacted Agency(ies)

10/25/85

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ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

5889

DAVID T. WALKER
ATTORNEY AT LAW
MENDENHALL BUILDING
326 FOURTH STREET, SUITE B
JUNEAU, ALASKA 99801
(907) 586-3537

May 7, 1986

Senator Fred F. Zharoff, Chairman
Senate Labor and Commerce Committee
Room 121, Capital Building
Juneau, Alaska 99801

RE: CSHB 589 (Finance) am; An Act relating to disability insurance; and providing for an effective date.

Dear Senator Zharoff:

I am the registered lobbyist for the Alaska Nurses Association. The Association has some concerns about the impact of HB 589 on the practice of nursing. Nurses constitute the largest group of health care providers in the State and are deeply involved in all aspects of health care delivery. Nurses do not practice medicine, they practice nursing. Insurance coverage should be provided for nursing services without regard to whether those services are provided under the continued direction of a physician. Specifically, the Association recommends:

1. Page 4, line 28, delete "at the physician's direction";
2. Page 16, line 29, delete "upon recommendation of a licensed physician";
3. Page 17, lines 4-5, delete "under the continued direction of the person's physician and".

Additionally, we believe that Section 21.55.140 (13) found on page 10, lines 3-5, should be deleted. We believe it is poor policy to exclude services of a registered nurse from coverage simply because she resides in the covered individual's home - this makes no more sense than excluding the services of a physician who treats a member of his family.

Please do not hesitate to contact me if you have a question about the Association's position on this bill,

nurses, the practice of nursing, or any other matter.

Very truly yours,

David T. Walker

DTW/dsm
cc: Members of the Senate Labor
and Commerce Committee

METROPOLITAN LIFE INSURANCE
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NEW YORK NY 10010 02AM

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THE HONORABLE ZHAROFF FRED
ALASKA SENATE RM 121
STATE CAPITOL
P O BOX V
JUNEAU AK 99811

MAY 6 1986

METROPOLITAN LIFE RESPECTFULLY URGES THE ALASKA SENATE NOT TO ACT FAVORABLY ON HOUSE BILL 589. THERE IS NO DEMONSTRATED NEED FOR SUCH WIDE RANGING LEGISLATION IN ALASKA. ALTERNATIVE SOLUTIONS MERIT FURTHER STUDY. THE LEVEL OF BENEFITS MANDATED COUPLED WITH LIMITATIONS ON PREMIUMS COULD RESULT IN SOME INSURERS CEASING THE WRITING OF HEALTH INSURANCE IN ALASKA.
ROBERT O. FLECKENSTEIN METROPOLITAN LIFE INSURANCE CO

50085
1619 EST

MGMCOMP MGM

Form L-01342 1601557

TO REPLY BY MAILGRAM, SEE INSTRUCTIONS ON REVERSE SIDE.

CS HB 589 (Finance)

An Act relating to disability insurance;
and providing for an effective date.

OVERVIEW
Prepared by Rep. John Sund's office; May 3, 1986

Objective

The primary purpose of HB 589 is to ensure medical insurance availability to those Alaskan residents who are considered too high of a health risk for standard insurance in the open marketplace.

What This Bill Does

HB 589 would establish a nonprofit, statewide association of all disability insurers in the state. Participation in the association would be mandatory in order to do business in the state.

The association would offer major medical insurance and medicare supplement insurance as described in the bill to any Alaskan who cannot get standard coverage or has excessive restrictions placed on his or her insurance. Certain eligibility requirements would be set.

If the association's claim payments exceed the premiums collected, the association members would be assessed to make up the differences. Any premiums that exceed losses would be held at interest to offset future losses. The association would administer the plan under the monitoring of the director of the Division of Insurance.

For the first year of the plan, premium rates would be capped at 150% of the average rate of the plan if it were offered to standard risk people by the five largest disability insurers in the state. Based on that year's experience, the association will set actuarially sound rates but the rates cannot exceed 250% of standard rates for a comparable plan.

Why This Bill Is Needed

Standard disability insurance is often denied people who are considered high risks, such as older individuals and those who are suffering or have suffered from serious illnesses. Comprehensive insurance should be available to these people. Moreover, providing them insurance should eventually decrease costs to society.

CS HB 589 (Judiciary)

An Act relating to disability insurance; and providing for an effective date.

SECTIONAL ANALYSIS

Prepared by Rep. John Sund's office; May 3, 1986

Section 1
ARTICLE 1
Sec. 21.55.010. Page 1, line 12: creates the Comprehensive Disability Insurance Association, a nonprofit corporation with membership consisting of all licensed disability insurers and licensed hospital or medical service corporations in the state that write on an expense incurred basis. Insurers must be members of the association in order to do business in the state.

Sec. 21.55.020. Page 1, line 22: sets a seven-member board of directors selected by association members and approved by the director of the state Division of Insurance. The director or a designee will be a nonvoting, ex officio member of the board.

Sec. 21.55.030. Page 2, line 12: describes the association's general powers.

Sec. 21.55.040. Page 2, line 21: subjects association articles, bylaws and operating rules to the approval of the director of the Division of Insurance.

Sec. 21.55.050. Page 3, line 26: exempts the association from the Administrative Procedure Act.

Sec. 21.55.060. Page 3, line 28: exempts the association from taxes.

ARTICLE 2
Sec. 21.55.100. Page 4, line 4: offers the state plan, including the medicare supplement plan, on an individual basis to high-risk residents. The association may not deny coverage to any eligible resident.

Sec. 21.55.110. Page 4, line 16: explains the minimum benefits of the state plan, which is a basic major medical plan. Lifetime maximum benefit is $1 million.

Sec. 21.55.120. Page 6, line 26: offers deductibles of $200, $500 or $1,000 per person. The maximum copayment by enrollees would be 20% once the deductible is met for all health care and 50% for mental health care. Maximum annual payments of

deductible and copayments cannot exceed $2,000 per insured. The plan would pay 100% once that limit is reached.

Sec. 21.55.130. Page 7, line 27: excludes coverage for preexisting conditions if the condition began within the three months just preceding the effective date of coverage. Preexisting conditions would not be covered for the first six months of a plan. The limitation can be waived if the insured's previous insurance was terminated and the state plan application is made within 31 days following termination.

Sec. 21.55.140. Page 8, line 22: describes care and services that are not covered by the plan.

Sec. 21.55.150. Page 10, line 9: sets separate scales of premium rates based on age and geographic location of the insured.

Premium rates for the first year of the plan are capped at 150% of the average rate of the plan if it were offered to standard risk people as determined by the five largest disability insurers in the state. Thereafter, the rates will be determined using sound actuarial methods based on plan experience. But the rates may never exceed 250% of standard rates for a comparable plan.

ARTICLE 3

Sec. 21.55.200. Page 10, line 29: sets guidelines for the association's selection of a writing carrier through a bidding process.

Sec. 21.55.210. Page 11, line 7: explains the duties of the writing carrier who will be contracted for three-year terms unless earlier termination is approved by the director.

The carrier will perform the administrative and claims payment functions of the plan and report quarterly to the association. The carrier will be reimbursed for direct and indirect expenses of administering the plan.

Sec. 21.55.220. Page 12, line 17: requires that association members be assessed to share the claim losses and administrative expenses that exceed premium payments. Each member will contribute to the association an amount based on that member's share of all disability insurance premiums paid in the state. Assessments will be made yearly, unless interim assessments are desired.

A member's failure to pay an assessment within 30 days could cease that member's certification to operate in the state.

Net gains will be held at interest to offset future losses.

ARTICLE 4

Sec. 21.55.300. Page 14, line 5: states that all high-risk residents are eligible for the state plan unless covered by another disability insurance policy. A person loses eligibility upon ceasing residency.

Sec. 21.55.310. Page 14, line 16: explains the enrollment procedure.

Sec. 21.55.320. Page 14, line 25: requires the state plan writer to respond to the applicant within 30 days of receiving the application.

Sec. 21.55.330. Page 15, line 1: sets the policy effective date at the day of application once the first premium is paid. It also permits 60 day retroactive coverage for those individuals whose previous insurance terminated, if premiums are paid for the retroactive period.

Sec. 21.55.340. Page 15, line 15: requires that the association advertise the state plan to the public. An insurer who rejects or restricts a policy must tell the applicant about the state plan.

ARTICLE 5

Sec. 21.55.400. Page 16, line 5: explains the duties of the director of the Division of Insurance in regard to the state plan.

Sec. 21.55.410. Page 16, line 16: states the state is not liable for association actions.

Sec. 21.55.500. Page 16, line 20: offers chapter definitions.

Resident is defined as a person who has lived in the state at least six consecutive months prior to application and intends to remain. Absence from the state is permitted for medical and educational reasons.

A high risk resident is defined as someone who has been rejected for disability coverage by at least two association members or has had a restrictive rider placed on a policy.

Section 2. Page 19, line 20: requires that the state plan be available by July 1, 1987.

Section 3. Page 19, line 23: sets an immediate effective date.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

603

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 603(L&C) Sectional Analysis

Section 1) Extends the Board of Dispensing Opticians until 6/30/89.

Section 2) Expands the qualifications required of applicants for examinations as follows:

Adds 4 years of attendance, or the equivalent, at a high school;

Provides that graduation with an associate degree, from a recognized school of opticianry, may be substituted for 4,000 of the 6,000 hours of experience in the profession.

Section 3) Prior to license renewal, licensee shall submit evidence to the board of 30 hours of continued competence in the profession, as prescribed by board regs.

Section 4) Immediate effective date

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 14, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to extend the Board of Dispensing Opticians until June 30, 1988 and to make minor changes in two sections of AS 08.71, concerning opticians' eligibility for examination for licensure and renewal of licensure.

Although the June 30, 1985 termination date for the Board of Dispensing Opticians has passed, the board continues in existence until June 30, 1986 under the wind-down provisions of AS 08.03.020.

Last spring, I vetoed CSSB 167(L&C) which would have continued the board until 1989 and made the same change as does sec. 3 of this bill regarding optician license renewal, along with several other changes to AS 08.71, concerning licensing of opticians. After that veto, I appointed a working group identical to that which would have been required by the vetoed bill. That working group recommended, by unanimous vote, all of the provisions of the attached bill.

I believe that the best way to solve the inefficiencies, controversies, and sometimes bitter contention, that pervades the sometimes overlapping and deeply interrelated professions of optometry and opticianry is to pursue combining the two separate boards and statutes now regulating each. I agree with the working group that this somewhat radical change from the status quo can be most productively pursued as part of simultaneous sunset review of both

boards. That is why this bill extends the Board of Dispensing Opticians until the June 30, 1988 sunset date for the Board of Examiners in Optometry.

Meanwhile, the working group, also by unanimous vote, recommended other changes to AS 08.71, the dispensing optician statutes, which are also part of the bill. I agree with these changes, including the doubling of the number of continuing education hours in sec. 3 of the bill. In 1980 the license renewal date was changed from every two years to every four years, but a corresponding doubling of the continuing education hour requirement was overlooked. Now that all the 66 dispensing optician licenses were renewed last summer, for four years, the licensees will have ample notice and time to comply with the doubled requirement. The changes made by sec. 2 of the bill affect the qualifications that must be met by an applicant for examination.

I urge your prompt action to pass this bill so that we can continue to work with the opticians and the optometrists to pursue a better, more efficient way to regulate these two interrelated professions in truly the best interests of the consuming public.

Sincerely,

Bill Sheffield
Governor

CHAIRMAN'S INFORMATION: CSHB 603 (L&C)

1) BILL TITLE: "An act relating to dispensing opticians; and providing for an effective date."

a) Introduced: Governor

b) Co-sponsors:

2) INTENT: This measure extends the termination date of the dispensing opticians until 6/30/89, and expands the qualifications an applicant must meet prior to examination and licensure.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: HESS and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

A PERFORMANCE REPORT ON THE BOARD OF DISPENSING OPTICIANS

July 1, 1981 -- June 30, 1984

Audit Control Number

08-1168-84-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilley Terry Elder

Members of the
Board of Dispensing Opticians

Chairman	J. Robin Isbell
Secretary	Leslie E. Brockelsby
Member	Larry E. Harper
Member	George Tresnak
Member	Vacant

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

June 30, 1984

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE BOARD OF
DISPENSING OPTICIANS

July 1, 1981 -- June 30, 1984

Audit Control Number

08-1168-84-R

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dispensing Opticians for the past three fiscal years to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Dispensing Opticians should be reestablished. The law now specifies that the Board will terminate June 30, 1985, and have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Tests of files and documents of licensees.

3. Interviews with the license examiners.

4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.

5. Discussions with Board members.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General's Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Dispensing Opticians was established by the 1973 Session Laws of Alaska. This regulatory board consists of five persons; four dispensing opticians and one public member, appointed by the Governor. Board members serve staggered terms of four years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help to the Board.

The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing, amending, or eliminating regulations necessary and desirable to enforce statutes.

3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated dispensing optician statutes or regulations.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committee should take into consideration the Findings and Recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints, and various Board functions. As a result of our examination we found:

1. The Board performs only minimal functions. The majority of their duties, as outlined by AS 08.71.070, are handled by the Division of Occupational Licensing. Those duties that are executed by the Board include conducting meetings, reviewing applications for licensure, reviewing results of investigations and hearings and determining proper disciplinary actions, and preparing and grading the State examination. These duties are not substantial enough to continue the Board. Conducting meetings is only necessary to the extent that it is easier to take care of business at a meeting as opposed to by mail.

The bulk of the work on reviewing applications for licensure is done by the license examiner. He/she gathers the proper documentation and makes sure it is complete. The applications are then presented to the Board, who then votes whether to approve or disapprove licensure. This review tends to be cursory as the majority of it has already been done by the license examiner.

Reviewing results of investigations and hearings and determining proper disciplinary actions also tends to be cursory. This is due to the up-front work that is done by the investigations unit in Occupational Licensing and the hearing officers. The Board is kept informed of the status of complaints but are not involved in the investigations. The determination of proper disciplinary actions has usually been done by the hearing officer. It is then a formality for the Board to approve them.

The only duty requiring the expertise of the Board is the preparation and grading of the State examination. A license examiner does not have the background to formulate those exams. However, it is not necessary to give an exam because the potential physical harm caused by unlicensed dispensing opticians is minimal to nonexistent, and the administering of an exam is not essential.

Consequently, there are not enough duties for the Board to justify its existence. The expenses to maintain a Board of 5 members to regulate approximately 60 dispensing opticians is not economical.

2. An optician cannot cause great physical harm to an individual. Spectacles can cause double vision, distorted vision, and trouble with perception. Yet with these types of troubles, most patients will return to their optometrist or ophthalmologist for verification of the prescription. Improper fitting of contact lenses can result in physical harm. However, AS 08.71.200 requires a licensed physician (ophthalmologist) or optometrist to supervise the fitting of contact lenses and requires the patient to return to the prescribing physician or optometrist. In addition, AS 08.72.275 is adequate to protect the public from harm due to improperly hardened lenses because it requires each lens to be impact resistant under specified test conditions.

3. Approximately 12 complaints were received by the Division of Occupational Licensing and 2 complaints were received by Consumer Protection over the last few years.

Most of the complaints were instigated by licensed practitioners, not consumers, and related to unlicensed individuals dispensing. Of these, none resulted in physical harm. In one case, the Attorney General's Office refused to prosecute a violation because there was no evidence of physical harm.

4. In addition, several cases were noted where individuals were licensed without adequate documentation of statutory and regulatory requirements. These individuals were potentially "unqualified," yet no evidence of physical harm has resulted from their practices.

5. Contact lenses cost approximately $500 and spectacles cost much less. Therefore, if for some reason the consumer received poor quality or useless contacts or spectacles, the loss to the consumer would not be severe. Also, if a consumer is dissatisfied, he/she has recourses available whether a business or individual is licensed or not. The Consumer Protection Unit as well as the court system are there to provide remedies for injured parties.

Thus, we found the Board's existence to be superfluous, especially in light of the scope of the dispensing optician's work. The dispensing optician prepares and dispenses original or duplicate lenses, eyeglasses, contact lenses, and appurtenances to them on written prescription from a licensed physician or optometrist. They also interpret, measure, adapt, and fit the above mentioned. This restricts their scope to a small sphere of duties and limits that amount of harm that could result if they were not licensed.

Therefore, we recommend the Board of Dispensing Opticians be allowed to terminate on June 30, 1985.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Dispensing Opticians should be allowed to terminate on June 30, 1985.

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh the potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints, and various Board functions. As a result of our examination we found:

A. The Board performs only minimal functions. The majority of their duties as outlined by AS 08.71.070 are handled by the Division of Occupational Licensing. Those duties that are executed by the Board include conducting meetings, reviewing applications for licensure, reviewing results of investigations and hearings, and determining proper disciplinary actions, and preparing and grading the State examination. These duties are not substantial enough to continue the Board. Conducting meetings is only necessary to the extent that it is easier to take care of business at a meeting as opposed to by mail. The bulk of the work on reviewing applications for licensure is done by the license examiner. He/she gathers the proper documentation and makes sure it is complete. The applications are then presented to the Board, who then votes whether to approve or disapprove licensure. This review tends to be cursory as the majority of it has already been done by the license examiner.

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The only duty requiring the expertise of the Board is the preparation and grading of the State examination. A license examiner does not have the background to formulate those exams. However, it is not necessary to give an exam because the potential physical harm caused by unlicensed dispensing opticians is minimal to nonexistent, and the administering of an exam is not essential.

Consequently, there are not enough duties for the Board to justify its existence. The expenses to maintain a Board of 5 members to regulate approximately 60 dispensing opticians is not economical.

B. An optician cannot cause great physical harm to an individual. Spectacles can cause double vision, distorted vision, and trouble with perception. Yet with these types of troubles, most patients will return to their optometrist or ophthalmologist for verification of the prescription. Improper fitting of contact lenses can result in physical harm. However, AS 08.71.200 requires a licensed physician (ophthalmologist) or optometrist to supervise the fitting of contact lenses and requires the patient to return to the prescribing physician or optometrist. In addition, AS 08.72.275 is adequate to protect the public from harm due to improperly hardened lenses because it requires each lens to be impact resistant under specified test conditions.

C. Approximately 12 complaints were received by the Division of Occupational Licensing and 2 complaints were received by Consumer Protection over the last few years. Most of the complaints were instigated by licensed practitioners, not consumers, and related to unlicensed individuals dispensing. Of these, none resulted in physical harm. In one case, the Attorney General's Office refused to prosecute a violation because there was no evidence of physical harm.

D. Several cases were noted where individuals were licensed without adequate documentation of statutory and regulatory requirements (See Recommendation No. 4). These individuals were potentially "unqualified," yet no evidence of physical harm has resulted from their practices.

E. Only 20 out of the 49 other states deem it necessary to license dispensing opticians. The rest recognize that potential users can evaluate a dispensing optician's qualifications. Free enterprise will take care of those unlicensed practitioners who are not able to provide quality services and competitive prices. Consumers will not continue to patronize a business or individual if they are not satisfied.

F. Contact lenses cost approximately $500 and spectacles cost much less. Therefore, if for some reason the consumer received poor quality or useless contacts or spectacles, the loss to the consumer would not be severe. Also, if a consumer is dissatisfied, he/she has recourses available whether a business or individual is licensed or not. The Consumer Protection Unit as well as the court system are there to provide remedies for injured parties.

If the Board is not terminated and some control over the occupation is desired, the dispensing opticians should be combined with the Board of Optometry. The optometrists can and do dispense spectacles and contact lenses like the dispensing opticians as well as refracting eyes and diagnosing eye diseases. Thus, the Board of Optometry has experience in the same areas and is an appropriate Board with which to combine the Board of Dispensing Opticians.

However, in the event that the Board is reestablished, we recommend the following changes be made in their operations.

Recommendation No. 2

The Board of Dispensing Opticians and the Office of the Governor should work together to ensure that vacant Board positions are filled.

The Board is responsible for making recommendations to the Office of the Governor, Special Staff Assistant, Boards and Commissions for vacant Board positions. The Office of the Governor is then responsible for following up on those recommendations as well as those from any other interested parties.

There are conflicting stories from the staff of the Office of the Governor and the Board members regarding the lack of recommendations and follow up. There is some dispute as to whether any recommendations have been made in the past several years as there has been no acknowledgement of receipt by the Office of the Governor, except within the last month. Regardless of who has been at fault, there are still vacant Board positions to be filled.

This is particularly crucial since two of the five positions have members who are serving past the expiration dates of their terms. One member has served two years beyond his original term because no one has been appointed to fill his slot. This extension of terms defeats the purpose in setting a specified term length. In addition, the public member slot has been vacant since June 1982. The public member brings a different perspective. They help keep the purpose in mind which is to protect the public, not the economic interest of an occupational group. Therefore, it is crucial that the Board and the Office of the Governor work together to fill these three slots.

Recommendation No. 3

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the Board's statutes and regulations to determine if any were obsolete, vague, or unduly restrictive. Examples of what we found are as follows:

A. AS 08.71.130(d) and 12 AAC 30.050 set out continuing competency requirements. These requirements were based on biennial licensing. Since then, the profession has changed to quadrennial licensing without a compensating change in the continuing competency requirements.

B. AS 08.71.150 allows the State to license by reciprocity. However, none of the 20 other states will grant Alaska these rights. And since licensure by credentials accomplishes the same purpose, this Statute is not necessary.

C. AS 08.71.200 sets out dispensing opticians' constraints for issuing contact lenses. The language used is not specific enough and needs to be further defined as to what is meant by "contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist." The optometrists and dispensing opticians are currently debating changes to this Statute, and a caution should be noted. The Attorney General's Office has found a potential

antitrust issue with regards to where contact lens prescriptions can be filled. Any changes to this Statute should not be to make it more restrictive (i.e., requiring the prescriptions be filled at specified places instead of where the consumer chooses).

D. The Board still has not received statutory authority to issue temporary permits. These temporary permits would allow a greater influx of qualified individuals to practice while awaiting formal Board approval.

AS 08.71.055 provides that the Board shall exercise general control over dispensing opticians. This cannot be done effectively without clear and concise statutes and regulations. And although the Board has had various obsolete or vague statutory and regulatory requirements repealed or amended, the Board should continue to review them for obsolescence, vagueness, and restrictiveness, and propose appropriate changes where necessary.

Recommendation No. 4

The Board should ensure that requirements are being met and adequately documented prior to licensure.

Statutory and regulatory requirements have been set up to ensure that competent individuals are being licensed. Documentation of these requirements is necessary to show that they have indeed been met.

During our examination, we reviewed several licensing files to determine if statutory and regulatory requirements were being met. Examples of what we found are as follows:

A. Out of 12 tested, 4 did not have adequate documentation of training hours. Either the hours listed were not signed by the instructor on the application or there weren't enough hours (AS 08.71.110 and 12 AAC 30.070).

B. For those 2 tested that were licensed by credentials, apprentice hours were not listed at all or those listed were not enough. Also there was no evidence that the applicants had ever taken the national exam either in Alaska or in another state (AS 08.71.145 and 12 AAC 30.100).

C. One licensee's file did not have any indication of the Board's approval (AS 08.71.055).

D. Much of the documentation consisted of photocopies and not originals. Photocopies are acceptable but they should be notarized or certified copies and not copies of notarized or certified originals since copies of notarized or certified originals are easy to falsify.

The Board has some flexibility in assuring the requirements are met. They can waive them in order to let a candidate take the exam. However, there should be no exceptions when licensing. All requirements must be met including those that may have been initially waived for the exam. The follow up on those items lacking is the Board's responsibility, and the Board should ensure requirements are being met and adequately documented prior to licensure.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission, or program has operated in the public interest.

A. The Board has held meetings and exams at least two times a year.

B. The Board has passed regulations regarding apprentices, continuing competency, and licensure by credentials.

C. The Board has not had a public member since June 1982 (see Recommendation No. 2).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board has had two vacant Board positions for two years (see Recommendation No. 2).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board succeeded in having various obsolete or vague statutory requirements repealed or amended.

B. No statutory changes have been made since 1980.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The Board has published public notices of all examinations, meetings, and regulation changes. The Board has not actively solicited comments on its effectiveness.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board has published notices of its meetings in Anchorage, Fairbanks, and Juneau. However, no public participation appears to have resulted.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. According to the Division of Occupational Licensing's files, there have been approximately twelve investigation cases in the past four years. Two complaints have been filed with the Consumer Protection Unit and none with the Office of the Ombudsman.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. In the last six years, the number of currently licensed dispensing opticians has increased from 45 to 63.

B. The Board has not established reciprocal agreements with other states or established statutory authority to issue temporary permits. They have established licensure by credentials which tries to address the same situation.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX

(Intentionally left blank)

APPENDIX A

BOARD OF DISPENSING OPTICIANS
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended 1983
(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$ 3,853
Expenditures (Note 3)	4,258
Excess of Expenditures over Revenues	$ (405)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Examination Fee	$ 50	With application
Reexamination Fee	$ 50	With application
Initial License Fee	$ 50	Before licensure
Renewal Fee	$ 200	Every four years
Late Renewal Fee	$ 10	If over 60 days after renewal date

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average for the revenues collected from 1981 to the present in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by board members, such as travel, per diem, and direct administrative expenses of the Division of Occupational Licensing. They do not include indirect administrative expenses of the Division or expenditures for efforts of other departments such as the Department of Law, assisting the boards and the Division.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

October 4, 1984

OCT 05 1984

LEGISLATIVE AUDIT

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary audit report on the Board of Dispensing Opticians, covering the period July 1, 1981 to June 30, 1984.

The position we expressed in response to your interim letter has not changed. We, at that time, concluded the assessment of allowing the board to terminate was accurate and would not subject the public to harm. We concurred in part to your recommendations.

Having now reviewed your preliminary audit report, we continue to maintain our position. We do not know of any reason to change.

For clarification, we will respond to each of your recommendations.

Recommendation 1

The Board of Dispensing Opticians should be allowed to terminate on June 30, 1985.

We concur with your report and endorse allowing the board to terminate on June 30, 1985. Since establishment (Chapter 45 SLA 1973), the board has licensed 60 practitioners.

We would also suggest the licensing functions by the Division of Occupational Licensing should also terminate. Citizens have other means of redress for harm, and the practitioners would still be required to have a State business license from the Department of Revenue.

08-H2LH

Recommendation 2

The Board of Dispensing Opticians and the Office of the Governor should work together to ensure that vacant board positions are filled. Currently, the Office of the Governor is making efforts to increase communication with the boards. The staff has solicited from boards, professional associations and the general public, candidates for board appointments. Vacancy lists are published in the Administrative Journal.

We would not endorse appointing a person to a board when we are suggesting termination of the function. Although the board has not had its full membership, licenses have been issued.

Recommendation 3

The board should review existing statutes and regulations and seek appropriate revisions where necessary.

We concur with your assessment in part. The board has made efforts to change regulations and, in doing so, has developed a better working relationship with the Board of Optometry in subjects of mutual consideration.

We disagree that the board is responsible for statutes that are unnecessary. Their input is necessary, however, they have no control over forcing repeal.

Our position on temporary permits remains unchanged. We disagree that a temporary permit allows for a greater influx of qualified practitioners. Applying for licensure should be a scheduled pursuit, not when an applicant wants immediate licensure by a different set of standards. To protect the public, verification of all documentation should be made. This does take time.

Recommendation 4

The Board should ensure that requirements are being met and adequately documented prior to licensure.

We concur in this recommendation and, if the board is continued, will work with them to ensure your suggestions and the laws are followed. Our position, expressed in response to your interim letter, is still accurate.

Be assured your recommendations will be endorsed to the board pending the determination of the legislative committee. We appreciate your evaluation and thank you for your cooperation.

Sincerely,

Richard A. Lyon
Commissioner

RAL/lt0668t
100484b

Offered: 3/7/86
Referred: Health, Education & Social Services

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 603 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to dispensing opticians; and providing for an effective date."

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

* Section 1. AS 08.03.010(c)(5) is amended to read:

(5) Board of Dispensing Opticians (AS 08.71.010) -- June 30, 1988 [1985].

* Sec. 2. AS 08.71.110 is amended to read:

Sec. 08.71.110. QUALIFICATIONS OF APPLICANTS FOR EXAMINATION. (a) A person is entitled to take the examination who

(1) has had education equivalent to four years attendance at a high school;

(2) [(1)] has either

(A) completed at least 6,000 hours of training as an apprentice, or

(B) been engaged for at least 6,000 hours as a practicing optician in good standing in a state, territory, district or possession of the United States; and

(3) [(2)] has paid the required examination fee.

(b) Graduation from an associate degree program in a recognized school or college of opticianry may be substituted for 4,000 of the 6,000 hours of experience required by (a)(2) of this section.

* Sec. 3. AS 08.71.130(d) is amended to read:

(d) Before a license may be renewed the licensee shall submit to the board evidence of 30 [15] hours of continuing competence in

optical dispensing as prescribed by regulations of the board.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. CS HB 603 (L&C)
Title: An Act relating to dispensing opticians; and providing for an effective date
Sponsor: _____
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE		1.0	1.0	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary. This bill extends the Board of Dispensing Opticians to June 30, 1988, expands the requirements for licensure, and increases the number of continuing education hours required to satisfy the quadrennial renewal period. This bill is not expected to generate new costs or revenues. Funding for the board is already included in the department's FY 87 operating budget. Revenues indicated are based on the assumption that 10 new licenses will be issued each fiscal yea

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 3/5/86

Approved by Commissioner: _____ Date: _____
Agency: Commerce and Economic Development

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

10/25/85

FISCAL NOTE

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

641

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB641
Title : An act relating to generic drug pharmaceuticals and Board of Pharmacy and providing for an effective date.
Sponsor : Gruenburg
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept. of Health & Social Servi
BRU : Medical Assistance Non-Facility
Components : GRM Non-Facility

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The Department has submitted to the Governor an FY87 budget Amendment of $2.5 million for an FY87 Pharmacy Program. One of the assumptions included in the amendment was the substitution of generic drug ~~products~~ for more expensive brand name products.

Prepared by : Rod Betit, Director — Phone : 465-3355
Division : Medical Assistance — Date : 3/4/86

Approved by Commissioner : _____ — Date : 3/6/86
Agency : Department of Health & Social Services

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST new

Bill/Resolution No.: CSHB 641

Title: An Act relating to generic drugs, pharmaceuticals, and the Board of Pharmacy;

Sponsor: Rep. Gruenberg

Requester: House HESS

Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.

BRU: Occupational Licensing

Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

The bill extends the Board of Pharmacy to June 30, 1989, grants pharmacists the authority to fill prescriptions using generic drugs, and repeals the Marijuana Therapeutic Research Program.

This bill is not expected to generate new costs or revenues.

Prepared by: Jennifer Strickler, Management Analyst — Phone: 465-2144

Division: Occupational Licensing — Date: 3-25-86

Approved by Commissioner: Loren H. Lounsbury — Date: 3/25/86

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

10/25/85

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH
JUNEAU, AK 998
465-375

March 25, 1986

Representative Ben Grussendorf
Speaker of the House
P.O Box V
Juneau, Alaska 99811

Dear Mr. Speaker:

The House Committee on Health, Education and Social Services has considered the Sunset Review of the Board of Pharmacy, and recommends that the board be continued. Representative Max Gruenberg, Co-Chair of the committee, has introduced HB 641, to fulfill some of the findings of the Division of Legislative Audit.

As required by AS 44.60.050 (c), the Committee submits the following findings:

(1) the extent to which the board, commission or program has operated in the public interest.

The board has held three public meeetings a year, administers a yearly licensing examination and has passed regulations concerning dangerous drugs, continuing education as proof of continued comptency, false or misleading advertising of drugs and prepackaging of drugs in hospital drug rooms.

(2) the extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Prior audit recommendation (1983) was that continuing competency regulations are too stringent and should be changed. The regulations require nonacademic programs to have an examination or another method of assuring satisfactory completion of the program before credit will be given. Continued competency regulations may also be waived for chronic illness, retirement, military service or hardship.

The 1985 audit states that the board believes the regulations to be arbitrary or unreasonable and should be changed since the board has deviated from their written policy in accepting nonregulation credits. Legislative Audit also believes it is more reasonable to require

individuals who have been chronically ill, retired or in the military to demonstrate continued compentency than those who have not interrupted their practice. These recommendations were accomplished by the board in August of 1985.

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The board succeeded in having various obsolete or vague statutory requirements repealed which provided for smoother operation of the board. The board also was instrumental in passage of the controlled substances registration and the Marijuana Therapeutic Research Program which are currently recommended, by Legislative Audit, for repeal.

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The board does not actively solicit comments on its effectiveness.

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

The board announces proposed regulation changes or additions in newspapers according to the Administrative Procedures Act.

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which the board or commission is administratively assigned, or with the office of the ombudsman have been processed or resolved.

No problems were found by Legislative Audit.

(7) the extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The board has licensed 83 pharmacists in the last three years, all but eight were licensed by credentials. Legislative Audit found no instances where the board licensed unqualified practitioners.

(8) the extent to which state personnel practices, including affirmative action practices, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

Applications for licensure as a pharmacist require information and photographs which the Division of Equal Employment Opportunity believes may not be necessary to determine the qualifications of the applicant.

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the

interests of the public and to comply with the factors enumerated in this subsection.

Legislative Audit found that state registration under the Controlled Substances Act is duplicative of the Federal Drug Enforcement Agency, unnecessary for litigation and costly for the state and that the board should recommend legislation to eliminate state registration.

The 1983 Audit recommendation that legislation be introduced to clarify the investigatory powers of the board and the Division was never accomplished, but has been incorporated into CSHB 641 (HESS)

The Audit also recommends repeal of the Marijuana Therapeutic Research Program since it was not accomplished in a timely fashion. The repeal is included in CSHB 641.

As required by AS 44.60.050 (d), the Committee submits the following findings:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address.

The board should recommend legislation to regulate pharmacy technicians. Although the Legislative Audit recommended the repeal of controlled substances registration, the committee has not addressed that issue, feeling that it will require further study.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments.

The purpose of the board is to license qualified applicants, inspect pharmacies and adopt needed regulations.

(3) an identification of any other programs having similar, conflicting or duplicate objectives.

There are no other agencies which license pharmacists. The Department of Public Safety is the lead agency in enforcement of the Controlled Substances Act, and should be given the responsibilities currently assigned to the Board of Pharmacy which are necessary and do not duplicate federal DEA activity.

(4) an assessment of alternative methods of achieving the purposes of the program.

The Committee did not consider any alternatives for licensure. The Committee did consider the recommendations of the Departments of Law, Public Safety and Commerce and Economic Development for rewriting aspects of the Controlled Substances Act, but did not adopt these provisions because of opposition from members of the board, reserving the issue for possible future legislation.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level.

Eliminating the board would remove licensing mechanisms, which are designed to assure that practitioners are competent to practice. The Committee did not consider funding for the board since legislation was passed last year to require licensing boards to alter fees in order to support board expenses.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts.

The board should be continued because the regulation and licensing of qualified professional pharmacists is necessary to protect the public's health, safety and welfare. There are no other agencies which regulate pharmacists.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

The Committee has no further recommendations.

Representative Max F. Gruenberg, Jr., Co-Chair
House Health, Education and Social Services Committee

Representative Niilo Koponen, Co-Chair
House Health, Education and Social Services Committee

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4220 SLAB HCR 9 - HJR 20 1100

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I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smoly
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HCR

9

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HCR 9: Summary

This resolution commends DOT/PF for its investigation of ways to improve transportation access to Whittier and urges the department to establish, as a priority, the planning of improved access to Whittier, and improved access between Whittier and Shotgun Cove. Departmental priority for the improved access plan would allow the 14th Legislature to review recommendations of DOT/PF and take action.

Further, the resolution requests that the Alaska Railroad increase its summer shuttle service between Portage and Whittier until the State makes a permanent decision on the access problem.

Chairman's Information:

1) HCR 9: "Relating to the Whittier-Shotgun Cove access"

a) Introduced: Rep Szymanski

b) Co-Sponsors:

2) INTENT: This resolution commends DOT/PF its investigation of ways to improve transportation access to Whittier and urges DOT/PF to consider the planning process for improved access to Whittier as a priority. Departmental priority for the improved access plan would allow the 14th Legislature to review recommendations of DOT/PF and take action.

Further, the resolution requests the Alaska Railroad to increase its summer shuttle service between Portage and Whittier until the state makes a permanent decision on the access problem.

FISCAL NOTE: none

3) ADDITIONAL REFERRALS: Rules FINANCE E

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

SCS HCR 9 (L&C) RELATING TO THE WHITTIER SHOTGUM COVE ACCESS

THIS RESOLUTION URGES DOT/PF TO CONSIDER THE PLANNING PROCESS FOR IMPROVED ACCESS TO WHITTIER AS A PRIORITY. DEPARTMENTAL PRIORITY FOR THE IMPROVED ACCESS PLAN WOULD ALLOW THE 14th LEGISLATURE TO REVIEW AND TAKE ACTION ON THE RECOMMENDATIONS OF DOT/PF.

THE RESOLUTION WAS AMENDED IN SENATE LABOR AND COMMERCE TO URGE THE GOVERNOR TO DIRECT DOT/PF TO ESTABLISH THE IMPROVED ACCESS PLANNING AS A PRIORITY.

Offered: 4/24/85
Referred: Finance

SCS p.2 line 10

Original sponsors: Szymanski and Uehling

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR HOUSE CONCURRENT RESOLUTION NO. 9 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the Whittier-Shotgun Cove Access.

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

WHEREAS Whittier is becoming an important destination for tourists visiting Alaska, as shown by the increase of tour ships stopping at Whittier and of recreational businesses operating out of Whittier; and

WHEREAS Whittier is also growing in recreational importance to many Alaska residents who travel to Whittier each summer for water-related recreation, and who depend for this purpose upon access to Whittier; and

WHEREAS demand for Whittier harbor berths by recreational boaters far exceeds the available harbor space; and

WHEREAS the Thirteenth Alaska State Legislature created the Alaska Marine Park system to protect areas within Prince William Sound for public recreation; and

WHEREAS the planned disposal of municipal land between Whittier and Shotgun Cove for community expansion and recreation will increase the interest in the Whittier area for recreational homes or permanent residences; and

WHEREAS in 1984, over 200,000 persons visited Whittier, including travelers on the Alaska marine highway system; and

WHEREAS the summer shuttle service between Portage and Whittier during the summer of 1984 was too infrequent to meet the needs of Anchorage visitors to Whittier; and

WHEREAS the Alaska Railroad has been acquired by the state, and transportation planning can go forward at the state level on a comprehensive

basis; and

WHEREAS the Department of Transportation and Public Facilities is examining alternatives for improving access to Whittier;

BE IT RESOLVED that the Alaska State Legislature commends the Department of Transportation and Public Facilities for its investigation of ways to improve transportation to Whittier, including the possibility of paving one or both of the railroad tunnels between Portage and Whittier, and of increasing shuttle service by the Alaska Railroad; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the governor to direct the Department of Transportation and Public Facilities to establish as a priority the planning of improved access to Whittier and between Whittier and Shotgun Cove so that the Fourteenth Alaska State Legislature can consider the department's recommendations and take action on this matter; and be it

FURTHER RESOLVED that the Alaska State Legislature requests that the Alaska Railroad Corporation initiate increased summer shuttle service between Portage and Whittier until the state makes a permanent decision on this access problem.

Introduced: 2/20/85
Referred: Transportation

IN THE HOUSE BY SZYMANSKI

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basis; and

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FURTHER RESOLVED that the Alaska State Legislature urges the Department of Transportation and Public Facilities to establish as a priority the planning of improved access to Whittier and between Whittier and Shotgun Cove so that the Fourteenth Alaska State Legislature can consider the department's recommendations and take action on this matter; and be it

FURTHER RESOLVED that the Alaska State Legislature requests that the Alaska Railroad Corporation initiate increased summer shuttle service between Portage and Whittier until the state makes a permanent decision on this access problem.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HJR

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SUBCHAPTER E—VISAS

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Authority: Sec. 104, 66 Stat. 174; 8 U.S.C. 1104, unless otherwise noted.

§ 41.1 Definitions.

In addition to the pertinent definitions contained in the Immigration and Nationality Act, the following definitions shall be applicable to this part:

Accredited. "Accredited", as used in sections 101(a)(15)(A), 101(a)(15)(G) and 212(d)(8) of the Act, refers to an alien who holds an official position, other than an honorary official position, with the government or international organization he represents, and who is in possession of a travel document or other evidence showing that he seeks to enter, or pass in transit through, the United States for the purpose of transacting official business for that government or international organization.

Act. "Act" means the Immigration and Nationality Act, as amended.

Attendants. "Attendants" as used in sections 101(a)(15)(A)(ii), 101(a)(15)(G)(iv), and [illegible] of the Act, shall include [illegible] is paid from the public funds of a foreign government or from the funds of an international organization and who is accompanying or following to join the principal alien to whom he owes a duty or service.

Competent officer. "Competent officer", as used in section 101(a)(26) of the Act, shall refer to a "consular officer" as defined in section 101(a)(9) of the Act and this section.

"Consular officer," as defined in section 101(a)(9) of the Act, shall include commissioned consular officers, the District Administrators of the Trust Territory of the Pacific Islands, the Director of the Visa Office of the Department and such other officers of the Department as he shall designate for the purpose of issuing nonimmigrant visas, but shall not include a consular agent, an attache, or an assistant attache. The assignment by the Department of any Foreign Service Officer or Foreign Service Reserve Officer to a diplomatic or consular office of the United States abroad in a position administratively designated as requiring, solely, principally, or partially, the performance of consular functions, and the initiation of a request for a consular commission, shall constitute designation of such officer as a "consular officer" within the meaning of section 101(a)(9) of the Act.

Department. "Department" means the Department of State of the United States of America.

Diplomatic passport. "Diplomatic passport" means a national passport bearing that title and issued by a competent authority of a foreign government. "Equivalent of a diplomatic passport" means a national passport, other than a specifically described diplomatic passport, which is issued by a

—Federal Law: Dept. of State/ visas

competent authority of a foreign government and which indicates the career diplomatic or consular status of the bearer, the issuing government being one which does not issue diplomatic passports to its career diplomatic and consular officers.

Diplomatic visa. "Diplomatic visa" means a nonimmigrant visa of any classification bearing that title and issued to an alien in accordance with the regulations contained in this part.

Government vessel or aircraft. "Government vessel or aircraft" means a vessel or aircraft operated directly by the Government of the United States with government personnel in connection with public business of a non-commercial and non-profit character, or a foreign-flag vessel or aircraft operated directly by a foreign government recognized de jure by the United States, with foreign government personnel in connection with public business of a non-commercial and non-profit character. The term "government vessel or aircraft" shall not include a vessel or aircraft which is merely controlled or subsized by a government, or one which is engaged in what would ordinarily be regarded as commercial shipping or commercial transportation.

Immediate family. "Immediate family", as used in sections 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8) of the Act and with reference to classification under the symbols NATO-1, NATO-2, NATO-3, NATO-4, and NATO-5, includes the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. "Immediate Family" also includes, upon individual authorization by the Department, other close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, who will reside regularly in the household of the principal alien, and who are recognized as dependents by the sending Government as demonstrated by their eligibility for all rights and benefits, such as the issuance of a diplomatic or official passport and travel and other allowances, which would be granted to the spouse and children of the principal alien.

International organization. "International organization" means any public international organization which has been designated by the President by Executive Order as being entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act.

Official visa. "Official visa" means a nonimmigrant visa of any classification bearing that title and issued to an alien in accordance with the regulations contained in this part.

Passport. "Passport", as defined in section 101(a)(30) of the Act, shall not be considered as limited to a national passport and shall not be considered as limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport as defined in section 101(a)(30) of the Act: *Provided*, That permission to enter a foreign country must be issued by a competent authority and must be clearly valid for such purpose in order to meet the requirements of section 101(a)(30). A nonimmigrant unable to obtain a document issued by a competent authority which indicates his origin, identity, and nationality if any, may furnish the missing information to the best of his knowledge and belief, by presenting an affidavit which, when combined with the documentary evidence of admissibility into a foreign country, will suffice to meet the requirements of section 101(a)(30) of the Act.

Port of entry. "Port of entry" means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply for admission into the United States.

Principal alien. "Principal alien" means an alien from whom another alien derives a privilege or status under the law or regulations.

Regular visa. "Regular visa" means a nonimmigrant visa of any classification issued in accordance with the regulations contained in this part, which does not bear the title "Diplomatic" or "Official."

Regulation. "Regulation" means a rule established pursuant to the provisions of section 104(a) of the Act which has been duly published in the FEDERAL REGISTER.

Servants and personal employees. "Servants" and "personal employees," as used in sections 101(a)(15)(A)(ii), 101(a)(15)(G)(v) and 212(d)(8) of the Act, include an alien who is employed in a domestic or personal capacity by a principal alien, who is paid from the private funds of such principal alien, and who seeks to enter the United States solely for the purpose of such employment.

Western Hemisphere. "Western Hemisphere" means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in section 101(b)(5) of the Act.

[Dept. Reg. 108.411, 24 FR 6679, Aug. 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

DOCUMENTATION OF NATIONALS, CLAIMANT NATIONALS, AND FORMER NATIONALS

§ 41.3 Nationals, claimant nationals, and former nationals of the United States.

(a) A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) A person whose case fulfills the conditions of section 360(b) of the Act and who continues to claim that he is a national of the United States may apply for a certificate of identity as provided in section 360(h) of the Act.

(c) A former national of the United States who seeks to enter the United States shall be required to comply with the documentary requirements applicable to aliens under the Act.

[Dept. Reg. 108.411, 24 FR 6680, Aug. 18, 1959]

PASSPORTS AND VISAS NOT REQUIRED FOR CERTAIN NONIMMIGRANTS

§ 41.5 Nonimmigrants exempted by law or treaty from the requirement of passports, visas, and border-crossing identification cards.

The provisions of section 212(a)(26) of the Act relating to the requirement of passports, visas, and border-crossing identification cards for nonimmigrants do not apply in the cases of aliens who fall within any of the following described categories:

(a) *Alien members of United States Armed Forces.* An alien member of the armed forces of the United States who (1) is in the uniform of, or who bears documents identifying him as a member of, such armed forces, (2) has not been lawfully admitted for permanent residence, and (3) is making application for admission to the United States under official orders or permit of such armed forces. (Sec. 284, 66 Stat. 232; 8 U.S.C. 1354.)

(b) *American Indians born in Canada.* An American Indian born in Canada, having at least fifty per centum of blood of the American Indian race. (Sec. 289, 66 Stat. 234; 8 U.S.C. 1359.)

(c) *Aliens entering from Guam, Puerto Rico, or Virgin Islands.* An alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. (Sec. 212, 66 Stat. 188; 8 U.S.C. 1182.)

(d) *Armed Services personnel entering under NATO Status of Forces Agreement.* Personnel belonging to the land, sea or air armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed at London on June 19, 1951, and entering the United States under the provisions of Article III of such Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending State or of the North Atlantic Treaty Organization. (TIAS 2846; 4 U.S.T. 1792.)

(e) *Armed Services personnel attached to NATO Allied Headquarters in the United States.* Personnel attached to an Allied Headquarters in the United States set up pursuant to the North Atlantic Treaty signed in Washington, D.C., on April 4, 1949, who belong to the land, sea or air armed services of a government which

is a Party to the North Atlantic Treaty, and who are entering the United States in connection with their official duties under the provisions of the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty. (TIAS 2978; 5 U.S.T. 877.)

(f) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment. (59 Stat. 1252; TS 994.)

[Dept. Reg. 108.411, 24 FR 6680, Aug. 18, 1959, as amended by Dept. Reg. 108.433, 25 FR 4577, May 26, 1960]

§ 41.6 Nonimmigrants not required to present passports, visas, or border-crossing identification cards.

The provisions of section 212(a)(26) of the Act relating to the requirements of valid passports and visas for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212(d)(4) of the Act under the conditions specified for the following classes:

(a) *Canadian nationals, and aliens having a common nationality with nationals of Canada or with British subjects in Bermuda, Bahamian nationals or British subjects resident in The Bahamas, Cayman Islands, and Turks and Caicos Islands.* A visa shall not in any case be required of a Canadian national, and a passport shall not be required of such a national except after a visit outside of the Western Hemisphere. A visa shall not be required of an alien having a common nationality with Canadian nationals or with British subjects in Bermuda, who has his residence in Canada or Bermuda, and a passport shall not be required of such an alien except after a visit outside of the Western Hemisphere. A Bahamian national or a British subject who has his residence in The Bahamas shall require a passport and a visa for admission to the United States except that a visa shall not be required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfies the examining United States immigration officer at either Freeport or Nassau, The Bahamas that he is clearly and beyond a doubt entitled to admission in all other respects. A British subject who has his residence in the Bahamas shall require a passport and a visa for admission to the United States except that a visa shall not be required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfies the examining United States immigration officer at Nassau, Bahamas, that he is clearly and beyond a doubt entitled to admission in all other respects. A visa shall not be required of a British subject who has his residence in, and arrives directly from, the Cayman Islands or the Turks and Caicos Islands and who presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(b) *British, French, and Netherlands nationals, and nationals of certain adjacent Islands of the Caribbean which are independent countries.* A visa shall not be required of a British, French, or Netherlands national, or of a national of Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has his residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or in Barbados, Grenada, Jamaica, or Trinidad and Tobago, who:

(1) Is proceeding to the United States as an agricultural worker; or

(2) Is the beneficiary of a valid, unexpired indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding to the Virgin Islands of the United States for such purpose, or is the spouse or child of such an alien accompanying or following to join him.

A visa shall not be required of a national of the British Virgin Islands who has his residence in the British Virgin Islands, and who is proceeding to the Virgin Islands of the United States.

(c) *Mexican nationals.* A visa and a passport shall not be required of a Mexican national who is in possession of a border crossing card on Form I-186 and is applying for admission as a temporary visitor for business or pleasure from contiguous territory or is entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border. A visa shall not be required of a Mexican national who is in possession of a border crossing card and is applying for admission to the United States as a temporary visitor for business or pleasure from other than contiguous territory nor of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States. A visa shall not be required of a Mexican national bearing a Mexican diplomatic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for a stay of up to six months for any purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States. A visa shall also not be required of the official's spouse or any of the official's dependent family members under 19 years of age, bearing diplomatic or official passports, who are in the actual company of such official at the time of entry into the United States. This waiver does not apply to the spouse or any of the official's family members classifiable under sections 101(a)(15)(F) or (M) of the Act.

(d) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport shall not be required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(e) *Aliens in immediate transit.* (1) *Aliens in bonded transit.* A passport and visa are not required of an alien who is being transported in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the transportation line and the Immigration and Naturalization Service under the provisions of section 238(d) of the Act on Form I-426 to insure such immediate and continuous transit through and departure from the United States en route to a specifically designated foreign country: *Provided,* That such alien is in possession of a travel document or documents establishing his identity and nationality and ability to enter some country other than the United States. This waiver of visa and passport requirements is not available to an alien who is a citizen of Afghanistan, Cuba, Iran, or Iraq. This waiver of visa and passport requirements is not available to an alien who is a citizen of North Korea ("Democratic Peoples' Republic of Korea") or North Viet-Nam ("Democratic Republic of Viet-Nam"), and is a resident of one of the said countries, and is on a basis of reciprocity, available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Rumania, or the Union of Soviet Socialist Republics resident in one of said countries, only if he is transiting the United States by aircraft of a transportation line signatory to an agreement with the Immigration and Naturalization Service on Form I-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(2) *Foreign government officials in transit.* If an alien is of the class described in section 212 (d)(8) of the Act only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least 30 days from the date of his application for admission into the United States shall be required.

(f) *Individual cases of unforeseen emergencies.* A visa and a passport shall not be required of a nonimmigrant who, either prior to his embar-

kation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director of the Immigration and Naturalization Service in charge of the port of entry, after consultation with and concurrence by the Director of the Visa Office of the Department, that, because of an unforeseen emergency, he was unable to obtain the required documents. Any waiver of the visa requirement heretofore or hereafter granted pursuant to section 212(d)(4)(A) of the Act in the case of a national or resident of Cuba who embarks for the United States on or after November 10, 1963, shall not be valid unless such national or resident proceeds directly from Cuba to the United States and has been inspected in Cuba by officials of the United States Immigration and Naturalization Service and of the United States Public Health Service immediately prior to his departure for the United States, irrespective of whether such national or resident had prior notice of these conditions.

(g) *Fiance or fiancee of a United States citizen.* Notwithstanding the provisions of paragraphs (a), (b), (c), and (d) of this section, a visa shall be required of an alien described in such paragraphs who is classified, or who seeks classification, under section 101(a)(15)(K) of the Act.

(Sec. 101, 84 Stat. 1, 5, 8 U.S.C. 1101; 109(b), 91 Stat. 847; sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847)

[Dept. Reg. 108.411, 24 FR 6080, Aug. 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.7 Waiver of visa and/or passport requirements by joint action of consular and immigration officers.

The provisions of sections 212(a)(26) of the Act prescribing the documentary requirements for nonimmigrants may be waived by joint action of consular officers abroad and immigration officers pursuant to the authority contained in section 212(d)(4) of the Act in individual cases of aliens who satisfy the consular officer serving the port or place of embarkation, after consultation with and concurrence by the appropriate immigration officer, that their cases come within any of the following categories:

(a) An alien having his residence in foreign contiguous territory who does not qualify for the benefits of any waiver provided in § 41.6, and who is a member of a visiting group or excursion proceeding to the United States under circumstances which make the timely procurement of a passport and visa impracticable.

(b) *Passport waiver; aliens for whom passport extension facilities are unavailable.* An alien whose passport is not valid for the period prescribed in section 212(a)(26) of the Act and who is embarking for the United States at a port or place remote from any foreign diplomatic or consular establishment at which the passport could be revalidated.

(c) *Passport waiver; aliens precluded from obtaining passport extensions by foreign government restrictions.* An alien whose passport is not valid for the period prescribed in section 212(a)(26) of the Act and whose government as a matter of policy does not revalidate passports more than six months in advance of their expiration or until they actually expire.

(d) *Visa waiver; certain aliens proceeding to the United States under emergent circumstances.* An alien who is well and favorably known at the consular office, who has previously been issued a nonimmigrant visa which has since expired, and who is embarking on a direct journey to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) *Visa and passport waiver; members of armed forces of foreign countries making friendly visits to the United States.* An alien who is on active duty as a member of the armed forces of a foreign country and who is a member of a group of such force which is making a friendly call in the United States, whether courtesy or operational and whether in behalf of his own government or in behalf of the United Nations, under advance arrangements made with the military, naval, or air force authorities of the United States, other than an alien who is a citizen or resident of Albania, Bulgaria, Cuba, Czechoslovakia, Estonia, German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, North Korea (Democratic Peoples' Republic of Korea), North Vietnam (Democratic Republic of Vietnam), People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics.

(f) *Passport waiver; landed immigrants in Canada.* An alien applying for a visa at a consular office in Canada (1) who is a landed immigrant in Canada, (2) whose port and date of expected arrival in the United States are known, and (3) who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity.

(g) *Visa and/or passport waiver; authorization to individual consular offices.* An alien within the district of a consular office which has been individually authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specifically described categories of cases, and whose case falls within one of those categories.

[Dept. Reg. 108.416, 24 FR 8548, Oct. 22, 1959, as amended by Dept. Reg. 108.422, 24 FR 11030, Dec. 31, 1959; Dept. Reg. 108.433, 25 FR 4578, May 25, 1960; Dept. Reg. 108.441, 25 FR 7018, July 23, 1960; Dept. Reg. 108.494, 28 FR 5258, May 28, 1963; Dept. Reg. 108.684, 38 FR 4576, F. b. 16, 1973]

CLASSIFICATION OF NONIMMIGRANTS

§ 41.10 Presumption of immigrant status and burden of proof.

An applicant for a nonimmigrant visa shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer that he is entitled to a nonimmigrant status described in section 101(a)(15) of the Act or otherwise established by law or treaty. The burden of proof is upon the applicant to establish that he is entitled to the nonimmigrant classification and type of nonimmigrant visa for which he is an applicant.

(Secs. 214, 291, 66 Stat. 189, 234, 8 U.S.C. 1184, 1361)

[Dept. Reg. 108.422, 24 FR 11080, Dec. 31, 1959]

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate symbol to be inserted by the consular officer in the space provided in the visa stamp to show the classification of the alien. The following symbols shall be used:

Class	Citation	Symbol to be inserted in visa
Ambassador, public minister, career diplomatic or consular officer, and members of immediate family	101(a)(15)(A)(i), 66 Stat. 167	A-1
Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii), 66 Stat. 167	A-2
Attendant, servant, or personal employee and A-1 and A-2 classes and members of immediate family	101(a)(15)(A)(iii), 66 Stat. 167	A-3
Temporary visitor for business	101(a)(15)(B), 66 Stat. 167	B-1
Temporary visitor for pleasure	101(a)(15)(B), 66 Stat. 167	B-2
Temporary visitor for business and pleasure	101(a)(15)(B), 66 Stat. 167	B-1 and B-2
Alien in transit	101(a)(15)(C), 66 Stat. 167	C-1
Alien in transit to United Nations Headquarters District under § 11 (3), (4), or (5) of the Headquarters Agreement	101(a)(15)(C), 66 Stat. 167	C-2
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8), 66 Stat. 188	C-3 and G
Crewman (seaman or airman)	101(a)(15)(D), 66 Stat. 167	D
Treaty trader, spouse and children	101(a)(15)(E)(i), 66 Stat. 168	E-1
Treaty investor, spouse and children	101(a)(15)(E)(ii), 66 Stat. 168	E-2
Student—Academic or language training Program	101(a)(15)(F)(i), 66 Stat. 168, 75 Stat. 527	F-1
Spouse or child of student	101(a)(15)(F)(ii), 75 Stat. 527	F-2
Foreign accredited representative or recognized foreign member government to international organization, his staff, and members of immediate family	101(a)(15)(G)(i), 66 Stat. 168	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii), 66 Stat. 168	G-2

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Class	Citation	Symbol to be inserted in visa
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(ii), 66 Stat 168	G-3
International organization officer or employee, and members of immediate family	101(a)(15)(G)(iii), 66 Stat 168	G-4
Attendant, servant, or personal employee, of G-1, G-2, G-3, and G-4 classes, and members of immediate family	101(a)(15)(G)(iv), 66 Stat 168	G-5
Temporary worker of distinguished merit and ability	101(a)(15)(H)(i), 66 Stat 168	H-1
Trainee	101(a)(15)(H)(ii), 66 Stat 168, 24 Stat 116	H-3
Spouse or child of alien classified H-1, H-2, or H-3	101(a)(15)(H), 64 Stat 116	H-4
Representative of foreign information media, spouse, and children	101(a)(15)(I), 66 Stat 168	I
Exchange visitor	101(a)(15)(J), 66 Stat 167, 75 Stat 527	J-1
Spouse or child of exchange visitor	101(a)(15)(J), 75 Stat 527	J-2
Fiancé or fiancée of U.S. citizen	101(a)(15)(K), 64 Stat 116	K-1
Minor child of fiancé or fiancée of U.S. citizen	101(a)(15)(K), 64 Stat 116	K-2
International company transferee (Executive, managerial, and specialized personnel continuing employment with international firm or corporation)	101(a)(15)(L), 64 Stat 116	L-1
Spouse or minor child of alien classified L-1	101(a)(15)(L), 64 Stat 116	L-2
Vocational or other recognized nonacademic student	101(a)(15)(M), 95 Stat 1611	M-1
Spouse or minor child of alien classified M-1	95 Stat 1611	M-2
Principal permanent representative of Member State to NAIO (including any of its subsidiary bodies) resident in the United States and resident members of the official staff, Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NAIO, other permanent NAIO officials of senior rank, and members of immediate family	Art 12, 5 UST 1094, Art 20, 5 UST 1098	NATO-1
Other representatives of Member State to NAIO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NAIO Status of Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas	Art 13, 5 UST 1094, Art 1, 4 UST 1794, Art 3, 4 UST 1796	NATO-2
Official clerical staff accompanying a representative of Member State to NAIO (including any of its subsidiary bodies) and members of immediate family	Art 14, 5 UST 1096	NATO-3
Officials of NAIO (other than those classifiable under NAIO-1) and members of immediate family	Art 18, 5 UST 1098	NATO-4
Experts, other than NAIO officials classifiable under the symbol NATO-4, employed on missions on behalf of NAIO and their dependents	Art 21, 5 UST 1100	NATO-5
Members of a civilian component accompanying a force entering in accordance with the provisions of the NAIO Status of Forces Agreement, members of a civilian component attached to or employed by an NAIO headquarters under the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and their dependents	Art 1, 4 UST 1794, Art 3, 5 UST 877	NATO-6
Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 classes, and members of immediate families	Arts 12-20, 5 UST 1094-1098	NATO-7

(Sec. 212(e), 75 Stat. 535; 8 U.S.C. 1182; sec. 104, 66 Stat. 174 (8 U.S.C. 1104); sec. 109(b)(1), 91 Stat. 847)

[Dept. Reg. 108.471, 20 FR 9518, Oct. 10, 1981, as amended by Dept. Reg. 108.502, 28 FR 13934, Dec. 21, 1963; Dept. Reg. 108.618, 35 FR 6124, Apr. 15, 1970; Dept. Reg. 108.820, 47 FR 21776, May 20, 1982; 47 FR 24203, June 4, 1982]

§ 41.13 More than one person included in nonimmigrant visa.

A single nonimmigrant visa may be issued to include more than one eligible alien if each alien to be included in the visa executes a separate application. When several members of a family are to be included in the same visa, the name of each family member, in addition to the name of the principal applicant, shall be written in the space provided in the visa stamp. The visa fee to be collected shall be equal to the total of the fees prescribed by the Secretary of State in accordance with the provisions of section 281 of the Act for each alien included in the visa, unless upon a basis of reciprocity a lesser fee is chargeable in such a case.

[Dept. Reg. 108.416, 24 FR 8548, Oct. 22, 1959]

§ 41.11 Significance of visa in A, G, or NATO cases.

A visa issued pursuant to the provisions of section 101(a)(15)(A) or 101(a)(15)(G) of the Act or to an alien classifiable under the symbols NATO-1 through NATO-7 shall be prima facie evidence of the proper classification of the alien when presented to the immigration authorities at a port of entry.

[Dept. Reg. 108.422, 24 FR 11080, Dec. 31, 1959]

FOREIGN GOVERNMENT OFFICIALS

§ 41.20 Officials of foreign governments.

(a) *Criteria for classification of foreign government officials.* An alien shall be classifiable under section 101(a)(15)(A) (i) or (ii) of the Act if, in the case of the principal alien, (1) he has been accredited by a foreign government recognized de jure by the United States, (2) he intends to engage solely in official activities for said foreign government while in the United States, and (3) he has been accepted by the President, or by the Secretary of State, or by a consular officer acting on behalf of the Secretary of State. A member of the immediate family of a principal alien shall be classifiable under section 101(a)(15)(A) (i) or (ii) if the principal alien is classifiable under section 101(a)(15)(A) (i) or (ii).

(b) *Classification of status under section 101(a)(15)(A).* If an alien is entitled to classification under section 101(a)(15)(A) of the Act he shall be classified under this section even if he is eligible for another nonimmigrant classification.

(c) *Classification of attendants, servants, and personal employees.* An alien shall be classifiable as a nonimmigrant under the provisions of section 101(a)(15)(A)(iii) of the Act if he establishes to the satisfaction of the consular officer that he qualifies under that section of the Act.

(d) *Referral of certain cases to the Department.* In any case in which there is uncertainty about the applicability of these regulations to a principal alien applicant requesting nonimmigrant status, the matter shall immediately be referred to the Department for consideration as to whether acceptance of accreditation shall or shall not be granted.

(e) *Change of nonimmigrant status to that of a foreign government official.* In the case of an alien in the United States seeking a change of nonimmigrant classification pursuant to section 248 of the Act to a classification under section 101(a)(15)(A) (i) or (ii), the question of acceptance of accreditation shall be determined by the Department.

(f) *Termination of status.* The Department may, in its discretion, cease to recognize as entitled to nonimmigrant status under section 101(a)(15)(A) (i) or (ii) any alien who has such status.

(g) *Classification of foreign government officials for entry other than diplomatic.* A foreign government official or employee who seeks to enter the United States temporarily in a status other than that of a representative or employee of a foreign government shall not be classifiable under the provisions of section 101(a)(15)(A).

[Dept. Reg. 108.807, 46 FR 28637, May 28, 1981]

§ 41.21 Officials or representatives of foreign governments not recognized by the United States.

An official of a foreign government, which is not recognized de jure by the United States, who is proceeding to or through the United States on an official mission for his government or to an international organization shall be classified as a nonimmigrant under the provisions of section 101(a)(15) (i), (G), or (G) (iii) of the Act.

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

§ 41.22 Couriers and acting couriers on official business.

(a) *Couriers of current.* An alien who is regularly and professionally employed as a courier by the government

of the country to which he owes allegiance shall be classified as a nonimmigrant under the provisions of section 101(a)(15)(A)(i) of the Act if he is proceeding to the United States on official business for his government.

(b) *Officials acting in capacity of courier.* An alien who is not regularly and professionally employed as a courier by the government of the country to which he owes allegiance shall be classified as a nonimmigrant under the provisions of section 101(a)(15)(A)(ii) of the Act if he holds an official position with that government and is proceeding to the United States as a courier on official business for his government.

(c) *Nonofficials serving in capacity of courier.* An alien who is serving in the capacity of courier but who is not regularly and professionally employed as such and who holds no official position with, or is not a national of, the country whose government he is so serving, shall be classified as a nonimmigrant under the provisions of section 101 (a)(15)(B) of the Act.

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

Temporary Visitors

§ 41.25 Temporary visitors for business or pleasure.

(a) An alien shall be classifiable as a nonimmigrant visitor for business or pleasure if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(B) of the Act and that: (1) He intends to depart from the United States at the expiration of his temporary stay (consular officers are authorized in borderline cases to require the posting of a bond with the Attorney General in a sufficient sum to insure that upon the conclusion of his temporary visit, or upon his failure to maintain temporary visitor status, or any status subsequently acquired under section 248 of the Act, the alien will depart from the United States); (2) he has permission to enter some foreign country upon the termination of his temporary stay; and (3) adequate financial arrangements have been made to enable him to carry out the purpose of his visit and to travel to, sojourn in, and depart from the United States.

(b) The term "business", as used in section 101(a)(15)(B) of the Act, refers to legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement shall be required to qualify under the provisions of § 41.55. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.

(c) The term "pleasure", as used in section 101(a) (15) (B) of the Act, refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives and rest; medical treatment, or activities of a fraternal, social, or service nature.

[Sec. 101, 66 Stat. 166, 70 Stat. 919, 8 U.S.C. 1101]

[Dept. Reg. 108.422, 24 FR 11080, Dec. 31, 1959, as amended by Dept. Reg. 108.502, 28 FR 13934, Dec. 21, 1963; Dept. Reg. 108.527, 30 FR 14782, Nov. 30, 1965]

Transit Aliens

§ 41.30 Transit aliens.

An alien shall be classifiable as a nonimmigrant transit alien under the provisions of section 101(a)(15)(C) of the Act if he establishes to the satisfaction of the consular officer that: (a) He is passing in immediate and continuous transit through the United States, (b) he is in possession of a ticket or other assurance of transportation to his destination; (c) he is in possession of sufficient funds to enable him to carry out the purpose of his transit journey, or has sufficient funds otherwise available for that purpose; and (d) he has permission to enter some country other than the United States following his transit journey through the United States unless the alien submits evidence that such advance permission is not required.

[Sec. 101, 66 Stat. 166, 8 U.S.C. 1101]

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

§ 41.31 Certain aliens in transit to United Nations.

An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may at his own request or at the direction of the Secretary of State be issued a nonimmigrant visa bearing the symbol C-2. If such a visa is issued, the recipient will be subject to such restrictions in his travel within the United States as may be provided in regulations prescribed by the Attorney General.

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

§ 41.32 Accredited officials in transit through the United States.

An accredited official of a foreign government who intends to proceed in immediate and continuous transit through the United States on official business for his government shall be entitled to the benefits of section 212(d)(8) of the Act if his government grants similar privileges to officials of the United States, and shall be classified under the provisions of section 101(a)(15)(C) of the Act. Members of the immediate family, attendants, servants, or personal employees of such an official shall be accorded the same classification as the principal alien.

[Sec. 212(d)(8), 66 Stat. 188; 8 U.S.C. 1182]

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

Crewmen

§ 41.35 Crewmen.

(a) An alien shall be classifiable as a nonimmigrant crewman if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(D) of the Act and that he has permission to enter some foreign country after a temporary landing in the United States.

(b) An alien employed on board a vessel or aircraft in a capacity not required for normal operation and service on the particular vessel or aircraft, or an alien employed or listed as a regular member of the crew in excess of the number normally required shall not be classified as a crewman.

[Sec. 101, 66 Stat. 166, 8 U.S.C. 1101]

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

Cross Reference: For documentary requirements for crewmen see § 41.91(a)(26) and for instructions regarding the procedure to be followed in issuing crew list visas see § 41.127.

§ 41.36 Foreign government official crewmen.

Alien crewmen serving on board a foreign warship or other vessel of war, or military, naval or other aircraft of the armed forces of a foreign country, when making a friendly call at a United States port under advance arrangements made with the military authorities of the United States, or any other government vessel or aircraft shall not be subject to the provisions of § 41.91(a)(26) if the documentary requirements have been waived by the Secretary of State and the Attorney General pursuant to section 212(d)(4) of the Act.

[Dept. Reg. 108.433, 25 FR 4576, May 25, 1960]

Treaty Traders and Investors

§ 41.40 Treaty traders.

(a) An alien shall be classifiable as a nonimmigrant treaty trader if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(E)(i) of the Act and that: (1) He intends to depart from the United States upon the termination of his status; and (2) if he is employed by a foreign person or organization having the nationality of the treaty country which is engaged in substantial trade as contemplated by section 101(a)(15)(E)(i), he will be engaged in duties of a supervisory or executive

character, or, if he is or will be employed in a minor capacity, he has the specific qualifications that will make his services essential to the efficient operation of the employer's enterprise and will not be employed solely in an unskilled manual capacity. The employment must be by an individual employer having the nationality of the treaty country who is maintaining the status of a nonimmigrant treaty trader, or by an organization which is principally owned by a person or persons having the nationality of the treaty country and, if not residing abroad, maintaining nonimmigrant treaty trader status.

(b) The term "trade," as used in this section, means trade of a substantial nature which is international in scope, carried on by the alien in his own behalf or as an agent of a foreign person or organization engaged in trade, and is principally between the United States and the foreign state of which such alien is a national. Consideration shall be given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on substantial trade principally between the United States and such country.

(c) The nationality of a spouse or child of a treaty trader shall not be material to the classification of such spouse or child under the provisions of section 101(a)(15)(E)(i) of the Act.

(d) Representatives of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of section 101(a)(15)(I) of the Act and § 41.60, before consideration is given to their possible classification as nonimmigrants under the provisions of section 101(a)(15)(E) of the Act and of this section.

(Sec. 101, 66 Stat. 166; 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6683, Aug. 18, 1959, as amended by Dept. Reg. 108.507, 29 FR 4770, Apr. 3, 1964; Dept. Reg. 108.702, 39 FR 26154, July 17, 1974]

§ 41.41 Treaty investors.

(a) An alien shall be classifiable as a nonimmigrant treaty investor if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(E)(ii) of the Act and that: (1) He intends to depart from the United States upon the termination of his status; and (2) he is an alien who has invested or is investing capital in a bona fide enterprise and is not seeking to proceed to the United States in connection with the investment of a small amount of capital in a marginal enterprise solely for the purpose of earning a living; or that (3) he is employed by a treaty investor in a responsible capacity and the employer is a foreign person having the nationality of the treaty country who is maintaining the status of a nonimmigrant treaty investor, or an organization which is principally owned by a person or persons having the nationality of the treaty country and, if not residing abroad, maintaining nonimmigrant treaty investor status.

(b) The nationality of a spouse or child of a treaty investor shall not be material to the classification of such spouse or child under the provisions of section 101(a)(15)(E)(ii) of the Act.

(Sec. 101, 66 Stat. 166; 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6683, Aug. 18, 1959, as amended by Dept. Reg. 108.702, 39 FR 26154, July 17, 1974]

Students—Academic, Language Training Programs

§ 41.45 Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(F)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend, and has been accepted for attendance by, a college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(F)(i) of the Act, as evidenced by the presentation of Form I-20A-B (Certificate of Eligibility) properly and completely filled out and signed by the alien and by a designated school official (the Form I-20A, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or institution providing language training has been approved by the Attorney General for the attendance of nonimmigrant students, and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide those expenses;

(3) Has sufficient scholastic preparation and knowledge of the English language (unless the alien is going to an institution exclusively to participate in an English language training program) to enable the undertaking of a full course of study given in the English language which the accepting institution is equipped to offer, or the institution (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or

(ii) Will enroll the alien in a combination of academic courses and English instruction which will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of the student status (consular officers are authorized in borderline cases to require the posting of a bond with the Attorney General in a sufficient sum to insure that upon the alien's conclusion of studies, or upon the alien's failure to maintain student status, or any status subsequently acquired under section 248 of the Act, the alien will depart from the United States). If the alien is otherwise qualified for classification as a nonimmigrant student under this section, but intends to study the English language exclusively while in the United States, such alien may be classified as a nonimmigrant student under the provisions of section 101(a)(15)(F)(i) of the Act even though no credits are given by the institution for such study. The approved school must be equipped to offer a full course of study in the English language and must have accepted the applicant expressly for that course.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(F)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien:

(1) Is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and

(2) Intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847)

[Dept. Reg. 108.820, 47 FR 21777, May 20, 1982, 47 FR 24293, June 4, 1982]

International Organization Aliens

§ 41.50 Aliens coming to international organizations.

(a) An alien shall be classifiable under the provisions of section 101(a)(15)(G) of the Act if he establishes to the satisfaction of the consular officer that he is within one of the classes described in that section and that he seeks to enter, or pass in transit through, the United States in pursuance of his official duties. Such alien who seeks to enter, or pass in transit through, the United States other than in pursuance of his official duties shall not be classified under section 101(a)(15)(G) of the Act.

(b) An alien who applies for a visa as a nonimmigrant under the provisions of section 101(a)(15)(G) of the Act shall not be refused such visa solely on the grounds that he is not a national of the country whose government he represents.

(c) An alien who seeks to enter the United States as a foreign government representative to an international organization and who, at the same time,

is proceeding to the United States on official business as a foreign government official within the meaning of section 101(a)(15)(A) of the Act, shall, if otherwise qualified, be issued a visa as a non-immigrant under the provisions of section 101(a)(15)(A) of the Act.

(d) An alien not classifiable under section 101(a)(15)(A) of the Act who is entitled to classification under section 101(a)(15)(G), the Act shall be classified under this section although he may also be eligible for another nonimmigrant classification.

(Sec. 101, 66 Stat. 166, 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6083, Aug. 18, 1959]

Temporary Workers and Trainees

§ 41.55 Temporary workers and trainees.

(a) An alien shall be classifiable under the provisions of section 101(a)(15)(H) of the Act if—

(1) (i) He establishes to the satisfaction of the consular officer that he qualifies under the provision of that section; and (ii) the consular officer shall have received a petition approved by the Immigration and Naturalization Service to accord such classification to the alien, or official notification of the approval thereof; or (iii) the alien shall have presented to the consular officer official confirmation of the approval of the petition to accord him such classification or of the extension of his period of authorized stay in such classification; or

(2) He establishes to the satisfaction of the consular officer that he is the spouse or child of an alien so classified.

The period of validity of a visa issued on the basis of such an approved petition or official notification or confirmation shall not exceed the period of validity or of authorized stay set forth therein. The approval of such a petition shall not, of itself, establish that the alien is eligible to receive a nonimmigrant visa.

(b) If a consular officer knows or has reason to believe that an alien applying for a visa under section 101(a)(15)(H) of the Act is not qualified to perform the services, or to undertake the training, specified in the employer's petition approved by the Attorney General he shall suspend action on the alien's application and submit a report to the approving office of the Immigration and Naturalization Service for whatever action appears to be warranted.

(c) The term "Trainee", as used in section 101(a)(15)(H)(iii) of the Act, means a nonimmigrant alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor, including agriculture, commerce, communication, finance, government, transportation, and the professions as well as in a purely industrial establishment. (For provisions relating to the ineligibility of former exchange visitors to receive visas under section 101(a)(15)(H) of the Act see § 41.91(d)).

(Sec. 101, 66 Stat. 166 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6083, Aug. 18, 1959; 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108.618, 35 FR 6124, Apr. 15, 1970. Dept. Reg. 108.644, 36 FR 19301, Oct. 2, 1971; 36 FR 19907, Oct. 13, 1971; Dept. Reg. 108.678, 37 FR 21027, Oct. 14, 1972]

Cross Reference: For provisions relating to the ineligibility of former exchange visitors to receive visas under section 101(a)(15)(H) of the Act, see § 41.91(d).

Information Media Representatives

§ 41.60 Representatives of foreign press, radio, film, or other information media.

(a) An alien shall be classifiable as a nonimmigrant information media representative if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(I) of the Act and that he is a bona fide representative of a foreign press, radio, film, or other information medium having its home office in a foreign country, the government of which grants upon a basis of reciprocity similar privileges to representatives of such a medium having home offices in the United States.

(b) An alien who will be engaged in the United States in newsgathering activities between the United States and the country of which he is a national shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101(a)(15)(I) of the Act, notwithstanding the fact that such alien may also be classifiable as a nonimmigrant under the provisions of section 101(a)(15)(E) of the Act.

(Sec. 101, 66 Stat. 166; 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6084, Aug. 18, 1959]

Exchange Visitors

§ 41.65 Exchange visitors.

(a) *Classification.* An alien shall be classifiable as an exchange visitor if he qualifies under the provisions of section 101(a)(15)(J) of the Act and establishes to the satisfaction of the consular officer that:

(1) He has been accepted to participate, and intends to participate, in an exchange visitor program designated by the International Communication Agency as evidenced by the presentation of a properly executed Form IAP-66 (Certificate of Eligibility for Exchange Visitor (J-1) status);

(2) He has sufficient funds to cover his expenses or other arrangements have been made to provide for his expenses;

(3) He has sufficient knowledge of the English language to enable him to undertake the program for which he has been selected, or, except for an alien coming to participate in a program under which he will receive graduate medical education or training, the organization sponsoring him is aware of his deficiency in this respect and has indicated its willingness to accept him regardless of that deficiency;

(4) He meets the requirements of section 212(j) of the Immigration and Nationality Act, as amended, if coming to participate in a program under which he will receive graduate medical education or training; or that,

(5) The alien is the spouse or minor child of such an exchange-visitor program participant.

(b) *Applicability of section 212(e) of the Act.* (1) An alien is subject to the 2-year foreign residence requirement of section 212(e) of the Act if—

(i) His participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the Government of the United States or by the government of his country of nationality or last residence; or

(ii) At the time of the issuance to him of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of his acquisition of such status after admission, he is a national and resident, or if not a national he is a lawful permanent resident (or has status equivalent thereto), of a country which the Director of the International Communication Agency had designated, through publication by public notice in the Federal Register, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage in his exchange visitor program; or

(iii) He acquires exchange visitor status in order to receive graduate medical education or training in the United States.

(2) For the purposes of this paragraph the terms "financed directly" and "financed indirectly" shall be defined as set forth in § 514.1 of Chapter V.

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of sections 212(e) of the Act in the case of an alien determined to be subject to such requirements shall be the country of which the alien is, at the time of such determination, a national and resident, or, if not a national, a lawful permanent resident (or has status equivalent thereto).

(4) If an alien is subject to the 2 year foreign residence requirement of section 212(e) of the Act, the spouse or child of such alien shall also be subject to such requirement if such spouse or child is admitted to the United States pursuant to section 101(a)(15)(J) of the Act, or acquires status pursuant to such section after admission, for the purpose of accompanying or following to join such alien.

(c) *Notification to alien.* The consular officer to whom an alien applies for

an exchange visitor visa shall, prior to the issuance of such visa, determine whether the alien will be subject to the 2-year foreign residence requirement of section 212(e) of the Act if admitted to the United States under section 101(a)(15)(J) of the Act and, if so, the country in which 2 years' residence and physical presence will satisfy such requirement with respect to the alien, and shall inform the alien of such determinations.

(Sec. 104, 66 Stat. 174; (8 U.S.C. 1104, 1182(e), 1258); Reorganization Plan No. 2 of 1977; E.O. 12048 of March 27, 1978)

[Dept. Reg. 108.057, 37 FR 7156, Apr. 11, 1972, as amended by Dept. Reg. 108.673, 37 FR 17471, Aug. 29, 1972; Dept. Reg. 108.691, 38 FR 20219, July 31, 1973; Dept. Reg. 108.766, 44 FR 17659, Mar. 23, 1979, 45 FR 81560, Dec. 11, 1980]

Fiancée or Fiancé

§ 41.66 Fiancee or fiance of a United States citizen.

(a) An alien shall be classifiable as a nonimmigrant fiancee or fiance if he submits evidence that he qualifies under the provisions of section 101(a)(15)(K) of the Act and if the consular officer shall have received from the Immigration and Naturalization Service a petition filed by the alien's U.S. citizen fiance or fiancee and approved in accordance with the provisions of section 214(d) of the Act.

(b) Upon receipt of such a petition, and upon submission by the alien of a sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States, the consular officer shall grant the status accorded in the petition and shall determine the eligibility of the alien to receive a visa.

(c) Determination of the eligibility of an alien to receive a visa under section 101 (a)(15)(K) of the Act shall be made, insofar as practicable, as if the alien were an applicant to receive an immigrant visa.

(d) If it is determined that the alien would be eligible in all respects to receive an immigrant visa, the consular officer may issue a nonimmigrant visa under the provisions of this section to the alien.

(Sec. 101, 84 Stat. 116; 8 U.S.C. 1101)

[Dept. Reg. 108.618, 35 FR 6124, Apr. 15, 1970, as amended by Dept. Reg. 108.670, 37 FR 14873, July 26, 1972]

Executives, Managers, and Specialists

§ 41.67 Executives, managers, and specialists (intracompany transferees).

(a) An alien shall be classifiable under the provisions of section 101(a)(15)(L) of the Act if –

(1) (i) He establishes to the satisfaction of the consular officer that he qualifies under the provisions of that section; and (ii) the consular officer shall have received a petition approved by the Immigration and Naturalization Service to accord such classification to the alien, or official notification of the approval thereof; or (iii) the alien shall have presented to the consular officer official confirmation of the approval of the petition to accord him such classification or of the extension of his period of authorized stay in such classification; or

(2) He establishes to the satisfaction of the consular officer that he is the spouse of child of an alien is so classified. The period of validity of a visa issued on the basis of such an approved petition or official notification or confirmation shall not exceed the period of validity or of authorized stay set forth therein. The approval of such a petition shall not, of itself, establish that the alien is eligible to receive a nonimmigrant visa.

(b) If a consular officer knows or has reason to believe that an alien applying for a visa under section 101(a)(15)(L) of the Act has not been continuously employed for 1 year by the same employer or an affiliate or subsidiary thereof, or has not been employed in a managerial or executive capacity, or does not posses specialized knowledge, as specified in the employer's petition approved by the Attorney General, he shall suspend action on the alien's application and submit a report to the approving office of the Immigration and Naturalization Service for whatever action appears to be warranted.

(Sec. 101, 84 Stat. 116; 8 U.S.C. 1101)

[Dept. Reg. 108.618, 35 FR 6125, Apr. 15, 1970, as amended by Dept. Reg. 108.644, 36 FR 19304, Oct. 2, 1971; 36 FR 20907, Oct. 13, 1971; Dept. Reg. 108.678, 37 FR 21637, Oct. 14, 1972]

Students—Vocational

§ 41.68 Students in established vocational or other recognized nonacademic institutions, other than in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(M)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend and has been accepted for attendance solely for the purpose of pursuing a full course of study (other than a language training program) by an established vocational or other recognized nonacademic institution in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(M)(i) of the Act, as evidenced by the presentation of Form I-20M-N (Certificate of Eligibility) properly and completely filled out and signed by the alien and by a designated school official (the form I-20M, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated vocational or other recognized nonacademic institution which has issued the document has been approved by the Attorney General for the attendance of nonimmigrant students pursuant to section 101(a)(15)(M)(i) of the Act and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide for those expenses;

(3) Has sufficient knowledge of the English language to enable such an alien to undertake a full course of study in the accepting institution, or, if knowledge of the English language is inadequate to enable such alien to pursue a full course of study given in the English language, the accepting institution is equipped to offer, and (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or (ii) will enroll the alien in courses of instruction in English incidental to principal instruction in vocational courses which, when taken together, will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of student status.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(M)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien: (1) Is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and (2) intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

(Sec. 104, 66 Stat. 174 (8 U.S.C. 1104); sec. 1091(b)(1), 91 Stat. 847)

[Dept. Reg. 108.820, 47 FR 21777, May 20, 1982; 47 FR 24293, June 4, 1982]

NATO Aliens

§ 41.70 NATO representatives, officials and employees.

(a) (1) An alien shall be classifiable under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5 (see § 41.12 for classes of aliens entitled to classification under each symbol) if he establishes to the satisfaction of the consular officer that he is seeking admission to the United States under the applicable provision of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, or that he is a member of the immediate family of an alien classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5.

(2) Armed services personnel entering the United States in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the

Protocol on the Status of International Military Headquarters may enter the United States under the appropriate treaty waiver of documentary requirements contained in § 41.5(d) or (e), but if issued visas shall be classifiable under the symbol NATO 3.

(3) Dependents of armed services personnel referred to in paragraph (a)(2) of this section shall be classifiable under the symbol NATO-2.

(b) An alien member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, and his dependents, or an alien member of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and his dependents, shall be classified under the symbol NATO-6.

(c) An alien attendant, servant, or personal employee of an alien classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6, and the members of the immediate family of such attendant, servant, or personal employee, shall be classifiable under the symbol NATO-7.

(5 U.S.C. 877, 1094)

[Dept. Reg. 108.433, 25 FR 4579, May 25, 1960]

CROSS REFERENCE: 1. For exemption from certain grounds for refusal of visas to NATO aliens, see § 41.91(c).

2. For exemption from passport validity requirement for certain NATO aliens, see § 41.91(f).

INELIGIBLE CLASSES OF NONIMMIGRANTS

§ 41.90 Basis for refusal.

A visa shall be refused only upon a ground specifically set out in the law or regulations issued thereunder. The term "reason to believe", as used in section 221(g) of the Act, shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a nonimmigrant visa as provided in the Act and as implemented by the regulations contained in this part. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of a nonimmigrant visa may no longer exist. The burden of proof is upon the applicant to establish that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the Act, or any other provision of law and § 41.91.

(Sec. 221, 66 Stat. 192, 8 U.S.C. 1201)

[Dept. Reg. 108.422, 24 FR 11081, Dec. 31, 1959]

§ 41.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.* Determinations relating to the ineligibility of aliens to receive nonimmigrant visas under section 212(a) of the Act shall be governed by the following provisions:

(1-6) *Medical grounds of ineligibility.* A finding of a medical examiner of the United States Public Health Service, a contract location physician, or of a panel physician designated by the Foreign Service establishment in whose jurisdiction examination is performed, with respect to the applicability of section 212(a) (1) through (6) of the Act shall be binding on the consular officer, except that the consular officer may refer for review to the appropriate office of the United States Public Health Service the finding of a contract location or panel physician in an individual case. In such case he may hold in abeyance his decision on the visa application pending the receipt of the review finding of the Public Health Service.

(7) *Physical defect affecting alien's ability to earn a living.* An alien within the purview of section 212(a)(7) of the Act may be issued a nonimmigrant visa, if otherwise qualified therefor, upon receipt by the consular officer of notice from the Immigration and Naturalization Service of the giving of a bond or undertaking as provided in section 221 (g) of the Act, if the consular officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of section 212(a)(15) of the Act.

(8) *Paupers, professional beggars, or vagrants.* The provisions of section

212(a) (8) shall be applicable only in the case of an alien who is at the time of visa application a pauper, professional beggar, or vagrant.

(9) *Crime involving moral turpitude.*

(i) A determination that a crime involves moral turpitude shall be based upon the moral standards generally prevailing in the United States. Before a finding of ineligibility under section 212 (a)(9) of the Act may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred.

(ii) An alien who has been convicted of a crime involving moral turpitude or who admits the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude is ineligible to receive a visa under the provisions of section 212(a)(9) of the Act although the crimes were committed while the alien was under the age of eighteen years.

(iii) An alien shall not be ineligible to receive a visa under section 212(a)(9) of the Act by reason of having been tried and treated as a juvenile by a juvenile court for the commission of an offense involving moral turpitude provided the alien was under the age of eighteen years at the time the offense was committed. An alien convicted as an adult of a crime involving moral turpitude shall be subject to the provisions of section 212(a)(9) of the Act regardless of whether juvenile courts existed within the jurisdiction at the time of the conviction and regardless of whether he was under the age of eighteen years at the time the offense was committed.

(iv) A conviction *in absentia* of a crime involving moral turpitude shall not constitute a conviction within the meaning of section 212(a)(9) of the Act.

(v) An alien shall not be considered ineligible to receive a visa under section 212(a) (9) of the Act by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a)(9) of the Act.

(vi) The term "purely political offense" as used in section 212(a)(9) of the Act shall include offenses which resulted in convictions obviously based on trumped-up charges or predicated upon repressive measures against racial, religious or political minorities.

(10) *Conviction of two or more offenses.* (i) An alien shall not be ineligible to receive a visa under section 212(a)(10) of the Act by reason of having been tried and treated as a juvenile by a juvenile court for the commission of two or more offenses regardless of the period of confinement imposed by the sentence provided the alien was under the age of eighteen years at the time the offenses were committed. An alien convicted as an adult of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more shall be subject to the provisions of section 212(a)(10) of the Act regardless of whether juvenile courts existed within the jurisdiction at the time of conviction and regardless of whether he was under the age of eighteen years at the time the offenses were committed.

(ii) A conviction or convictions in absentia of two or more offenses for which the aggregate sentences to confinement imposed were five years or more shall not constitute a conviction within the meaning of section 212(a)(10) of the Act.

(iii) An alien shall not be considered ineligible to receive a visa under section 212 (a)(10) of the Act by reason of having been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more if a full and unconditional pardon or pardons

for the offenses have been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a)(10) of the Act.

(iv) The term "purely political offense" as used in section 212(a)(10) of the Act shall include offenses which resulted in convictions obviously based on repressive measures against racial, religious or political minorities.

(v) A sentence to confinement which has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of section 212(a)(10) of the Act.

(11) *Polygamy.* (Section 212(a)(11) of the Act inapplicable; Section 212 (d)(1)).

(12) *Prostitution, procuring and related activities.* (i) The term "prostitute" means a woman given to promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity which would indicate a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(ii) The fact that an alien may have ceased to engage in prostitution shall not serve to remove the existing ground of ineligibility to receive a visa under the provisions of section 212(a)(12) of the Act.

(iii) A prostitute or a person who has engaged in prostitution shall be ineligible to receive a visa under section 212 (a)(12) of the Act notwithstanding the fact that prostitution may not be prohibited under the laws of the foreign country where the acts occurred.

(13) *Immoral sexual act.* An alien shall not be ineligible to receive a visa under section 212(a)(13) of the Act unless his primary purpose in coming to the United States is to engage in an immoral sexual act.

(14) *Aliens entering to perform skilled or unskilled labor.* (Section 212(a)(14) of the Act inapplicable).

(15) *Public charge.* (i) Any conclusion that an alien is ineligible to receive a nonimmigrant visa under the provisions of section 212(a)(15) of the Act shall be predicated upon circumstances which indicate that the alien will probably become a charge upon the public after entry into the United States.

(ii) An alien within the purview of section 212(a)(15) of the Act may be issued a nonimmigrant visa upon receipt of notice by the consular officer of the giving of a bond or undertaking, as provided in section 221(g) of the Act, if the consular officer is satisfied that the giving of such bond or undertaking removes the alien's ineligibility to receive a visa under this section of the law.

(16) *Aliens excluded and deported.* An alien who was excluded and deported from the United States within the meaning of section 212(a)(16) of the Act shall not be issued a visa within one year from the date of his deportation unless he has obtained permission from the Immigration and Naturalization Service to reapply for admission.

(17) *Aliens arrested and deported or removed from the United States.* An alien who was arrested and deported from the United States, or who was removed from the United States within the meaning of section 212(a)(17) of the Act shall be required to obtain permission from the Immigration and Naturalization Service to reapply for admission into the United States before a visa may be issued, regardless of the period of time which may have elapsed since his deportation or removal.

(18) *Stowaways.* (Section 212(a)(18) of the Act inapplicable at time of visa application.)

(19) *Fraud and misrepresentation.* (i) An alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation for entry into the United States by fraud or by willfully misrepresenting a material fact, regardless of whether such fraud or misrepresentation occurred before or after December 24, 1952, shall be ineligible to receive a visa under the provisions of section 212(a)(19) of the Act: *Provided,* That the provisions of this subdivision shall not be applicable if the fraud or misrepresentation was committed by an alien at the time he sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to his former homeland if he had disclosed the facts in his case in connection with his application for a visa to enter the United States: *Provided further,* That the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of his former residence or elsewhere in connection with an application for a visa.

(ii) Subject to the conditions stated in paragraph (a)(19)(i) of this section, an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible thereunder, shall be considered ineligible to receive a visa under the provisions of section 212(a)(19) of the Act.

(iii) The commission of fraud or the willful misrepresentation of a material fact in seeking to enter the United States as distinguished from fraud or misrepresentation in connection with the procurement, or attempt to procure, documents for entry, shall not render an alien ineligible to receive a visa under the provisions of section 212(a)(19) of the Act. (6 I. & N. Dec. 140, approved by the Attorney General 9-13-54.)

(20) *Immigrant documentary requirements.* (Section 212(a)(20) of the Act inapplicable.)

(21) *Non-compliance with section 203 of the Act.* (Section 212(a)(21) of the Act inapplicable.)

(22) *Aliens ineligible to citizenship, or who departed to avoid service in the Armed Forces.* An alien shall be refused a nonimmigrant visa under the provisions of section 212(a)(22) of the Act if, having other than nonimmigrant status, he departed from or remained outside of the United States on or after September 8, 1939 to avoid or evade training or service in the United States Armed Forces.

(23) *Narcotics traffickers.* Any alien shall be ineligible to receive a nonimmigrant visa under the provisions of section 212(a)(23) of the Act, as amended, irrespective of whether the conviction for illegal possession of narcotic drugs or marijuana or for conspiracy to violate any law or regulation within the contemplation of the Narcotic Control Act of 1956 occurred before or after July 18, 1956.

(24) *Aliens arriving in foreign contiguous territory or adjacent islands on nonsignatory transportation lines.* The provisions of section 212(a)(24) of the Act shall not render an alien ineligible to receive a nonimmigrant visa inasmuch as the Attorney General upon the recommendation of the Secretary of State has waived this ground of ineligibility for nonimmigrants under the authority contained in section 212(d)(3)(A) of the Act.

(25) *Illiterates.* (Section 212(a)(25) of the Act inapplicable: Section 212(d)(1).)

(26) *Nonimmigrant documentary requirements.* (i) A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in section 212(a)(26) of the Act.

(ii) A crew-list visa issued in accordance with § 41.127 is considered to constitute a valid nonimmigrant visa within the meaning of section 212(a)(26)(ii) of the Act.

Cross Reference: For waivers of and exemptions from documentary requirements see §§ 41.5, 41.6, and 41.91(d).

(27) *Prejudicial activities.* (Reserved)

(28) *Members or affiliates of proscribed organizations.* (i) The term "affiliate", as used in sections 212(a)(28)(C) and (I) of the Act, shall mean an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other things of value for any purpose to any proscribed association or party shall be presumed to be an "affiliate" of such association or party, but nothing contained in this subdivision shall be construed as an exclusive definition of the term "affiliate."

(ii) Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(iii) Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(iv) If an alien continues or continued his membership in or affiliation with a proscribed organization on or after reaching sixteen years of age, only his activities after reaching that age shall be pertinent to a determination whether the continuation of his membership or affiliation is or was voluntary.

(v) The term "operation of law", as used in section 212(a)(28)(I) of the Act, shall include any case wherein the alien without his acquiescence automatically became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.

(vi) In accordance with the definition of "totalitarian party" contained in section 101(a)(37) of the Act, a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a nonCommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, shall not be considered ineligible under the provisions of section 212(a)(28)(C) of the Act to receive a visa, unless the alien is known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship, within the meaning of section 212(a)(28)(D) of the Act.

(vii) The words "actively opposed", as used in section 212(a)(28)(I)(ii) of the Act, shall be considered as embracing speeches, writings, and other overt or covert activities in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a voluntary member.

(29) *Espionage, sabotage, or other subversive activities.* [Reserved]

(30) *Alien accompanying excludable alien.* (Section 212(a)(30) of the Act inapplicable.)

(31) *Alien aiding illegal entrant.* [Reserved]

(b) *Aliens unable to establish nonimmigrant status.* (1) A nonimmigrant visa shall not be issued to an alien who has failed to overcome the presumption of immigrant status established by section 214(b) of the Act. An alien shall be considered to have established bona fide nonimmigrant status only if the consular officer is satisfied that his case falls within one of the nonimmigrant categories described in section 101(a)(15) of the Act or otherwise established by law or treaty.

(2) Consular officers are authorized in borderline cases under sections 101(a)(15) (D) and (P) to require the posting of a bond with the Attorney General. (See §§ 41.25 (a)(1) and 41.45(a)(4).)

(c) *Failure of application to comply with Act.* (1) An alien's visa application shall be considered as failing to comply with the provisions of the act or the regulations issued thereunder if: (i) The applicant fails to furnish the information to be included in such application as required by the Act or the regulations contained in this part;

(ii) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under section 212(a)(19) or (19) of the Act;

(iii) The application is not supported by the documents required under the provisions of the Act or the regulations contained in this part;

(iv) The applicant refuses to be fingerprinted if required by the Act or the regulations contained in this part;

(v) The necessary fee is not paid for the issuance of a nonimmigrant visa; or

(vi) The application otherwise fails to meet the specific requirements of the Act for reasons for which the applicant is responsible.

(2) The grounds of refusal described in paragraph (c)(1) of this section shall not constitute a bar to the reconsideration of the application upon compliance with statutory or regulatory requirements, or to the consideration of a subsequent application submitted by the same applicant.

(d) *Former exchange visitors.* An alien who was admitted into the United States as an exchange visitor or who acquired such status after admission, who is within the purview of section 212(e) of the Immigration and Nationality Act as amended by the Act of April 7, 1970 (84 Stat. 116), shall not be eligible to apply for and receive a nonimmigrant visa under section 101(a)(15) (H) or (L) of the Act, notwithstanding the approval of a petition as provided in section 214(c) of the Act, unless

(1) It has been established that the alien has resided and has been physically present abroad in the country his nationality or last residence for an aggregate of at least 2 years following the termination of his exchange visitor status as required by section 212(e) of the Act, or

(2) The foreign residence requirement of section 212(e) of the Act has been waived by the Attorney General in his behalf.

(e) *Grounds for refusal of visas applicable to certain nonimmigrant classes.* (1) No visa may be issued in the A 1 or A 2 category to an alien who is considered by the Department to be persona non grata.

(2) Only those provisions of section 212(a) of the Act which are stated specifically with reference to each class apply to the following classes of nonimmigrants: (i) Class A 1: Section 212(a)(27) upon the direction of the President and the issuance of appropriate rules and regulations; (ii) Class A 2: Section 212(a) (27) and (29); (iii) Class C 2: Section 212(a)(26)(A), (27), (28) and (29); (iv) Class C 3: Section 212(a)(26)(A), (27) and (29); (v) Class G 1: Section 212(a)(27); (vi) Classes G 2, G 3, and G 4: Section 212(a) (27) and (29); (vii) Class B TO 1: Section 212(a)(27); (viii) Classes NATO 2, NATO 3, NATO 4 and NATO 6: Section 212(a) (27) and (29).

(3) An alien within class A 3 or G 5 shall be subject to all grounds of refusal specified in section 212 of the Act which are applicable to nonimmigrants in general except paragraph (28) of subsection (a) of that section.

(f) *Exception from passport validity requirement for certain nonimmigrants.* A nonimmigrant alien in whose case the passport requirement of section 212(a)(26) has not been waived and

(1) Who is within one of the classes of nonimmigrants described in section 101(a)(15)(A) (i) and (ii) of the Act, or

(2) Who is within one of the classes of nonimmigrants described in section 101(a)(15) (G)(i), (ii), (iii), and (iv) of the Act, or

(3) Who is within a class of nonimmigrants classifiable under the visa symbol NATO 1, NATO 2, NATO 3, NATO 4, or NATO 6, shall present a passport which is valid for a sufficient period to enable the alien to apply for admission at a port of entry prior to its expiration.

(Sec. 17, 79 Stat. 919; 8 U.S.C. 1201)

[Dept. Reg. 108.411, 24 FR 6670, Aug. 18, 1959]

Editorial Note: For Federal Register citations affecting § 41.91, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Cross Reference: For validity period of passport for alien classifiable under section 212(d)(8) of the Act, see § 41.64(c)(2).

Temporary Admission of Ineligible Aliens

§ 41.95 Procedure in recommending temporary admission of ineligible aliens.

(a) Except as provided in paragraph (b) of this section, a consular officer may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212(d)(3)(A) of the Act in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of section 212(a) of the Act, other than paragraph (27) or (29).

(b) A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated immigration officers that an alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act.

(c) When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions imposed by the Attorney General.

(Sec. 212, 66 Stat. 182; 8 U.S.C. 1182)

[Dept. Reg. 108.48, 28 FR 274, Jan. 10, 1963]

Types of Nonimmigrant Visas

§ 41.100 Regular, diplomatic and official visas.

A nonimmigrant visa of any classification shall be issued as a regular nonimmigrant visa unless the alien falls within one of the classes entitled to a diplomatic or official visa as described in §§ 41.102 and 41.104.

[Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959]

§ 41.102 Classes of aliens eligible to receive diplomatic visas.

(a) A nonimmigrant alien who is in possession of a diplomatic passport or its equivalent shall, if otherwise qualified, be eligible to receive a diplomatic visa irrespective of his classification under § 41.12 if he is within one of the following classes:

(1) Heads of States and their alternates;

(2) Members of a reigning royal family;

(3) Governors-general, governors, high commissioners, and similar high administrative or executive officers of a territorial unit, and their alternates;

(4) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;

(5) Presiding officers of chambers of national legislative bodies;

(6) Justices of the highest national court of a foreign country;

(7) Ambassadors, public ministers, other officers of the diplomatic service and consular officers of career;

(8) Military officers holding a rank not inferior to that of a brigadier general in the U.S. Army or Air Force and Naval officers holding a rank not inferior to that of a rear admiral in the U.S. Navy;

(9) Military, naval, air and other attaches and assistant attaches assigned to a foreign diplomatic mission;

(10) Officers of foreign-government delegations to international organizations so designated by executive order;

(11) Officers of foreign-government delegations to, and officers of, international bodies of an official nature, other than international organizations so designated by executive order;

(12) Officers of a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(13) Officers of foreign-government delegations proceeding to or from a specific international conference of an official nature;

(14) Members of the immediate family of a principal alien who is within one of the classes described in paragraphs (a) (1) to (11) inclusive, of this section;

(15) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in paragraphs (a) (12) and (13) of this section;

(16) Diplomatic couriers proceeding to or through the United States in the performance of their official duties.

(b) A nonimmigrant alien who is classifiable under section 101(a)(15)(G)(iv) shall, if otherwise qualified, be eligible to receive a diplomatic visa if he is—

(1) The Secretary General of the United Nations;

(2) An Under Secretary General of the United Nations;

(3) An Assistant Secretary General of the United Nations;

(4) The Administrator or the Deputy Administrator of the United Nations Development Program;

(5) An Assistant Administrator of the United Nations Development Program;

(6) The Executive Director of the—

(i) United Nations Children's Fund;

(ii) United Nations Institute for Training and Research;

(iii) United Nations Industrial Development Organization.

(7) The Executive Secretary of the—

(i) United Nations Economic Commission for Africa;

(ii) United Nations Economic Commission for Asia and the Far East;

(iii) United Nations Economic Commission for Latin America;

(v) United Nations Economic Commission for Europe.

(8) The Secretary General of the United Nations Conference on Trade and Development;

(9) The Director General of the Latin American Institute for Economic and Social Planning;

(10) The United Nations High Commissioner for Refugees;

(11) The United Nations Commissioner for Technical Co-operation;

(12) The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

(13) The spouse or child of any nonimmigrant alien listed in paragraphs (b) (1) through (12) of this section.

(c) Any other individual alien or class of aliens shall, if otherwise qualified, be eligible to receive a diplomatic visa upon the authorization of the Department, the Chief of a United States Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

[Dept. Reg. 108.633, 36 FR 4097, Mar. 11, 1971, as amended by Dept. Reg. 108.653, 37 FR 2139, Feb. 1, 1972; 37 FR 3051, Feb. 11, 1972]

§ 41.104 Classes of aliens eligible to receive official visas.

A nonimmigrant within one of the following categories shall, if otherwise qualified, be eligible to receive an official visa irrespective of his classification under § 41.12:

(a) An alien within one of the following classes who is not eligible to receive a diplomatic visa:

(1) Aliens within a class described in § 41.102(a) who are ineligible to receive a diplomatic visa because they are not in possession of a diplomatic passport or its equivalent.

(2) Aliens classifiable under section 101(a)(15)(A) of the Act;

(3) Aliens, other than those described in § 41.102(b), who are classifiable under section 101(a)(15)(C) of the Act, except those classifiable under section 101(a)(15)(C)(iii) of the Act unless the government of which the alien is an accredited representative is recognized de jure by the United States;

(4) Aliens classifiable under section 101(a)(15)(C) of the Act as nonimmigrants described in section 212(d)(8) of the Act;

(5) Members and members-elect of national legislative bodies.

(6) Justices of the lesser national and the highest state courts of a foreign country;

(7) Officers and employees of national legislative bodies proceeding to or through the United States in the performance of their official duties;

(8) Clerical and custodial employees attached to foreign-government delegations to, and employees of, international bodies of an official nature,

other than international organizations so designated by executive order, proceeding to or through the United States in the performance of their official duties;

(9) Clerical and custodial employees attached to a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(10) Clerical and custodial employees attached to foreign government delegations proceeding to or from a specific international conference of an official nature;

(11) Officers and employees of foreign governments recognized de jure by the United States who are stationed in foreign contiguous territories or adjacent islands;

(12) Members of the immediate family, attendants, servants and personal employees of, when accompanying or following to join, a principal alien who is within one of the classes referred to or described in paragraphs (a) (1) to (11) inclusive of this section;

(13) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in § 41.102(a) (1) to (13) inclusive;

(b) Any other individual alien or class of aliens for whom the acceptance of an application for an official visa has been authorized by the Department or by the Chief of a United States Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the principal officer at a consular post not under the jurisdiction of a diplomatic mission.

(Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959, as amended by Dept. Reg. 108.433, 25 FR 4579, May 25, 1960; Dept. Reg. 108.633, 36 FR 4698, Mar. 11, 1971, 36 FR 5040, Mar. 17, 1971)

Application for Nonimmigrant Visas

§ 41.110 Place of application.

(a) *Applications for regular and official visas.* With the exception of certain aliens who are in the United States who may be issued nonimmigrant visas under the provisions of § 41.120, every alien applying for a regular or official visa shall make application to the consular officer in the consular district in which he has as his residence, except that a consular officer shall at the direction of the Department, or may in his discretion, accept an application for a nonimmigrant visa from an alien having no residence in the consular district if the alien is physically present therein.

(b) *Applications for diplomatic visas.* Application for a diplomatic visa shall be made at a diplomatic mission or at a consular office authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant.

(Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959, as amended by Dept. Reg. 108.422, 24 FR 11082, Dec. 31, 1959)

Cross Reference: For applications for crew-list visas see § 41.127(b).

§ 41.111 Supporting documents.

(a) *Authority to require documents and consideration accorded.* The consular officer shall have authority to require such documents as he may consider necessary to establish the alien's eligibility to receive a nonimmigrant visa. All such documents submitted and any other evidence adduced by the alien shall be given consideration by the consular officer, including briefs submitted by attorneys or other representatives.

(b) *Unobtainable documents.* In the event an alien establishes to the satisfaction of the consular officer that any document or record required under the authority of this section is unobtainable, the consular officer may accept in lieu of such document or record, other satisfactory evidence of the fact to which the document or record would, if obtainable, pertain. A document or other record shall be considered "unobtainable" if it cannot be procured without causing the applicant or a member of his family actual hardship other than normal delay and inconvenience.

(c) *Photographs.* Except as otherwise provided in this paragraph, every alien shall furnish with his application identical photographs of himself in such number as may be required in the discretion of the consular officer. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, and shall be 1½ by 1½ inches in size, unmounted, without head covering, have a light background, and clearly show a full front view of the facial features of the alien. The reverse of each copy of the photograph shall be signed by the person executing the application (see § 41.115(a)) with the full name of the applicant. The photograph requirement may be waived, in the discretion of the consular officer, in the case of any alien who is (1) within a class of nonimmigrants described in sections 101(a)(15)(A), 101(a)(15)(G) or 212(d)(8) of the Act, (2) within a class of nonimmigrants classifiable under the visa symbol NATO-1 through NATO-7, (3) an applicant for a diplomatic visa, (4) an applicant for an official visa, or (5) under sixteen years of age. A notation of any such waiver shall be made in the space provided in the application form for the alien's photograph. A new photograph need not be required, in the discretion of the consular officer, if there is on file at the consular office a photograph which was submitted in connection with a prior nonimmigrant visa application and which still reflects a reasonable likeness of the applicant.

(d) *Police certificates.* (1) An alien shall be required to present a police certificate if the consular officer has reason to believe that he may have a police or criminal record, except that no police certificate shall be required in the case of an alien who is (i) within a class of nonimmigrants described in section 101(a)(15)(A) (i) or (ii), or section 101(a)(15)(G) (i), (ii), (iii), or (iv), or section 212(d)(8), of the Act, or (ii) within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-6.

(2) A police certificate is a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alie

(Sec. 2.2, 60 Stat. 193; 8 U.S.C. 1202)

(Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959, 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108.433, 25 FR 4579, May 25, 1960; Dept. Reg. 108.495, 28 FR 5375, May 30, 1963)

§ 41.112 Passports.

(a) *Passport requirement.* Except for certain persons in the A, C 3, G and NATO categories and persons for whom the passport requirement has been waived pursuant to the provisions of section 212(d)(4) of the Act, every applicant for a nonimmigrant visa shall present a passport as defined in section 101(a)(30) of the Act and § 41.1 which is valid for the period required by section 212(a)(26) of the Act.

(b) *Aliens included in a single passport.* The passport requirement referred to under paragraph (a) of this section may be met by the presentation of a passport including more than one person if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each person sixteen years of age or over to whom a visa is to be issued shall have been attached to the passport by the issuing authority.

(c) *Applicants for diplomatic visas.* Every applicant for a diplomatic visa shall be required to present a diplomatic passport, or the equivalent thereof, having the period of validity indicated in paragraph (a) of this section, unless such requirement has been waived pursuant to the authority contained in section 212(d)(4) of the Act or unless the case falls within the provisions of § 41.91(f).

(Dept. Reg. 108.422, 24 FR 11082, Dec. 31, 1959, Dept. Reg. 108.433, 25 FR 4579, May 25, 1960; Dept. Reg. 108.441, 25 FR 7019, July 23, 1960)

§ 41.113 Medical examination.

(a) An alien shall be required to be medically examined if (1) he is an applicant for a nonimmigrant visa as a fiancee or fiance of a U.S. citizen, or as the child of such applicant, or (2) the consular officer has reason to believe that a medical examination is advisable or that it would disclose that the alien is medically ineligible to receive a visa.

(b) At consular offices where medical officers of the United States Public Health Service are on duty, the alien's examination shall be conducted by such officers. If a medical officer of the United States Public Health Service is not available, the required exam

lination shall be conducted by a contract location physician or by a physician selected by the alien from a panel of physicians approved by the consular officer.

(c) A consular officer shall not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless such physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

(Sec. 221, 66 Stat. 191, 8 U.S.C. 1201)

[Dept. Reg. 108.504, 29 FR 2763, Feb. 26, 1964, as amended by Dept. Reg. 108.670, 37 FR 14873, July 26, 1972; Dept. Reg. 108.684, 38 FR 4577, Feb. 16, 1973]

§ 41.111 Personal appearance.

(a) Except as otherwise provided in this section, every alien seeking a nonimmigrant visa shall be required to apply in person before a consular officer. The requirement of personal appearance may be waived in the discretion of the consular officer in the case of any alien who is:

(1) A child under 14 years of age,

(2) Within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, A-3, C-2, C-3, G-1, G-2, G-3, G-4, G-5, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7,

(3) An applicant for a diplomatic or official visa,

(4) An applicant for a nonimmigrant visa under the provisions of section 101(a)(15)(I) of the Act,

(5) Within a class of nonimmigrants classifiable under the visa symbols C-1, E-1, or I,

(6) Within a class of nonimmigrants classifiable under the visa symbol J-1, who qualifies as a leader in a field of specialized knowledge or skill and who is the recipient of a U.S. Government grant, and the spouse and children of such an alien who qualify for J-2 classification,

(7) An airman applying for a nonimmigrant visa under the provisions of section 101(a)(15)(D) of the Act if the application is supported by a letter from the employing carrier certifying that the applicant is employed as an airman and the consular officer is satisfied in the individual case that the personal appearance of the alien is not necessary to a determination of his eligibility to receive a visa, or,

(8) A nonimmigrant in any category in whose case the responsible consular officer determines that a waiver of personal appearance in the individual case is warranted in the national interest or because of unusual circumstances, including hardship to the visa applicant.

(b) In the categories described in paragraphs (a) (2) and (3) of this section the filing of a visa application by the applicant may be waived in the discretion of the consular officer. In cases in which personal appearance is waived pursuant to paragraph (a)(8) of this section the filing of a visa application by the applicant may be waived in the discretion of the consular officer in hardship, emergency or national interest cases. In any case in which personal appearance is waived pursuant to any other subparagraph of paragraph (a) of this section, application for a visa shall be made on Form OF-156 as determined to be appropriate by the consular officer.

[Dept. Reg. 108.540, 31 FR 13080, Oct. 6, 1966, as amended by Dept. Reg. 108.506, 33 FR 7369, May 24, 1968; Dept. Reg. 108-739, 42 FR 32535, June 27, 1977]

§ 41.115 Application forms.

(a) *Aliens required to execute applications.* Every alien applying for a nonimmigrant visa shall make application therefor on Form OF-156, unless personal appearance is waived and submission of the application form by the applicant is not required pursuant to 22 CFR 41.114(b) or unless there is a Form OF-156 available at the consular office which can be appropriately amended to bring the application up to date. In cases in which the filing of the visa application is waived, the consular officer shall prepare a Form OF-156 on behalf of the applicant from the data available in the passport or other documents submitted. In the case of an alien under 16 years of age, or one physically incapable of making an application, the application may be made by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(b) *Additional information as part of application.* In any case in which the consular officer believes that the information provided in Form OF-156 is inadequate to determine the alien's eligibility to receive a nonimmigrant visa he may require the submission of such additional information as may be necessary or interrogate the alien on any matter which is deemed material. Any additional statements made by the alien shall become a part of the visa application. All documents required under the authority of § 41.111(a) shall be considered papers submitted with the alien's application within the meaning of section 221(g)(1) of the Act.

[Dept. Reg. 108.472, 26 FR 10051, Oct. 26, 1961, as amended by Dept. Reg. 108.540, 31 FR 13080, Oct. 6, 1966; Dept. Reg. 108.739, 42 FR 32535, June 27, 1977]

§ 41.116 Registration and fingerprinting.

(a) *Registration.* Form OF-156, when properly completed, shall constitute the alien's registration record for the purposes of section 221(b) of the Act.

(b) *Fingerprinting.* (1) The provisions of section 221(b) of the Act which require the fingerprinting of aliens in connection with their applications for visas are waived in pursuance of the authority contained therein for the nonimmigrant classes specified in paragraph (b)(1)(i) of this section, and in pursuance of the authority contained in section 8 of the Act of September 11, 1957 (71 Stat. 641; U.S.C. 1201(a) for the nonimmigrant classes specified in paragraph (b)(1)(ii) of this section: (i) an alien who is within a class of nonimmigrants enumerated in section 101(a)(15)(A) and section 101(a)(15)(G) of the Act, or an alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof (see § 41.1); (ii) an alien who is a national of a country whose government does not require fingerprinting in connection with an application for, or the issuance of, a visa to a national of the United States who intends to proceed to such country for a similar purpose, and who is classifiable as a nonimmigrant under the provisions of section 101(a)(15)(B), (C), (D), (E), (F), (H), (I), (J), (K), or (L) of the Act, including a nonimmigrant alien who is classifiable under the visa symbol NATO 1, NATO 2, NATO 3, NATO 4, NATO 5, NATO 6, or NATO 7.

(2) In the case of any nonimmigrant alien who is not exempted from the fingerprinting requirement under the provisions of this section, the fingerprints of such alien shall be taken in connection with his application for a nonimmigrant visa on Form AR 4 (Alien Registration Fingerprint Card) or in such other manner as may be authorized by the Department.

(3) An alien may be required by the consular officer, when he makes preliminary or informal application for a visa, to have a set of his fingerprints taken on Form AR-4 in the event such procedure is considered necessary for the purpose of identification, or investigation. Consular officers may, where necessary, use the fingerprint card in order to ascertain from the appropriate local or any other authorities whether they have any pertinent information concerning the applicant's eligibility to receive a visa.

[Dept. Reg. 108.411, 24 FR 6648, Aug. 18, 1959, 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108.488, 28 FR 275, Jan. 10, 1963; Dept. Reg. 108.616, 35 FR 6125, Apr. 4, 1970; Dept. Reg. 108.739, 42 FR 32536, June 27, 1977]

§ 41.117 Signature.

When personal appearance is required, Form OF-156 shall be signed and verified by or on behalf of the applicant in the presence of the consular officer. If personal appearance is waived, and the submission of an application form by the alien is required, the form shall be signed by the applicant. If the filing of an application form is also waived, the consular officer shall so indicate on the Form OF-156 prepared on behalf of the applicant. The consular officer shall, in every instance, write his initials over or adjacent to his name and title stamp on the Form OF-156.

[Dept. Reg. 108.571, 32 FR 16098, Nov. 23, 1967, as amended by Dept. Reg. 108.739, 42 FR 32536, June 27, 1977]

Issuance of Nonimmigrant Visas

§ 41.120 Authority to issue visas.

(a) *Issuance outside the United States.* Any consular officer is authorized to issue regular and official visas. Diplomatic visas may be issued only by—

(1) A consular officer attached to a United States Diplomatic Mission, if he is authorized to do so by the Chief of the Mission, or

(2) A consular officer assigned to a consular office, if so authorized by the Department or by the Chief, the Deputy Chief, or the Counselor for Consular Affairs of the United States Diplomatic Mission in the country in which such consular office is located or, at a consular post not under the jurisdiction of a diplomatic mission, by the principal officer.

(b) *Issuance in the United States in certain cases.* The Director of the Visa Office of the Department and such other officers of the Department as he may designate are authorized, in their discretion, to issue nonimmigrant visas to—

(1) Qualified aliens classifiable under the visa symbol C-2 or C-3;

(2) Other qualified aliens who—

(i) Are properly classifiable under sub-paragraph (A) or (G) of section 101(a)(15) of the Act or under the visa symbols NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7;

(ii) Present appropriate evidence that—

(a) They have been lawfully admitted to the United States in such status or have, after admission, had their status changed to such status;

(b) Their period of authorized stay in such status has not expired; and

(c) They are currently maintaining such status; and

(iii) Intend, after a temporary absence, to reenter the United States in such status.

[Dept. Reg. 108.638, 36 FR 12160, June 26, 1971, as amended by Dept. Reg. 108.695, 39 FR 2480, Jan. 22, 1974]

§ 41.121 Visa fees.

(a) Unless on a basis of reciprocity no fee is chargeable, the fees for the issuance of visas, including official visas, to nonimmigrant nationals or stateless residents of each foreign country shall be collected in the amounts prescribed by the Secretary of State. If practicable, fees will correspond to the total of all visa, entry, residence, or other similar fees, taxes or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents.

(b) *Aliens exempted from fees.* Upon a basis of reciprocity, or as provided in section 13(a) of the Headquarters Agreement with the United Nations (61 Stat. 756; 22 U.S.C. 287, Note), no fee shall be collected for the issuance of a nonimmigrant visa to an alien of any of the following classes: (1) Nonimmigrants described in section 101(a)(15)(A) of the Act; (2) nonimmigrants described in section 101(a)(15)(G) of the Act; (3) nonimmigrants described in section 212(d)(8) of the Act; (4) persons entitled to pass in transit to the United Nations Headquarters District under the provisions of paragraph (3), (4) or (5) of section 11 of the Headquarters Agreement and who are issued C-2 visas as nonimmigrants under the provisions of section 101(a)(15)(C) of the Act; (5) nonimmigrants who are classifiable under the visa symbol NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, and NATO-7; and (6) nonimmigrants who are issued diplomatic visas.

(c) *Refund of fees.* A fee collected for the issuance or revalidation of a nonimmigrant visa is refundable only when the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action by the United States Government over which the alien had no control and for which he was not responsible.

(Sec. 281, 60 Stat. 230, 8 U.S.C. 1351)

[Dept. Reg. 108.411, 24 FR 6689, Aug. 18, 1959; 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108.402, 28 FR 3261, Apr. 4, 1963 Reg. 108.507, 33 FR 16445, Nov. 9, 1968]

Cross References: For fee to be collected when more than one alien included in single visa see § 41.123.

For fee for revalidated or transferred visa see §§ 41.125(f) and 41.126(d).

For fee for crew-list visa see § 41.127(e).

§ 41.122 Validity, termination and replacement of visas.

(a) *Validity of visa not related to period of stay in the United States.* The period of validity of a nonimmigrant visa shall have no relation to the period of time the alien may be authorized by the immigration authorities to stay in the United States if, upon his arrival at a port of entry, he is admitted by those authorities.

(b) *Validity of visa pertains to period within which alien may apply for admission.* The period of validity of a nonimmigrant visa shall relate only to the period during which the alien to whom the visa was issued may use it in making application for admission into the United States.

(c) *Validity of visa and number of applications for admission.* Except as provided in paragraph (d) of this section a nonimmigrant visa shall have the validity prescribed in schedules made available to consular officers by the Department, which reflect, as nearly as practicable, the reciprocal treatment accorded U.S. nationals by the government of the country of which the alien is a national or stateless resident. Nonimmigrant visas issued pursuant to section 101(a)(15)(B) of the Immigration and Nationality Act may, in the discretion of the consular officer, be made valid indefinitely and for an unlimited number of applications for admission for aliens who: (1) Are nationals of countries which offer reciprocal treatment to U.S. citizens, as determined by the Department of State; (2) are in possession of a valid passport in which the visa may be stamped; and (3) have satisfied the consular officer that they are bona fide visitors and will continue to maintain that status for an indefinite period of time. An indefinite validity visa shall be valid for application for admission into the United States if the passport in which the visa is stamped has expired, provided the alien is also in possession of a valid passport issued by the appropriate authorities of the country of which the alien is a national as required by section 212(a)(26) of the Act and § 41.112.

(d) *Limitation on validity.* If warranted in an individual case, a consular officer may issue a nonimmigrant visa for (1) a period of validity which is less than that prescribed on a basis of reciprocity, (2) a number of applications for admission within the period of the validity of the visa which is less than that prescribed on a basis of reciprocity, (3) application for admission at a specified port or specified ports of entry in the United States, or (4) for use on and after a given date subsequent to the date of issuance.

(e) *Termination of validity by consular or immigration officer.* Notwithstanding any period of validity specified on the face of a nonimmigrant visa issued to an alien, a consular or immigration officer is authorized to terminate the validity thereof by physically cancelling such visa if –

(1) The alien obtains an immigrant visa or has his status adjusted to that of permanent resident;

(2) The alien is ordered excluded from the United States pursuant to section 235(c) or 236 of the Act;

(3) The alien is notified pursuant to section 235(b) of the Act by an immigration officer at a port of entry that he appears to be inadmissible to the United States and the alien requests and is granted permission to withdraw his application for admission;

(4) A final order of deportation or a final order granting voluntary departure with an alternate order of deportation is entered pursuant to 8 CFR Part 3, or 8 CFR Part 242;

(5) The alien has been permitted by the Immigration and Naturalization Service to depart voluntarily from the United States pursuant to 8 CFR 242.5;

(6) A waiver of ineligibility pursuant to section 212(d)(3)(A) of the Act on the basis of which the visa was issued to the alien is revoked by the Immigration and Naturalization Service;

(7) The visa is presented in connection with an application for admission to the United States by a person other

than the alien to whom it was issued; or

(B) The visa has been physically removed from the passport in which it was originally issued.

(f) *Termination of validity prior to alien's journey to the United States.* (1) Notwithstanding any period of validity specified on the face thereof, the validity of a nonimmigrant visa issued to an alien shall terminate if, prior to the embarkation of the alien upon a continuous voyage to the United States, the visa has been physically removed from the passport in which it was originally issued, or a consular officer finds that the alien has, subsequent to the issuance of such visa, become ineligible under section 212(a) of the Act to receive such visa or has ceased to be entitled to the nonimmigrant classification under section 101(a)(15) of the Act specified in such visa. Before making such a finding in an individual case, the consular officer shall, if practicable notify the alien and give him an opportunity to rebut and overcome the information on the basis of which the consular officer proposes to find that he has become ineligible to receive a nonimmigrant visa.

(2) Upon learning that a visa has been physically removed from the passport in which it was originally issued or upon a finding of ineligibility pursuant to paragraph (f)(1) of this section, the consular officer shall, if possible, physically cancel such visa. If the consular officer is unable to physically cancel the visa he shall give notice of the termination of validity to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed that the alien intends to travel to the United States and shall promptly submit to the Department a full report of the facts of any case in which a finding of ineligibility to receive a visa has been made pursuant to paragraph (f)(1) of this section.

(g) *Replacement of visa.* A nonimmigrant visa the validity of which has been terminated pursuant to paragraph (e) or (f) of this section may be replaced, without fee, by a consular officer if it is determined that the basis for termination has been overcome and if the validity specified on the face thereof has not at that time expired.

(Sec. 221, 66 Stat. 191; 8 U.S.C. 1201; 8 U.S.C. 1104; sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847)

[Dept. Reg. 108.411, 24 FR 6689, Aug. 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.122, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.123 More than one alien included in visa.

If the spouse and unmarried minor children of a principal alien are included in one passport (see § 41.112(b)) a single nonimmigrant visa may be issued to include all eligible family members. Each alien must execute a separate application. The name of each family member shall be written in the space provided in the visa stamp. The visa fee to be collected shall be equal to the total of the fees prescribed by the Secretary of State, in accordance with the provisions of section 281 of the Act, for each alien included in the visa unless upon a basis of reciprocity a lesser fee is chargeable in such a case.

[Dept. Reg. 108.411, 24 FR 6689, Aug. 18, 1959]

§ 41.121 Procedures in issuing visas.

(a) *Visa evidenced by a properly identifiable insert in the passport.* Except as provided in paragraph (b) of this section the issuance of a nonimmigrant visa shall be evidenced by a properly identifiable insert placed in the alien's passport. The appropriate symbol, as prescribed in § 41.12, showing the classification of the alien, shall be included in the visa insert.

(b) *Cases in which visa may not be placed in passport.* In the following cases the visa shall be placed on the prescribed Form OF-232, to which a photograph of the alien shall be attached under seal:

(1) The alien's passport was issued by a government with which the United States does not have formal diplomatic relations, unless the Department has specifically authorized the placing of the visa insert in such passport;

(2) The alien's passport does not provide sufficient space for the visa insert;

(3) The passport requirement has been waived; or

(4) In other cases as authorized by the Department. In issuing a visa in such cases a notation shall be made on the Form OF-232 on which the visa is placed specifying the pertinent subparagraph of this paragraph under which the action is taken.

(c) *Indefinite Validity Visa.* In no instance may a visa issued pursuant to section 101(a)(15)(B) of the Act and having indefinite validity as provided in § 41.122(c) be placed in any document other than a valid passport.

(d) *Visa Insert.* (1) The nonimmigrant visa insert shall be in the format designated by the Department and contain the following data:

(i) The number of the visa;

(ii) The location of the issuing office;

(iii) The classification of the visa;

(iv) The date of issuance;

(v) The expiration date or, if an indefinite validity visa is issued on the basis of reciprocity, the word "indefinitely";

(vi) The number of applications for admission for which it is valid or, the word "multiple";

(vii) The name(s) of the person(s) to whom issued, unless the entry authorized by paragraph (e)(1) of this section is used;

(viii) The signature or facsimile signature of the issuing officer.

(2) The format of a diplomatic visa shall be the same as a regular nonimmigrant visa, except that it shall bear the title "DIPLOMATIC".

(3) The format of an official visa shall be the same as a regular nonimmigrant visa, except that it shall bear the title "OFFICIAL".

(4) All of the data required by paragraph (d)(1) shall be contained in a nonimmigrant visa issued pursuant to the Automated Nonimmigrant Visa Issuance System (ANVIS) except that the signature or facsimile signature of the issuing officer shall not be contained in such a visa. In addition, the ANVIS visa shall contain the date and place of birth of the person the whom the visa is issued with the country of birth being indicated by a three digit numeric code. The location of the issuing office will also be shown by a three digit numeric code.

(e) *Insertion of name; petition and derivative status notation.*

(1) Except as otherwise provided in this paragraph, the name or names of the alien or aliens to whom a nonimmigrant visa is issued shall be shown on the visa insert just after the word "to". Consular officers may, in their discretion, show the word "Bearer(s)" in lieu of the name of the alien and in lieu of the names of accompanying family members, if any, who are included in the alien's passport, in visas issued in passports or other travel documents meeting the requirements of section 101(a)(30) of the Immigration and Nationality Act, which have been designated by the Department as approved for this purpose. This procedure may not be applied in the case of aliens who are the beneficiaries of waivers granted under section 212(d)(3) of the Act.

(2) If the visa is being issued upon the basis of a petition approved by the Attorney General, the number of the petition, if any, the period for which the alien's admission has been authorized and the name of the petitioner shall be noted immediately below the visa insert.

(3) In the case of an alien who derived status from a principal alien, the name and position of the principal alien shall be written below the lower margin of the visa insert.

(f) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "multiple" shall be appropriately placed in the visa insert. Otherwise the number of permitted applications for admission shall be shown in word form. The date of issuance and the date of expiration of the visa shall be shown in the appropriate places in the visa insert and shall indicate the day, month and year in that order. The standard three letter abbreviation for the month shall be used in all cases. If a visitor visa is to be made valid for an indefinite period the word "indefinite-

ly" shall be inserted in the space provided for the expiration date of the visa.

(g) *Restriction to specified port of entry.* If a nonimmigrant visa is to be valid for admission only at a specified port or ports of entry the name or names of such port or ports shall be entered immediately below the expiration date of the visa and shall be preceded by the word "at".

(h) *Signature.* Except in the case of a nonimmigrant visa issued pursuant to § 41.124(d)(4), the signature or facsimile signature of the consular officer issuing the visa shall appear in the visa insert.

(i) *Delivery of visa and disposition of Form OF-156.* In issuing a nonimmigrant visa the consular officer shall deliver the visaed passport, or the prescribed Form OF 232 which bears the visa, to the alien or, in any cases in which personal appearance has been waived, to the authorized representative. The executed Form OF-156 and any additional statements furnished by the alien in accordance with § 41.115(b) shall be retained in the consular files.

(j) *Disposition of supporting documents.* Original supporting documents furnished by the alien shall be returned to the alien for presentation, if necessary, to immigration authorities at the port of entry and a notation to that effect shall be made on the Form OF-156. Duplicates of the documents may be retained at the consular office in the discretion of the consular officer.

(k) *Replacement of erroneously issued visas.* A nonimmigrant visa, once issued and signed may not be amended or altered except as provided in § 41.120(c). A visa erroneously issued in relation to any item appearing in the visa insert shall be cancelled and replaced by a corrected visa. No fee shall be charged for a visa so replaced unless an incorrect fee was originally charged. The procedure prescribed by § 41.126(b) shall be followed except that the word "Corrected" shall be placed on the upper margin of the visa insert in place of the word "Transferred". The procedure described in this paragraph may not be used to include additional persons in the visa. (For regulations regarding the revocation or invalidation of a visa see § 41.134.)

(l) *Olympic Games, Pan American Games or other Regional Games.* Notwithstanding the provisions of paragraph (c) of this section, in the case of an alien who:

(1) Is a participant in the Summer or Winter Olympic Games, the Pan American Games or other Regional Games under the auspices of the International Olympic Committee, held in the United States; and

(2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for reentry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of sections 101(a)(30) and 212(a)(26) of the Immigration and Nationality Act,

a stamp consisting of:

(i) The imprint of the issuing post's rubber stamp seal; and

(ii) The signature of a consular officer affixed on the identity card

shall constitute a multiple entry B-1/B-2 visa valid for the duration of the card, or, in the case of a representative of foreign press, radio, film or other foreign information media, a multiple entry I visa valid for the duration of the card.

(Sec. 101, 64 Stat. 116; 8 U.S.C. 1101; sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(9)(1), 91 Stat. 847)

[Dept. Reg. 108.411, 24 FR 6678, Aug. 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.124, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.125 Revalidation of visas.

(a) *Conditions for revalidation.* A nonimmigrant visa may, in the discretion of the consular officer, be revalidated for the period or periods specified under paragraphs (c) and (d) of this section in the same classification at any visa-issuing office if (1) the alien's nationality is the same, (2) the visa is about to expire or has expired, or has become invalid by reason of having been used for the number of applications for admission specified therein, (3) the application for revalidation is made within one year of the date of expiration of the original visa or any revalidation thereof, and (4) the consular officer is satisfied that the alien is a bona fide nonimmigrant and is otherwise eligible to receive a nonimmigrant visa.

(b) *Waiver of personal appearance.* Except as indicated in paragraph (d) of this section, the consular officer may, in his discretion, waive the personal appearance of an alien who is an applicant for revalidation of his visa.

(c) *Period for which visa may be revalidated.* A nonimmigrant visa issued under the provisions of any paragraph of section 101(a)(15) of the Act may, in the discretion of the consular officer, be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State.

(d) *Revalidation of visas for crewmen—(1) Airmen.* If the requirements of paragraph (a) of this section are met, a nonimmigrant visa issued under the provisions of section 101(a)(15)(D) of the Act to an airman may be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State provided that (i) the application for revalidation is supported by a letter from the employing carrier certifying that the applicant is employed as an airman, or (ii) if the applicant is not employed at the time of application for revalidation, he appears in person in connection with his application and presents satisfactory evidence the he continues to be a bona fide airman.

(2) *Seamen.* If the requirements of paragraph (a) of this section are met, a nonimmigrant visa issued under the provisions of section 101(a)(15)(D) of the Act to a seaman may be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State provided that (i) the application for revalidation is supported by a letter from the employing carrier certifying that the applicant is employed as a seaman and that he is in possession of a valid alien crewman landing permit and identification card (Form I-184) issued by the Immigration and Naturalization Service, or (ii) if the applicant is not employed at the time of application for revalidation, he appears in person in connection with his application and submits satisfactory evidence that he continues to be a bona fide seaman.

(3) *Crewmen in transit.* A nonimmigrant visa issued under the provisions of section 101(a)(15)(C) of the Act to an airman or seaman who is being issued, or is in possession of, an individual D visa, may be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State if the conditions set out in paragraph (a) of this section and in paragraphs (d)(1) and (2) of this section are met.

(e) *Procedure for revalidation.* In revalidating a nonimmigrant visa, the consular officer shall follow the procedure prescribed in § 41.124. An alien seeking revalidation of a nonimmigrant visa shall make application therefor as prescribed in § 41.115. A photograph of the alien shall not be required unless it appears to the consular officer that the alien has not previously submitted a photograph in connection with an application for a visa and that the alien does not come within any of the excepted classes described in § 41.111(c). The visa stamp shall be placed in the alien's passport and all pertinent data contained in the original visa shall be transferred to the revalidated visa. The word "REVALIDATED" shall be inserted on the upper margin of the visa stamp.

(f) *Automatic revalidation of visas in certain cases.* (1) An expired nonimmigrant visa issued pursuant to the provisions of section 101(a)(15) (F) or (J) of the Act, or an expired or unexpired nonimmigrant visa issued pursuant to the provisions of another paragraph of section 101(a)(15) if the nonimmigrant status has been changed by the Immigration and Naturalization Service to that of a nonimmigrant as defined in paragraph (F) or (J), may be considered to be automatically revalidated to the date of application for

readmission to the United States and converted, if necessary, to classification under paragraph (F) or (J), in the case of a nonimmigrant alien who:

(i) Is applying for readmission into the United States after an absence not exceeding 30 days solely in contiguous territory or adjacent islands other than Cuba;

(ii) Has maintained and intends to resume his status under paragraph (F) or (J) in the United States;

(iii) Presents, or is the accompanying spouse or child of an alien who presents, a current Form I-20 (in the case of student) or Form DSP 66 (in the case of an exchange visitor) issued by the school the student has been authorized to attend by the Immigration and Naturalization Service, or by the sponsor of the exchange program in which he has been authorized to participate by the Immigration and Naturalization Service, and endorsed by the issuing school official or program sponsor to indicate the period of initial admission or extension of stay authorized by the Immigration and Naturalization Service;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport; and

(vi) Does not require the authorization of his temporary admission into the United States under section 212(d)(3) of the Act.

(2) An expired nonimmigrant visa issued pursuant to the provisions of any paragraph of section 101(a)(15) of the Act may be considered to be revalidated to the date of application for readmission to the United States and an expired or unexpired nonimmigrant visa issued pursuant to the provisions of any paragraph of section 101(a)(15) of the Act may, if the original nonimmigrant status has been changed by the Immigration and Naturalization Service to another nonimmigrant status, be considered to be revalidated to the date of application for readmission to the United States and converted to that changed status in the case of a nonimmigrant alien who:

(i) Has maintained nonimmigrant status in the United States and is in possession of an Arrival-Departure Card (Form I-94) endorsed by the Immigration and Naturalization Service to show an unexpired period of initial admission or extension of stay;

(ii) Is applying for readmission into the United States after an absence not exceeding 30 days solely in contiguous territory;

(iii) Intends to resume nonimmigrant status in the United States;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport; and

(vi) Does not require the authorization of his temporary admission into the United States under section 212(d)(3) of the Act.

(g) *Revalidation in the United States in certain cases.* The Director of the Visa Office of the Department and such other officers of the Department as he may designate are authorized, in their discretion, to revalidate nonimmigrant visas, including diplomatic visas, for—

(1) Qualified aliens classifiable under the visa symbol C-2 or C-3;

(2) Other qualified aliens who—

(i) Are properly classifiable under subparagraph (A), (E), (G), (H), (I), or (L) of section 101(a)(15) of the Act or under the visa symbols NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7;

(ii) Present appropriate evidence that—

(a) Their period of authorized admission in such status has not expired; and

(b) They are currently maintaining such status; and

(iii) Intend, after a temporary absence, to reenter the United States in such status.

(h) *Fee for revalidation.* The fee for the revalidation of a nonimmigrant visa shall be that prescribed for the issuance of such a visa, if any: *Provided, however,* That

(1) When the visa was issued valid for a lesser number of applications for admission or for a period of validity less than the maximum permitted by reciprocity, it may be revalidated for the remaining number of applications for admission and validity permitted without the payment of an additional fee, and

(2) No fee shall be charged in the case of a visa considered to be automatically revalidated pursuant to the provisions of paragraph (f) of this section.

[Dept. Reg. 108.488, 28 FR 275, Jan. 10, 1963]

EDITORIAL NOTE: For Federal Register citations affecting § 41.125, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.126 Transfer of visas.

(a) *Conditions for transfer.* Upon the request of the bearer a valid nonimmigrant visa shall be transferred from one travel document to a different travel document which is valid for the required period if he is found eligible to receive such a visa, except in a case in which the travel document containing the original visa has been lost or stolen. A visa may be transferred only if the new passport indicates that the alien has the same nationality he had when the visa was issued.

(b) *Procedure for transfer.* Application for the transfer of a nonimmigrant visa from one passport to another shall be made on an appropriate form. The consular officer may, in his discretion, waive the personal appearance of the alien. The issuance of a transferred visa shall be evidenced by placing the visa stamp with all of the original data in the alien's passport. The validity of the transferred visa shall be the same as that of the original visa. The transferred visa shall be valid for the number of applications for admission remaining as of the date of the transfer. The word "Transferred" shall be inserted on the upper margin of the visa stamp.

(c) *Cancellation of visa in old passport.* Upon transfer of a visa to a new travel document the visa issued in the original passport shall be canceled, unless the passport has been surrendered to the issuing authority, except that where the visa is being transferred for only one of several persons included in it, only the name of that person shall be stricken from the visa originally issued.

(d) *Fee for transfer.* No fee shall be charged for the transfer of a valid nonimmigrant visa.

[Dept. Reg. 108.411, 24 FR 6690, Aug. 18, 1959, as amended by Dept. Reg. 108.684, 38 FR 4577, Feb. 10, 1973]

§ 41.127 Crew-list visas.

(a) *Definition.* A crew-list visa is a nonimmigrant visa issued on a manifest of crewmembers of a vessel or aircraft which includes all aliens listed in the manifest unless otherwise stated.

(b) *Application.* (1) A list of all alien crewmen who are serving on board a vessel or aircraft which is proceeding to the United States and who are not in possession of valid individual entry documents shall be submitted, in duplicate, to a consular officer on Immigration and Naturalization Service Form I-418 (Crew List) or such other forms as may be prescribed. In lieu of a manifest on Form I-418, the manifest of alien crewmen serving on board an aircraft may be submitted on the International Civil Aviation Organization (ICAO) manifest, or on Customs Form 7507 (General Declaration) whenever the number of crewmen does not exceed the number which can be listed on the form. In cases of alien seamen serving on vessels, the duplicate copy of Form I-418, shall contain in column (4) the date, city and country of birth of each alien seaman listed who does not have in his possession a valid individual visa or an Immigration and Naturalization Service Form I-551 and, in column (5), the place of issuance and the authority issuing the passport held by such alien seaman. The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(2) The submission of the crew list together with such other information as the consular officer may deem necessary to determine the eligibility of an individual crewman to be included in the crew-list visa shall be considered the formal application for a crew-list visa. No other application form shall be required.

(3) The manifest should list separately, in alphabetical order, those alien crewmen who are to be consid-

because of entry without inspection or lack of required documents.

(d) *Validity.* A nonresident alien Mexican border crossing identification card issued solely or in combination with a B-1/B-2 visitor visa pursuant to the provisions of this section shall be valid until invalidated under the same conditions as provided in § 41.122(e) for the termination of nonimmigrant visas or revoked under the same conditions and procedures as provided in § 41.134 for the revocation of nonimmigrant visas. A nonresident alien Mexican border crossing identification card previously issued by a consular officer in Mexico on Form I-100 or Form I-586 shall be valid until revoked or voided regardless of any expiration date on the card.

(e) *Invalidation or revocation.* A nonresident alien Mexican border crossing identification card issued solely or in combination with a B-1/B-2 visitor visa pursuant to the provisions of paragraph (a) or (b) of this section may be invalidated pursuant to the provisions of § 41.122(e) or revoked pursuant to the provisions of § 41.134. Upon invalidation or revocation of such a card, the consular or immigration officer shall cancel the card by writing or stamping the word "canceled" plainly across the face of the card and indicating the location of the consular or immigration office at which the card was invalidated or revoked.

(f) *Voidance of Mexican border crossing cards issued in Mexico on Form I-186 or Form I-586.* A consular officer in Mexico may declare void, without notice, a nonresident alien Mexican border crossing card previously issued in Mexico on Form I-186 or Form I-586, upon a finding that the holder is ineligible to receive a nonimmigrant visa. The card shall be surrendered immediately upon voidance.

(g) *Replacement.* When a nonresident alien Mexican border crossing identification card issued solely or in combination with a B-1/B-2 visitor visa under the provisions of this section has been lost, mutilated or destroyed, the person to whom such card was issued may apply for a new card under the applicable provisions of this section. A nonresident alien whose border crossing identification card previously issued on Form I-186 or Form I-586 by a consular officer in Mexico has been lost, mutilated or destroyed, may apply for a combined border crossing identification card and B-1/B-2 visitor visa at any consular office in Mexico, provided the alien qualifies under the provisions of paragraph (b) of this section.

(Sec. 101, 66 Stat. 170, 8 U.S.C. 1101; sec. 109(b), 91 Stat. 847)

[Dept. Reg. 108.835, 48 FR 48080, Oct. 20, 1983]

§ 41.129 Nonresident alien Canadian border crossing identification cards.

(a) *Aliens eligible to apply.* Under the conditions prescribed in this section a consular officer assigned to a consular office in Canada may issue a nonresident alien border crossing identification card, as that term is defined in section 101(a)(6) of the Act, to a nonimmigrant alien who satisfactorily establishes that he:

(1) Has been admitted to Canada for permanent residence as a "Landed Immigrant";

(2) Seeks to enter the United States from Canada, or from Mexico if he has visited no countries other than Mexico and the United States since departing Canada, and only as a bona fide temporary visitor for business or pleasure as defined in section 101(a)(15)(B) of the Act for periods of stay not exceeding 6 months; and

(3) Is otherwise eligible to receive a temporary visitor visa or is the beneficiary of a waiver under section 212(d)(3)(A) of the Act of a ground of ineligibility which is valid for multiple applications for admission into the United States and for an indefinite period of time and which contains no restrictions as to extensions of temporary stay or itinerary.

(b) *Application for Canadian border crossing identification cards.* Application for a nonresident alien Canadian border crossing identification card shall be made on Form OF-156, accompanied by evidence of the applicant's "Landed Immigrant" status in Canada; a valid or expired passport or other travel document showing his origin, identity, and nationality, if any, and containing a photograph of the bearer if over the age of 14; and a photograph 1½ inches square if the applicant is over the age of 14. Personal appearance of the applicant may be waived at the discretion of the consular officer.

(c) *Issuance and format of border crossing cards.* A nonresident alien Canadian border crossing identification card shall consist of a stamp placed in the alien's passport or other travel document by a consular officer in Canada. Such stamps shall be numbered serially by each consular office beginning with the number 1 on each July 1, shall be in the format prescribed by the Department, and shall contain the following data:

(1) The post symbol;

(2) The number of the card;

(3) The title and location of the issuing office;

(4) The date of issuance;

(5) The name(s) of the person(s) to whom issued; and

(6) The signature and title of the issuing officer.

(d) *Signature of border crossing identification cards.* The consular officer who issues a nonresident alien Canadian border crossing identification card shall affix his signature to, and indicate his title in, the border crossing card stamp.

(e) *Validity of border crossing identification cards.* A nonresident alien Canadian border crossing identification card issued pursuant to the provisions of this section shall be valid until canceled.

(f) *Cancellation of border crossing identification cards.* (1) A nonresident alien border crossing identification card shall be canceled by a consular officer if information is developed indicating that the holder of such a card is ineligible to receive a nonimmigrant visa or by a District Director of the Immigration and Naturalization Service if he finds that the alien has violated the conditions of his admission into the United States.

(2) In canceling such a card the consular officer shall write or stamp the word "Canceled" plainly across the face of the border crossing card stamp, shall show the location of the consular office concerned and shall follow the procedures set forth in § 41.130.

(3) In canceling such a card the District Director shall write or stamp the word "Canceled" plainly across the face of the border crossing card stamp and shall show the location of the District Office of the Immigration and Naturalization Service concerned.

[Dept. Reg. 108.611, 36 FR 15745, Aug. 18, 1971, as amended by Dept. Reg. 108.719, 42 FR 32536, June 27, 1977]

REFUSAL AND REVOCATION OF NONIMMIGRANT VISAS

§ 41.130 Procedure in refusing individual visas.

(a) *Refusal procedure.* If a consular officer knows or has reason to believe that an alien is ineligible to receive a visa on grounds of ineligibility which cannot be overcome by the presentation of additional evidence, Form OF-156, if practicable, shall be executed before the refusal is recorded. If the alien fails to execute a visa application after being informed of a ground of ineligibility to receive a nonimmigrant visa, the visa shall be considered refused. The consular officer shall then insert the pertinent data on Form OF-156 with the reasons for the refusal and the form shall be filed in the consular office. In all cases the applicant shall be informed of the provision of law, or regulations issued thereunder, upon which the refusal is based. When refusing a nonimmigrant visa the consular officer may return the original of all supporting documents furnished by the alien with his application. The duplicate of each document upon which the refusal is based and the duplicate of each document which indicates a possible ground of ineligibility to receive a visa, whether or not related to the ground of refusal, shall be retained at the consular office with the memorandum of refusal. Duplicates of other documents may be returned to the alien in the consular officer's discretion.

(b) *Review of refusals at consular offices.* If the grounds of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the provi-

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SURVEY OF TRANSPOLAR STOPOVER VISITOR MARKET

Executive Summary

Commissioned by: Anchorage Convention & Visitors Bureau

Conducted by: Alaska Pacific University

June 1983

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1. INTRODUCTION

The Anchorage economy would benefit substantially if the gap between summer and winter capacity utilization could be narrowed by increasing off-season business. One potential market consists of international travelers who fly through Anchorage en route to other final destinations and who are able to allocate several days to a stopover "vacation" in Anchorage. Thus, ACVB commissioned Alaska Pacific University to survey passengers during their "one hour" stops at the Anchorage airport international terminal. The fundamental purpose of this study was to perform exploratory market research to determine if this untapped market potential actually exists, and to obtain basic data about its characteristics.

As part of the contract, the consultants have provided ACVB with a computer printout of data tables as well as a computer tape of data and programs. The most significant information is summarized in the tables of this report and briefly discussed here.

The main conclusions are summarized below:

- There is a market!

  - 84% indicated an interest in visiting Anchorage
  - 80% vacation at least once a year between September and May
  - 62% like winter oriented vacations
  - 50% could have planned a stop THIS trip
  - half would stop for 4 to 7 days

  and

  - 76% have landed in Anchorage before

- "Alaskan" activities are the most significant attraction for those interested in visiting Anchorage

  - 70% would like to visit a glacier/mountain
  - 40% would like to take a dog sled ride
  - 1/3 are interested in each of the following: downhill skiing, city sightseeing, and ice fishing.

- How to influence passengers interested in visiting Anchorage:

  - Highly important factors in deciding:
    75% selected uniqueness of Alaska
    55% selected cost of food and lodging
    53% selected desirability of activities
  - Only 1/4 of the Asian, and 1/2 of the non-Asian passengers knew that airlines allowed stopovers.
  - Prior commitments and/or no vacation time were the main reasons why passengers could not have stopped this trip.

Based on this research, the consultant team concludes that a large, virtually untapped market exists. While developing a marketing strategy was not part of this assignment, we believe that travelers can be efficiently reached while they are "captive" in the terminal during the "one-hour" stopovers. We also believe that the large number of of "repeat" passengers - 86% of business travelers - represents the most promising market for these increased efforts.

Organization of the Report

The balance of this report briefly explains the project methodology (section 2) and then presents a summary of the significant results in a series of tables:

- Table 3.1 focuses on evidence for market feasibility by providing the percentages of the total sample, and of several major sub-samples, that had landed in Anchorage before, understood stopover privileges, liked and took winter-oriented vacations, and had an interest in visiting Anchorage.

- Tables 4.1 through 4.4 are based only on the 84% of the passengers who indicated they <u>are</u> interested in visiting Anchorage. The tables indicate what these potential visitors <u>want</u> to do on a stopover, by providing the percentage of each group that is interested in each activity.

- Tables 5.1 through 5.8 are based on the same 84% of the passengers who indicated they are interested in visiting Anchorage. The tables provide data useful in developing strategies for increasing the number of stopovers by indicating the reasons why a stop could not be made, and the importance of various factors in deciding on an Anchorage visit.

- Table 6.1 summarizes responses for those questions not included in the other tables, including demographic information on the sample. Tables 6.2 and 6.3 are the English and Japanese versions of the questionnaire.

2. METHODOLOGY

This section briefly describes the steps and procedures that were followed in conducting this survey.*

A stratified sample of 707 passengers was gathered between January 28 and May 13, 1983, with additional pretests during October and December of 1982. Because of language difficulties during the pretest, an even split of English and Japanese questionnaires was used for the main sample. The survey was conducted at the international terminal of the Anchorage airport by asking passengers in the hallways, seating areas, and customs area to respond to questions read from a survey form. To ensure that the questions were properly understood and answered, passengers did not complete the questionnaire on their own, although they could read the questionnaire from the English or Japanese versions of the form. The sample was designed so that all the days of the week, all flights, and all months during the survey period were sampled. English and Japanese speaking surveyors of various ages and both sexes were used to eliminate a potential source of bias. Although a completely random sample could not be achieved, no serious bias seems to have occured.

The survey forms were coded and keypunched on a continuous basis so that interim checks on the survey procedures and results could be conducted. Coded results were analyzed using the Statistical Package for the Social Sciences (SPSS) and the resulting 1800 pages of tables were winnowed down into those that are presented in this Executive Summary. The complete computer runs were annotated and delivered to the Anchorage Convention and Visitors Bureau, along with a computer tape of the data and the programs so that further analysis can be conducted by ACVB.

* Any questions regarding specific statistical procedures used in this study should be addressed to Dr. Ted Eschenbach, School of Engineering, University of Alaska, Anchorage - 3221 Providence Drive, Anchorage, Alaska 99508 or call (907) 786-1862.

In interpreting the percentages presented here, the following guidelines should be used:

If the sample had been totally random, the overall results would be accurate within plus or minus 3%. Due to the stratification and selection process, the sample was not totally random and thus the results are accurate to approximately plus or minus 5%. In comparing results, differences of less than 5% cannot be assumed to be significant. This rough estimate should be increased for smaller sub-groups; for example, 10% for sub-groups of 100.

While the stratification process produced sub-groups large enough to examine as sub-groups for meaningful results, the overall percentages are sometimes affected by differences between the sub-groups. Thus, some tables include a "weighted" column in addition to the "all" column This weighted column adjusts the sample based on a sex/race stratification.

Table Interpretation

All tables in this report are constructed by combining individual sub-sample columns into master tables. Each column is individually tied to the row labels without reference to any other column. For example, Table 3.1 actually consists of 12 "individual" tables. As indicated by the column headings, many of these "individual" columns can also be usefully compared. Unless otherwise noted, table entries in a column indicate what percentage of the column's sub-sample met the row label characteristic or condition. The actual number of persons in each sub-sample is given in the bottom row. Using Table 3.1 as an example, the "Asian Male" column can be interpreted as showing that for this sub-group:

- 83% had landed in Anchorage before with an average of 7.4 landings.
- 27% knew airlines allowed stopovers and 48% could have planned a stopover this trip.
- There were 277 Asian males in the sub-sample.

3. THERE IS A MARKET

Table 3.1

INDICATIONS OF MARKET FEASIBILITY

		ALL	WEIGHTED ALL	WHY TRAVEL? BUSINESS	BUSINESS & PLEASURE	VACATION	BUSINESS & PLEASURE ADDED DAYS	ASIAN MALE	ASIAN FEMALE	NON-ASIAN MALE	NON-ASIAN FEMALE	SPEAKS ENGLISH NO	SPEAKS ENGLISH YES
Landed in Anchorage before	Yes (%)	76	77	86	68	55	66	83	68	75	64	62	79
	Mean #	5.4	5.6	7.8	3.1	1.3	2.8	7.4	3.0	5.6	2.1	3.2	6.0
	Median #	2.0	2.0	4.0	1.0	1.0	1.0	4.0	1.0	2.0	1.0	1.0	2.0
Knew airlines allow stopovers		39	33	39	44	34	48	27	26	50	52	23	42
Could have planned a stopover		51	47	53	52	44	47	48	38	54	55	35	54
Used stopovers on other routes		38	31	38	50	29	57	25	21	52	52	12	43
Frequency of September to May vacations	several each yr	37	41	31	33	51	27	40	55	27	32	43	36
	once a year	43	41	46	50	32	49	43	35	46	43	36	44
	every 2-5 yrs	3	2	3	4	4	6	1	0	6	7	1	4
	Never	17	16	20	13	13	18	16	10	21	18	20	17
Like winter oriented vacations		62	62	62	64	62	67	58	63	71	54	63	62
Would like to visit Anchorage		84	83	84	88	81	87	84	80	84	84	74	86
Potential length of visit	1-3 days	30	29	34	35	17	39	25	28	37	25	19	32
	4-7 days	52	52	52	46	55	44	58	47	47	54	58	50
	8-14 days	13	14	12	12	18	6	13	17	11	15	12	14
Have visited Anchorage during the last year		6	5	6	6	5	8	6	1	6	8	2	7
Sub-sample size		707	707	425	100	176	63	277	81	226	104	123	584

4. ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE

Table 4.1

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE

(By Why Traveling/Off-season Vacation Pattern/"Special" Groups)

	ALL-WEIGHTED	ALL	WHY ARE YOU TRAVELING? BUSINESS	BUSINESS & PLEASURE	VACATION	BUSINESS & PLEASURE WHO ADDED DAYS	HOW OFTEN DO YOU VACATION BETWEEN SEPTEMBER & MAY? SEVERAL TIMES EACH YEAR	ONCE A YR	ONCE EVERY 2-5 YRS	NEVER	COULD HAVE PLANNED A STOP	FIRST TIME IN U.S.	LANDED IN ANCHORAGE BEFORE
Visit glacier/ mountain	72	74	75	72	72	75	76	75	76	66	77	67	76
Dog sled ride	38	41	40	46	41	46	38	41	48	45	43	43	40
Downhill skiing	32	34	37	37	26	38	31	37	57	29	35	32	34
City sightseeing	31	34	33	40	33	42	28	36	57	33	36	38	33
Ice fishing	30	34	35	44	25	40	32	37	24	35	41	32	36
Snowmobiling	20	23	26	20	18	18	19	25	43	16	26	17	23
Cross-country skiing	20	27	28	25	27	31	23	29	71	21	28	23	25
Museum visit	19	24	20	34	27	40	21	25	43	20	24	20	23
Visit gold mine	17	25	25	28	22	38	24	24	52	22	27	18	24
Hot air ballooning	16	18	17	20	22	20	17	19	29	19	18	18	18
Concert, theatre, or ballet	12	15	11	20	24	24	12	18	38	10	16	17	13
Shopping	11	14	13	14	15	15	13	14	24	14	16	13	13
Sub-sample size	586	586	353	89	143	55	206	252	21	100	319	176	433

Table 4.2

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE (By Country)

	ALL	JAPAN	BRITAIN	GERMANY	FRANCE	SCANDINAVIA	NETHERLANDS BELGIUM	OTHER EUROPE	N. AMERICA	AUSTRALIA	OTHER
Visit glacier/ mountain	74	73	77	79	77	58	64	69	92	86	86
Dog sled ride	41	38	51	32	41	39	59	41	58	67	27
Downhill skiing	34	30	36	36	47	39	36	31	42	52	27
City sightseeing	34	26	43	53	32	33	46	38	38	43	68
Ice fishing	34	32	21	32	44	42	27	52	38	57	27
Snowmobiling	23	16	45	21	29	19	32	31	29	38	32
Cross-country skiing	27	14	38	38	47	67	32	41	42	38	18
Museum visit	24	16	26	23	24	36	46	35	33	62	27
Visit gold mine	25	10	53	28	44	44	46	28	38	43	32
Hot air ballooning	18	13	28	15	29	22	27	14	42	29	23
Concert, theatre, or ballet	15	8	23	17	18	28	32	14	29	33	27
Shopping	14	9	17	19	12	17	9	17	25	38	18
Sub-sample size	586	298	47	47	34	36	22	29	24	21	22

Table 4.3

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE (By Sex, Race, Age)

		ASIAN		NON-ASIAN		AGE				
	ALL	MALE	FEMALE	MALE	FEMALE	1-20	21-30	31-45	46-60	61- & UP
Visit glacier/ mountain	74	77	60	71	82	38	72	77	78	61
Dog sled ride	41	35	37	40	63	50	39	46	36	13
Downhill skiing	34	31	26	44	30	25	42	40	23	4
City sightseeing	34	23	35	40	48	33	20	34	43	52
Ice fishing	34	34	14	41	35	8	27	38	39	30
Snowmobiling	23	17	15	28	30	4	23	26	20	26
Cross-country skiing	27	11	11	43	48	25	30	27	26	22
Museum visit	24	11	22	30	47	8	12	23	34	52
Visit gold mine	25	11	6	34	56	4	15	27	33	26
Hot air ballooning	18	8	20	25	33	25	18	19	16	17
Concert, theatre, or ballet	15	4	14	20	35	8	13	12	23	17
Shopping	14	8	9	12	36	25	8	12	20	9
Sub-sample size	586	228	65	188	87	24	128	266	143	23

Table 4.4

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE (By Profession)

	ALL	PROFESSIONAL TECHNICAL	MANAGER	SALES	SKILLED WORKER	TEACHER PROFESSOR	STUDENT	CLERICAL	HOUSEWIFE	ARTIST	OTHER
Visit glacier/ mountain	74	79	64	81	70	85	46	75	73	70	84
Dog sled ride	41	41	40	40	52	55	41	32	48	57	21
Downhill skiing	34	40	38	41	22	35	35	29	15	26	16
City sightseeing	34	38	29	29	22	65	22	18	45	39	47
Ice fishing	34	41	32	38	35	15	14	25	30	52	32
Snowmobiling	23	26	18	26	22	40	16	18	18	22	21
Cross-country skiing	27	30	32	27	22	30	24	14	25	39	36
Museum visit	24	27	19	16	17	50	11	5	40	44	42
Visit gold mine	25	28	31	29	26	35	5	3	38	26	21
Hot air ballooning	18	18	15	16	22	30	30	2	33	26	21
Concert, theatre, or ballet	15	15	14	11	17	35	14	6	30	17	16
Shopping	14	15	13	11	4	10	14	8	13	26	37
Sub-sample size	586	214	72	73	23	20	37	63	40	23	19

5. DECISION FACTORS AND RESTRICTIONS

Table 5.1

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE

(By Why Traveling/Off-season Vacation Pattern/"Special" Groups)

	ALL	WHY ARE YOU TRAVELING?			HOW OFTEN DO YOU VACATION BETWEEN SEPTEMBER & MAY				COULD HAVE PLANNED A STOP	NEVER IN U.S. BEFORE	LANDED IN ANCHORAGE BEFORE
		BUSINESS	BUSINESS & PLEASURE	VACATION	SEVERAL TIMES EA YR	ONCE A YR	EVERY 2-5 YRS	NEVER			
Uniqueness of Alaska	75	78	73	70	67	81	91	76	78	72	76
Cost of food & lodging	55	53	58	58	55	54	52	59	55	59	54
Desirability of activities	53	51	57	57	48	58	76	50	55	44	53
Chance to break up trip	44	46	41	39	38	46	57	42	46	38	44
Weather & temperature	36	32	43	42	33	36	29	44	36	36	37
Chance to stop in the U.S.	29	27	31	33	24	30	52	30	28	32	27
Sub-sample size	573	436	84	142	202	246	21	97	315	171	421

Table 5.2

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE

(By Country)

	ALL	JAPAN	BRITAIN	GERMANY	FRANCE	SCANDINAVIA	BELGIUM	OTHER EUROPE	NORTH AMERICA	AUSTRALIA	OTHER
Uniqueness of Alaska	75	69	81	78	74	92	81	79	87	95	81
Cost of food & lodging	55	58	57	41	47	53	43	46	48	75	57
Desirability of activities	53	36	75	72	62	81	76	61	74	90	67
Chance to break up trip	44	32	49	59	59	64	29	75	48	65	57
Weather & temperature	36	34	32	37	32	42	29	39	39	35	62
Chance to stop in the U.S.	29	21	43	24	29	69	19	46	4	40	48
Sub-sample size	573	292	47	46	34	36	21	28	23	20	21

Table 5.3

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE

(By Sex, Race, & Age)

	ALL	NON-ASIAN				AGE				
		ASIAN MALE	ASIAN FEMALE	NON-ASIAN MALE	NON-ASIAN FEMALE	1-20	21-30	31-45	46-60	61 & UP
Uniqueness of Alaska	75	71	61	81	85	39	65	81	80	70
Cost of food & lodging	55	57	57	48	59	61	56	52	55	70
Desirability of activities	53	32	44	72	77	39	51	53	56	74
Chance to break up trip	44	30	24	58	64	30	26	47	52	65
Weather & temperature	36	32	40	39	38	35	31	33	41	65
Chance to stop in the U.S.	29	21	15	35	41	35	28	28	28	48
Sub-sample size	573	224	62	184	85	23	127	257	141	23

Table 5.4

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE
(By Profession)

	ALL	PROFESSIONAL TECHNICAL	MANAGER	SALES	SKILLED WORKER	TEACHER PROFESSOR	STUDENT	CLERICAL	HOUSEWIFE	ARTIST	OTHER
Uniqueness of Alaska	75	78	80	83	64	95	50	61	85	81	63
Cost of food & lodging	55	53	42	53	46	75	58	60	69	52	68
Desirability of activities	53	58	59	51	64	80	42	23	54	57	63
Chance to break up trip	44	51	54	42	41	45	28	16	44	48	53
Weather & temperature	36	37	33	38	32	40	39	19	44	48	58
Chance to stop in the U.S.	29	32	36	17	46	30	25	11	39	33	37
Sub-sample size	573	211	69	72	22	20	36	62	39	21	19

Table 5.5

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Why Traveling/ Off-season Vacation Pattern)

		WHY ARE YOU TRAVELING?			HOW OFTEN DO YOU VACATION BETWEEN SEPT & MAY			
	ALL	BUSINESS	BUSINESS & PLEASURE	VACATION	SEVERAL TIMES EA YR	ONCE A YR	EVERY 2-5 YRS	NEVER
Prior Committments	34	40	33	23	28	40	25	40
No Vacation Time	25	29	31	18	25	28	38	23
Other	21	14	19	36	26	17	12	19
Company Policy	13	15	8	3	12	11	13	9
Traveling with a group	7	1	8	20	9	5	12	8
Sub-sample size	260	146	36	66	91	101	8	47

Table 5.6

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Country)

	ALL	JAPAN	BRITAIN	GERMANY	FRANCE	SCAND'NAVIA	NETHERLANDS BELGIUM	OTHER EUROPE	N. AMERICA	AUSTRALIA	OTHER
Prior Committments	34	24	46	63	21	50	67	53	30	50	36
No Vacation Time	25	25	29	25	50	33	0	27	30	25	18
Other	21	29	4	6	14	8	17	13	20	0	27
Company Policy	13	12	21	6	14	0	8	0	10	25	9
Traveling with a group	7	10	0	0	0	8	8	7	10	0	9
Sub-sample size	260	128	24	16	14	12	12	15	10	4	11

Table 5.7

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Sex, Race, & Age)

	ALL	ASIAN		NON-ASIAN		AGE				
		MALE	FEMALE	MALE	FEMALE	1-20	21-30	31-45	46-60	61 & UP
Prior Committments	34	26	18	52	37	20	27	31	52	67
No Vacation Time	25	30	15	22	34	13	28	30	22	22
Other	21	26	39	10	12	53	22	24	8	0
Company Policy	13	14	3	14	6	0	12	13	8	0
Traveling with a group	7	4	24	2	11	13	11	3	10	11
Sub-sample size	260	96	33	81	35	15	64	108	50	9

Table 5.8

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Profession)

	ALL	PROF. TECHNICAL	MANAGER	SALES	SKILLED WORKER	TEACHER PROFESSOR	STUDENT	CLERICAL	HOUSEWIFE	ARTIST	OTHER
Prior Committments	34	34	37	50	57	25	25	29	33	29	14
No Vacation Time	25	31	33	21	14	50	13	21	17	43	14
Other	21	13	17	18	14	12	29	39	28	21	43
Company Policy	13	19	10	7	14	0	0	4	6	7	29
Traveling with a group	7	3	3	4	0	13	33	7	17	0	0
Sub-sample size	260	77	30	28	14	8	24	28	18	14	7

6. ADDITIONAL TABULATIONS AND QUESTIONNAIRES

Figure 6.1

TABULATIONS OF QUESTIONS NOT INCLUDED IN PREVIOUS TABLES

1. Airline and flight number?

JAL	39%
Lufthansa	13%
AirFrance	13%
SAS	11%
British Airways	9%
Korean Airlines	7%
KLM	5%
Sabena	4%

2-6. See other tables

7. Are you traveling alone? Yes 54% No 46%

If no, number in group: average number= 12.4

Breakdown:

2-4 members	62%
5-20 members	18%
12-50 members	15%
50+ members	5%

Type of Group:

51%	Business
28%	Family/friends
21%	Packaged tour

8. Why are you traveling?

61%	Business
14%	Business & Pleasure
	Did you add days to your trip for pleasure activities? Yes 91% No 9%
25%	Vacation

9-11. See other tables.

Figure 6.1 (continued)

12. How far in advance did you plan this trip?

Days	Percentage Responding
1-7	17%
8-14	11%
15-30	26%
31-90	24%
91+	21%

13. How did you book/arrange this trip?

66%	Travel agent or tour operator	22%	Secretary or Office
9%	Airline office	3%	Other

14. Where do you live?

51%	Japan	6%	Other European
9%	British Isles	4%	North America
8%	West Germany	3%	Australia/New Zealand
6%	Scandinavia	1%	Other Orient
5%	France	3%	Other
4%	Belgium/Netherlands		

15. Which languages do you speak?

83%	English	54%	Japanese
29%	French	2%	Korean
32%	German	3%	Other Asian
7%	Italian	21%	Other European

Figure 6.1 (continued)

16. What is your job or profession?

Professional/Technical	37%
Sales	13%
Manager/Administrative	13%
Clerical	10%
Housewife	7%
Student	6%
Skilled Worker	4%
Artist	3%
Teacher/Professor	3%
Other	4%

17. Please, how old are you?

10-20	4%
21-30	22%
31-45	45%
46-60	24%
61+	5%

ANCHORAGE STOPOVERS ONLY

18. how many times have you stopped over in Anchorage?

1% Spring 1% Summer

1% Fall 2% Winter

19. Why did you choose to stop over then?

Business	29%
Sightseeing	21%
Outdoor Activities	4%
Visit Friends	4%
Other	42%

Figure 6.1 (continued)

SURVEY CONTROL BLOCK

Male 73% Female 27%

Racial Group
47% White
52% Oriental
.1% Indian
.7% Black
.4% Other

Where interviewed?
79% Seating Area
18% Hallway
3% Customs area

Day of the Week	% interviewed	Date	% interviewed
Sunday	9%	1/28-1/31	26%
Monday	11%	2/16-2/18	22%
Tuesday	14%	3/8-3/13	18%
Wednesday	8%	4/1-4/4	14%
Thursday	9%	4/21-4/24	14%
Friday	39%	5/10-5/13	16%
Saturday	10%		

Table 6.2

Stopover Questionnaire

ENGLISH VERSION

ALASKA PACIFIC UNIVERSITY

for

THE ANCHORAGE CONVENTION &
VISITORS BUREAU

1. Airline and flight number? _____

2. How many times have you landed in Anchorage before? _____

   If more than 3, how often in the last year? _____

   Have you visited Anchorage on any of these trips?

   Yes ____ No _____

3. Did you know airlines allow you to stop over here? Yes ____ No ____

4. Could you have planned a stop, if you had wanted to? Yes ____ No ___

   If not, Why?
   _____ Company Policy
   _____ Traveling with a group
   _____ No vacation time to use for such a stop
   _____ Prior committments/schedule too tight
   _____ Other (please note)

   _____

5. Have you used stopover privileges on other routes? Yes ____ No ____

6. Have you visited the United States before? Yes ____ No ____

7. Are you traveling alone? Yes ____ No ____

   If no, number in group:_____ Type of Group:

   ____Business (corporate) group
   ____Family/friends
   ____Packaged tour group

8. Why are you traveling? _____ Business
   _____ Business & Pleasure
   Did you add days to your trip for pleasure activities? Yes ___ No ____
   _____ Vacation

9. How often do you vacation during the months September to May? (not including June, July, or August)

   ____Several times each year
   ____Once a year
   ____Every other year
   ____Once in five years
   ____Never
   ____

10. Do you like winter oriented vacations? Yes ____ No ___

FOLD

11. If you had time, would you be interested in visiting Anchorage? Yes ____ No ____

    If yes, which activities would interest you? Check all that apply:

    ____ City sightseeing
    ____ Shopping
    ____ Visit to a glacier/mountain
    ____ Hot air ballooning
    ____ Visit to a gold mine
    ____ Concert, theatre, or ballet
    ____ Museum visit
    ____ Ice fishing
    ____ Dog sled ride
    ____ Snowmobiling
    ____ Downhill skiing
    ____ Cross country skiing
    ____

    In deciding, how important would the following be?

	Importance	
	High	Low
Cost of Food & lodging	____	____
Chance to break up trip	____	____
Chance to stop in U.S.	____	____
Desirability of activities	____	____
Uniqueness of Alaska	____	____
Weather & temperature	____	____

    For how long would you stop over? _____

12. How far in advance did you plan this trip? _____

13. How did you book/arrange this trip?

    ____ Travel agent or tour operator
    ____ Airline office
    ____ Secretary or Office
    ____ Other

14. Where do you live? _____ (city) _____ (country)

15. Which languages do you speak?

    ____ English
    ____ French
    ____ German
    ____ Italian
    ____ Japanese
    ____ Korean
    ____ Other Asian
    ____ Other European

16. What is your job or profession? _____

17. Please, how old are you? _____

ANCHORAGE STOPOVERS ONLY

18. How many times have you stopped over in Anchorage?

____ Spring ____ Summer

____ Fall ____ Winter

19. Why did you choose to stop over then?

_____

SURVEY CONTROL BLOCK

Male ____ Female ____ How many helped? ____

Racial Group
____ White
____ Oriental
____ Indian
____ Black
____ Other

Where interviewed?
____ Seating area
____ Hallway
____ Customs area

Time of day _____ Day of the Week _____ Date _____

Table 6.3

ストップオーバー（一時滞在）　質問書

アンカレッジ観光局ではアンカレッジにてストップオーバーされる皆様に簡単な質問書を用意しお答えいただいております。皆様のご協力をお願い申し上げます。

1．ご利用の航空会社およびその便名：＿＿＿＿＿＿航空、＿＿＿＿＿便。

2．以前に、数時間のトランジット滞在も含めて、何回アンカレッジにて搭機されましたか。＿＿＿回。3回以上とお答の方、昨年は何回お来しになりましたか。＿＿＿回。
それらの旅行でアンカレッジに（一泊以上）滞在されましたか。
はい＿＿＿　いいえ＿＿＿

3．航空会社がここでのストップオーバー（一時滞在）を許しているのをご存知でしたか。
はい＿＿＿　いいえ＿＿＿

4．もしあなた自身が希望されれば、ここに滞在できたとお考えになりますか。
はい＿＿＿　いいえ＿＿＿

なぜ（いいえ）なのでしょうか。＿会社の規則だから
＿グループで旅行中だから
＿一時滞在にあてるような休暇時間がないため
＿事前に予定が確定／余裕のないスケジュール
＿その他＿＿＿＿＿＿＿＿＿＿＿＿＿＿

5．他のルート（航空路）でストップオーバーの特権・特典を使用されたことがありますか。
はい＿＿＿　いいえ＿＿＿

6．以前にアメリカ合衆国を訪問されたことがありますか。
はい＿＿＿　いいえ＿＿＿

7．おひとりでご旅行中ですか。　はい＿＿＿　いいえ＿＿＿
おひとりでなければ何名のグループですか。＿＿＿名。
グループの種類：＿＿＿ビジネス（会社関係）のグループ
＿＿＿家族・友人
＿＿＿パッケージツアー　グループ

8．旅行目的は何でしょうか。＿＿＿商用
＿＿＿商用兼観光、観光の為に特に時間をさきますか。
はい＿＿＿　いいえ＿＿＿
＿＿＿休暇／観光

9．9月から翌年5月までの間で、どれ程休暇がとれますか。
数回
一回
二年に一回
五年に一回
なし

10．冬に組む休暇はお好きですか。　はい＿＿＿　いいえ＿＿＿

11．もし時間があればアンカレッジを訪ずれてみたい、とお考えですか，はい___いいえ_____
はいとお答えの方、どの様なことに興味をお持ちでしょうか。

___市内観光
___ショッピング
___氷河／峡谷ツアー
___熱気球乗り（ホットエアー　バルーン）
___金鉱探訪
___コンサート、映画、バレー
___博物館
___アイス　フィッシング
___犬ソリ乗り
___スノーモービル
___ダウンヒル　スキー
___クロスカントリー　スキー

決定要素として、次の事項はどの程度重要でしょうか。

	重要性	
	高	低
食事と宿泊料金	___	___
旅行中の時間（ストップオーバー）の機会	___	___
アメリカに入国するかの機会	___	___
アラスカでの活動の好み	___	___
アラスカのユニークさ	___	___
気候および気温	___	___

どの程度の期間滞在したいとお考えですか，_____日間。

12．今回のご旅行は、どれくらい以前からご計画でしたか，_____

13．どのように予約／手配なさいましたか。

_____旅行代理店あるいは旅行業者　___航空会社あるいは事務所を通じて
_____直接会社から　___その他

14．どこにお住いですか．_____市／区_____州／府／道／県

15．この質問をお答えください．

英　語　　日本語
フランス語　　韓国語
中国語　　その他アジア
イタリア語　　その他ヨーロッパ

16．あなたのご専門あるいはご職業は何ですか，_____

17．最後に、あなたの年齢をお聞かせ下さい，_____

ご協力ありがとうございました。

アンカレッジでストップオーバーされるあるいはされた皆様

18．何回アンカレッジでストップオーバーされましたか，___春　___夏
___秋　___冬

19．なぜストップオーバーすることになさいましたか。

SURVEY CONTROL BLOCK

Male ____.　Female ____　　How many helped? ____

Racial Group　___White　___Oriental　___Indian　___Black　___Other

Where interviewed?　___Seating area　___Hallway　___Customs area

Time of day _____　Day of the Week _____　Date _____

Alaska State Legislature
House of Representatives

P.O. BOX 110623
ANCHORAGE, ALASKA 99511
(907) 346-1986

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE STEVEN RIEGER
DISTRICT 8, SEAT B

March 13, 1985

VISA WAIVERS FOR CERTAIN VISITORS

What are the current guidelines for nonimmigrant visitors in this country?

Current law requires almost all nonimmigrant visitors to this country to have a valid nonimmigrant visa before being admitted into the United States -- that is, most nonimmigrant visitors must obtain a visa in their home country before beginning their trip. The present process of applying for a visa is time consuming and involves considerable pre-planning. (For more detail, please see federal regulations.)

What is a "visa waiver"?

A visa waiver, as defined in S. 529, is special permission to a nonimmigrant visitor from any eligible foreign country to remain in the United States for up to 90 days without having obtained the customary nonimmigrant visa, subject to the provisions of Section 213 of S. 529.

What is S. 529?

S. 529, the Immigration Reform and Control Act of 1983, was a bill introduced in the United States Senate by Senator Alan K. Simpson of Wyoming. Different versions of the bill passed the U.S. Senate and the U.S. House of Representatives, but the bill ultimately died in Conference Committee when Conferees became bogged down in details of the bill. The visa waiver portion of the bill was never controversial and had broad support in both houses.

S. 529 is similar to H.R. 1510 by Representative Romano L. Mazzoli. The legislation is often cited as the Simpson-Mazzoli bill.

(For more information, please see "Immigration Reform Bill Dies As Compromise Efforts Fail". Congressional Quarterly. October 13, 1984. p. 2623.)

[redacted]

— Backup

What was Section 213 of S. 529?

Section 213 was the section of S. 529 which outlined the pilot visa waiver program. (Please see reprint of this section of the bill from the Congressional Record.)

Who could have received a visa waiver under the pilot program?

S. 529 would have allowed the Secretary of State and the Attorney General, acting in conjunction, to establish a pilot program to grant visa waivers to aliens who

(1) are visiting in the United States for no more than 90 days;

(2) are nationals of countries which extend reciprocal privileges to U.S. citizens and which are designated as pilot countries under the visa waiver program;

(3) complete a form requesting a visa waiver and execute a waiver of repeal and review;

(4) have round trip, nonrefundable, nontransferable, open-dated transportation tickets with eligible carriers; and

(5) have been determined not to represent a threat to the welfare, safety or security of the United States.

What were the other provisions of Section 213?

This section of the bill also required

(1) establishment of an automated monitoring system for nonimmigrant visitors who receive visa waivers;

(2) designation of countries to participate in the pilot program;

(3) establishment and enforcement of guidelines regarding acceptable standards of compliance of visitors who receive visa waivers; and

(4) establishment of agreements with foreign carriers to allow patrons of their services to participate in the visa waiver program.

Who in Alaska supports the creation of a visa waiver program?

The Alaska Visitors' Association, the Anchorage Convention and Visitors' Bureau and the state's Division of Tourism support creation of a visa waiver program.

What benefits would a visa waiver program offer to Alaska?

A visa waiver program would help the state to gain access to the 1.5 million travellers who annually transit the state. A study by the Anchorage Convention and Visitors' Bureau showed that among those passengers interviewed, all of whom were passing through the state during transpolar flights, 83% were interested

in visiting Alaska. Subsequent questions revealed that one main obstacle to such a stopover was the requirement of a nonimmigrant visa.

What are the prospects for passage of a bill creating a visa waiver program?

According to informed sources in Washington, the visa waiver proposal has broad support from the tourist industry and other interest groups, from both Houses of Congress, and from the Reagan Administration. With such interest, chances for passage of a bill which creates a visa waiver program similar to that outlined in Section 213 of S. 529 are very good.

What does HJR 20 do to help?

One representative of the tourist industry who was involved in the effort to gain passage of this specific provision in the Senate said that the main obstacle to passage of the visa waiver program this year was the low level of awareness among the general public. Strong vocal support could get a bill like this through the Congress.

HJR 20 is an opportunity for the legislature to make a strong statement of support for the creation of a visa waiver program, and to broaden public awareness of the issue and the program's potential benefits to Alaskans.

/wtl

OBJECTIVES AND PERFORMANCE MEASURES	PRIOR YEAR FY 84		CURRENT YEAR PLAN FY 85	BUDGET YEAR FY 86			
				AGENCY			GOVERNOR'S BUDGET
	PLAN	ACTUAL		ADJUSTED BASE	INCREMENT/ DECREMENT	REQUEST	
5. Number of consumer and travel trade shows serviced.	13	13	13	13		13	
Number of qualified inquiries generated.	11.0	11.2	14.0	14.0		14.0	
6. Visitor industry research project completed.	1	2	3	3		3	
7. Number of matching grants awarded.	58	79	74	49	25	74	
8. The number of nonresident visitors to Alaska in 1986.	**	687.7	725.8	762.3	7.1	769.4	
9. The number of full-time equivalent jobs attributable to nonresident visitation in 1986.	**	9.8	10.4	10.9	.1	11.0	
10. Dollar value of in-State sales to nonresident visitors in 1986.	**	$613,500.0	$683,700.0	$754,900.0	$6,000.0	$760,900.0	

* Due to depletion of FY '84 brochure supplies, 112.9, FY '84 inquiries were held for fulfillment with 1985 brochures.

** No meaningful figure was established for this year as a study was in progress to establish a valid data base.

B4 BRU PERFORMANCE PLAN

AGENCY Commerce & Economic Development

PROGRAM Economic Development

BRU Tourism

PAGE 2 OF 2

REVISED DATE

FY 86

1970

(6/84)-b4

Testimony for: House Labor & Commerce Committee
in support of HJR20

Chairman: Mike Navarre, members of the Labor & Commerce Committee

My name is Reyn Bowman. I am president of the Anchorage Convention & Visitors Bureau. I apologize for not being able to present this testimony in person today due to a Board of Directors meeting.

The ACVB is Anchorage's way to attract and serve visitors. We are a non-profit vehicle for public/private cooperation combining the resources of 600 members with half of the visitor paid bed tax.

ACVB is also pleased along with the AVA trade association and 124 other partners to be a part of statewide cooperative marketing with the Alaska Division of Tourism.

For more than two decades Alaska has been a fuel stop on the trans-polar air route between Europe and Asia. This year more than 1.3 million passengers will transit the route.

In 1983, ACVB conducted the first research to define the potential of stopover visitors. The survey showed tremendous market potential for Alaska and helped us enlist the moral support of the Alaska Visitors Association and the marketing participation of the Division of Tourism and its other cooperative marketing partners. We have provided copies of this research and we hope you find it helpful.

There are a number of very significant barriers to development of this market. Many are being very rapidly addressed.

* ACVB is working with DOT/PF and the Department of Commerce & Economic Development to upgrade the information center we operate in the Overseas Terminal of the Anchorage International Airport. This project should be complete later this year.

* ACVB and the Division of Tourism are putting increased promotional dollars into brochures and advertising to enlist future stopovers and to educate passengers on the requirements.

* We hope to join with a high level representative of the State later this year in meetings with each of the International Air Carriers to enlist their cooperation with assurances that stopover visitors will be encouraged in the time periods most beneficial to the carriers and the State...September-May. This is, fortunately, the same period of interests to a great number of potential stopover visitors.

But there remain a number of political obstacles to stopover visitors. While the bilateral treaties all permit stopovers, they are inhibited by:

* IATA (International Air Transport Association) refusal to permit stopovers on discount or special fares.

* the requirement of a U.S. Visa and

ACVB and many other organizations have worked for several years in support of a bill to grant visa waiver to citizens traveling to the U.S. from countries with a low incidence of Customs/Immigration violations and which grant reciprocal priviledges to U.S. citizens travelling abroad. The waiver would apply to many other U.S. ports in addition to Alaska.

Unfortunately, the widely popular visa waiver legislation has been fatally caught up in other immigration reform controversies a la the ill fated Simpson Mazzoli bill last year.

We strongly support the resolution HJR20 before the Alaska State Legislature in support of visa waiver and encouraging Alaska's congressional delegation to continue to work to eliminate this and other political barriers to stopover visits on the transpolar route.

The benefits are very dramatic. Stopover visitors will not only add directly to the economy. Through stopover promotions, transpolar passengers will develope interest in Alaska as a destination. This interest will help us retain transpolar air service long after the carriers will be able to over-fly Alaska. The resultant revenues will continue to provide 50% of the funds that go to subsidize Alaska's airport system.

Thank you for this opportunity to testify.

M E M O R A N D U M

To: All Members, House Labor and Commerce Committee

From: Roger Poppe, Committee Staff

Date: March 13, 1985 Wednesday

Subject: Overview, HJR 20

On March 13 the Committee met in Room 102 Capitol Building at 1:15-2:45 pm on HJR 20: An Act relating to Tourism and International Airline Travelers Visa Waivers, by Rieger.

This resolution would encourage our Congressional delegation to push for federal legislation that would ease the visa restrictions for non-immigrant visitors on a nation-wide basis, either through separate legislation or as part of some renewed effort to revive the Immigration Bill during the current session of Congress.

This resolution was not brought up in the legislature last year nor is there a companion piece in the Senate this year. The resolution grew out of a piece of federal legislation, S 529, The Immigration Reform and Control Act of 1983, otherwise referred to as the Simpson-Mazzolli Bill. This bill died in Congress last year after differences over its funding, as well as disagreements over many of the bill's points by different lobby groups.

However, one of the subject areas of the bill that was non-controversial dealt with visa waivers for certain types of visitors. That particular section of the bill is reproduced from the Congressional Record in your file (the House and Senate versions were identical).

For your reference, the federal law for Admission Qualifications for non-immigrants is spelled out in detail in 3 USC, 1182, and the particular part of federal law this resolution deals with is found in your file on page 187, Chp. 12 of the federal statutes, (26). Further, the federal regulations on this matter can be found in Title 22, paragraph 41.110: Application for Non-imigrant visas (see page 170 in your file on Subchapter E- Visas).

Finally, there is a survey that was conducted by Alaska Pacific University in June of 1983 for the Anchorage Convention and Visitor's Bureau that demonstrates that a potential market is available among the international travelers who fly through Anchorage year-around. These travelers could provide additional money for the local economy if they were allowed to stop off for a few days without having to go through the hassles of obtaining visas in advance from their home country.

People testifying on this bill will include representatives from the Anchorage Convention and Visitor's Bureau, and the AVA.

Sponsors Assessing 1985 Outlook:

Immigration Reform Bill Dies As Compromise Efforts Fail

For the third year in a row, a sweeping immigration reform measure died in Congress, the victim of swirling interest-group pressures and election-year political qualms.

The legislation (S 529) had been on its deathbed for two weeks. But supporters worked into the final days of the 98th Congress, hoping for agreement on a House-Senate conference report in time for approval by both chambers. The effort failed Oct. 11, two days after conferees deadlocked on a money issue. The dispute was over the amount of federal funds states should get to defray social-service costs anticipated from a proposal to grant amnesty to millions of illegal aliens. *(Weekly Report p. 2473)*

In 1982, an immigration bill passed the Senate but died on the House floor in the last days of a lame-duck session. Last year, S 529 passed the Senate but a companion bill was blocked in the House by Speaker Thomas P. O'Neill Jr., D-Mass. This year, that measure (HR 1510) passed June 20 by a 216-211 margin. *(1982 Almanac p. 405; 1983 Almanac p. 287)*

Try Again Next Year?

Sen. Alan K. Simpson, R-Wyo., and Rep. Romano L. Mazzoli, D-Ky., chief sponsors of the legislation, offered differing assessments about the prospects for action next year.

Simpson said he was ready to "crank up" a new bill early in 1985. Mazzoli said he was going back to Kentucky to think about the matter.

Several members, including Simpson and Mazzoli, said a great deal will depend on who is in the White House in 1985. They said that leadership from the president is critical to getting a bill through Congress.

President Reagan generally supported S 529, particularly a section that would penalize employers who knowingly hire illegal aliens. But he did not make it a priority issue.

Democratic presidential nominee Walter F. Mondale has strongly opposed employer sanctions and has said that he would never support such a program. Hispanic lobbyists contended that the penalties would result in discrimination against anyone who looked or sounded foreign, and they pressed their cause at the Democratic National Convention this summer.

Funding Snag

Conferees met 10 times over four weeks and resolved a number of thorny issues, including the sanctions provisions, the scope of the legalization program, and an expansion of an existing program that allows employers to bring in foreign workers temporarily for agricultural work.

That the cap on federal aid proved the bill's undoing surprised many conferees. On Sept. 20, members had agreed to an informal $1 billion yearly cap over four years for the legalization program. The cap was to be part of a statement of managers to accompany the conference report.

Simpson had said that some kind of cap was required or Reagan would veto the bill. He believed that the Sept. 20 action would be satisfactory, but he subsequently reported to conferees that the administration would not accept the informal cap.

Rescue Efforts Fail

During the week of Oct. 1, Rep. Charles E. Schumer, D-N.Y., who had not previously been a key player, tried to put together a compromise on the funding issue and another dispute involving anti-discrimination provisions designed to reduce bias that might result from the sanctions.

Schumer acted as mediator for Simpson and Rep. Barney Frank, D-Mass., the chief advocate of the anti-bias provision, and produced a compromise that commanded a majority of the conferees.

The compromise dropped House language barring discrimination based on "alienage." Simpson and others said this would subject employers to lawsuits if they chose a U.S. citizen over a legal alien. Conferees agreed to allow aliens who signed a document affirming their intent to become U.S. citizens to seek administrative remedies for employment discrimination.

Part of the deal, Schumer said, was making the $1 billion cap part of the legislation, as the administration had wanted.

When conferees convened Oct. 9 to ratify the agreement, the anti-bias provision was accepted. But House conferees voted 13-15 to reject the $1 billion yearly cap as part of the bill. Seven members who had voted for the cap in the statement of managers switched their votes and voted against the cap as part of the bill.

Conferees from states with large illegal alien populations contended that the $1 billion would be insufficient to cover the anticipated costs of legalization, leaving the states with a heavy financial burden.

Judiciary Chairman Peter W. Rodino Jr., D-N.J., who ran the conference, recessed the meeting and said he would reconvene members only if some new agreement were reached.

Schumer started a new round of negotiations with Reps. Larry Smith, D-Fla., and Leon E. Panetta, D-Calif., who had voted against the cap. By the evening of Oct. 10, Schumer had worked out a new compromise with Simpson that drew Panetta's support. But Schumer was unable to convince any other House conferee to switch.

"We exhausted our potential for compromise," Mazzoli said Oct. 11. "Pretty soon you don't have any tools to split hairs any finer."

Even if time had not run out, the bill faced problems on a final vote. Sens. John Tower, R-Texas, and Alan Cranston, D-Calif., had threatened a filibuster, and 40 or so House members had pledged to try to block passage in that chamber.

Simpson conceded that opposition to S 529 was strong and well-organized. "They formed coalitions for 'immigration reform' and then lobbed bombs from the balcony," he said.

"Next year," he added, "we'll have more time to pull their molars." ■

—*By Nadine Cohodas*

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ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4221 SLAB HJR 20 - HJR 23 1101

this Act or who otherwise acquire such status after such date.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States.

(3) The amendments made by subsection (c) apply to periods occurring on or after the date of the enactment of this Act and shall not have the effect of excluding (in the determination of a period of continuous physical presence in the United States) any period before the date of the enactment of this Act.

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsections:

"(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this subsection referred to as the 'program') under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends or agrees to extend reciprocal privileges to citizens and nationals of the United States, and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival and departure into the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection,

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during previous fiscal year and who violated the terms of such admission,

was less than 2 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for national of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period.

"(6) The Attorney General and the Secretary of State shall jointly monitor the program and shall report to the Congress not later than two years after the beginning of the pilot program, and shall include in such report recommendations respecting extension of the pilot program period and of the number of countries that may be designated under paragraph (3)(A).

"(m) The requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior jointly determine that—

"(1) the territory of Guam has developed an adequate arrival and departure control system, and

"(2) such a waiver does not present a threat to the welfare, safety, or security of the United States.".

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to subsection (l) or (m) of section 212 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding ninety days or fifteen days, respectively, from the date of admission.".

(c) For amendment prohibiting nonimmigrant visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

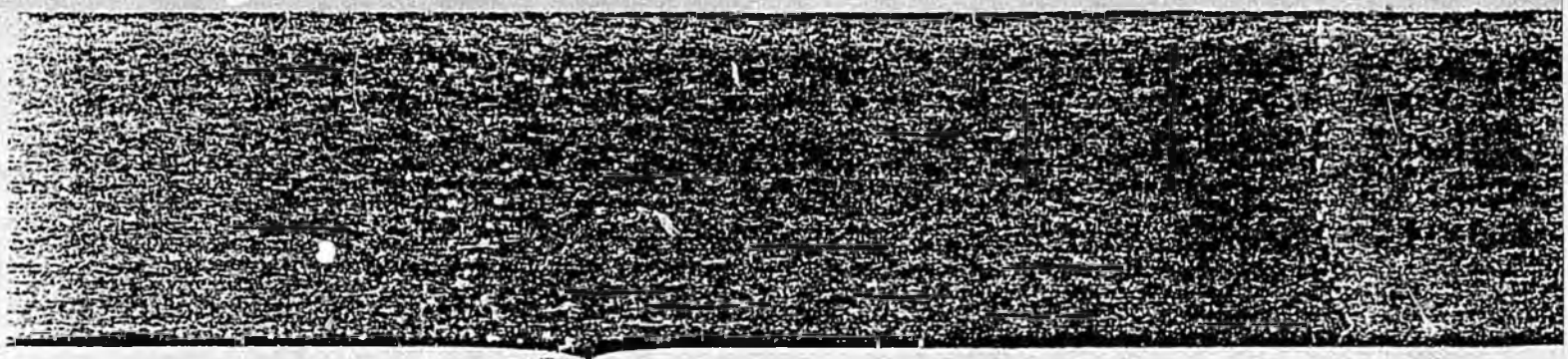
(d) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien classified as a nonimmigrant under section 101(a)(15)(O) or admitted as a nonimmigrant visitor without a visa under subsection (l) or (m) of section 212.".

NONIMMIGRANT SEASONAL AGRICULTURAL PROGRAM

SEC. 214. (a) Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sections 204(b) and 211(a)(2) of this Act, is further amended by striking out "or" at the end of subparagraph (N), by striking out the period at the end of subparagraph (O) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(P) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States for a period of not longer than 11 consecutive months to perform services or



om foreign contiguous territory the Attor-
l to their applying or reapplying for ad-

vaways;

ks to procure, or has sought to procure,
r other documentation, or seeks to enter
d, or by willfully misrepresenting a ma-

se specifically provided in this chapter,
time of application for admission is not
nexpired immigrant visa, reentry permit,
ion card, or other valid entry document
and a valid unexpired passport, or other
or document of identity and nationality,
ed under the regulations issued by the At-
o section 1181(a) of this title;

specifically provided in this chapter, any
f application for admission whose visa
ompliance with the provisions of section

igible to citizenship, except aliens seeking
; or persons who have departed from or
ic the United States to avoid or evade
armed forces in time of war or a period
to be a national emergency, except aliens
such departure nonimmigrant aliens and
nited States as nonimmigrants;

s been convicted of a violation of, or a
law or regulation relating to the illicit
narcotic drugs or marihuana, or who has
n of, or a conspiracy to violate, any law or
trolling the taxing, manufacture, produc-
rtation, sale, exchange, dispensing, giving
tion, or the possession for the purpose of
n, compounding, transportation, sale, ex-
f away, importation, or exportation of
, marihuana, or any salt derivative or
oca leaves, or isonipecaine or any addic-
ustaining opiate; or any alien who the
ration officers know or have reason to
illicit trafficker in any of the aforemen-

aliens described in section 1101(a) (27)
who seek admission from foreign contigu-

ous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory line, or if signatory, a noncomplying transportation line under section 1228(a) of this title and who have not resided for at least two years subsequent to such arrival in such territory or adjacent islands;

(25) Aliens (other than aliens who have been lawfully admitted for permanent residence and who are returning from a temporary visit abroad) over sixteen years of age, physically capable of reading, who cannot read and understand some language or dialect;

(26) Any nonimmigrant who is not in possession of (A) a passport valid for a minimum period of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period; and (B) at the time of application for admission a valid nonimmigrant visa or border crossing identification card;

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;

(28) Aliens who are, or at any time have been, members of any of the following classes:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this chapter, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and gov-

COPY FOR YOUR INFORMATION

M E M O R A N D U M April 11, 1985

TO: Representative Steve Rieger
FROM: Bill Lovell, Staff

RE: HJR 20 (Visa Waivers)

I suggest that we present the attached draft SCS to the Senate Labor and Commerce Committee for their consideration for adoption in lieu of the House Labor and Commerce CS for CSHJR 20.

I make this suggestion for the following reason:

The House Labor and Commerce Committee amendments changed the perspective of the resolution. As you know HJR 20 was originally drafted to be directed to Senators Stevens and Murkowski. The L & C CS added that copies were to be sent to various national leaders also and changed the resolution clause to include references to them.

However the CS did not change any of the language in the resolution's "whereas" clauses -- language which was also originally intended to be directed to Senators Stevens and Murkowski, "two of our own," so to speak.

The amendments I recommend do not change the basic arguments in favor of the bill, do not delete any of the specifically Alaskan issues mentioned, and do not detract from the House's position on the original bill; however, the amendments do broaden the resolution's message and would serve, I think, to lessen the provincial "sound" of the Labor and Commerce CS.

/wtl
Attachment

-- Memo from Rep. Rieger's staff - explaining proposed CS

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(_____ = material added to HCS [ ] = material deleted from HCS)

Original Sponsors: Rieger, Pearce, Collins, et al

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SCS FOR CS FOR HOUSE JOINT RESOLUTION NO. 20 (L & C)
IN THE LEGISLATURE OF E STATE OF ALASKA
FOURTEENTH LEGISLATU.. FIRST SESSION

Re ng to visa waivers for ... national airline passengers.

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

WHEREAS visa waivers would encourage eligible international airline passengers and other eligible nonimmigrants to visit the United States thereby benefiting the nation's tourism industry; and

WHEREAS all the states of the nation would benefit by granting visa waivers to eligible nonimmigrants; and

WHEREAS the state of Alaska is particularly interested in securing a visa waiver program because tourism is an important element in the state's immediate future and a vital part of ensuring stable and continuing economic growth; and

WHEREAS 1.5 million international airline passengers annually transit the Anchorage International Airport on the transpolar route between Europe and Asia; and

WHEREAS research by the Anchorage Convention and Visitors Bureau reveals that among the annual airport transpolar passengers, 84 percent indicated an interest in the state, 80 percent vacation at least once a year in the period from September to May when the state needs more visitors, 62 percent like winter-oriented vacations, 50 percent could have planned a stopover in Anchorage, 50 percent would stop for four to seven days, and 76 percent are frequent transpolar route passengers and previously have landed in Anchorage; and

WHEREAS state revenue from transpolar passengers constitutes more than 50 percent of the revenue necessary to operate all international airports in the state; and

WHEREAS there is the strong likelihood that carriers on the transpolar route will no longer need this state as a refueling stop in the foreseeable future and passenger interest in visits or stopovers in the state will be the only incentive for transpolar air carriers to continue to stop in the state; and

WHEREAS one of several obstacles to a stopover in Alaska or any other state [THE STATE] is the present requirement of a

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United States visa; and

WHEREAS last year Congress considered but failed to pass legislation providing for the granting of visa waivers;

BE IT RESOLVED that the Alaska State Legislature requests the President and the Congress of the United States to support the renewed effort to secure the waiver of visa requirements for eligible international airline [TRANSPOLAR] passengers and other eligible nonimmigrants wishing to exercise stopover privileges in Alaska and other states [THE STATE].

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable Robert Dole, Majority Leader of the Senate, the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the House of Representatives; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M March 18, 1985

TO: Senator Fred Zharoff, Chairman, Senate Labor and Commerce
FROM: Representative Steve Rieger

RE: CSHJR 20 (Labor and Commerce), Relating to visa waivers for international airlines passengers.

Attached please find back-up information on CSHJR 20 (Labor and Commerce).

This resolution offers the opportunity for the state legislature to express support for an idea which will benefit all Alaskans -- a federal visa waiver program for eligible nonimmigrants. As you may know, a visa waiver program was proposed during the last Congress and was defeated only after it became embroiled in another, unrelated controversy.

CSHJR 20 (Labor and Commerce) encourages our Congressional delegation in their continuing efforts to secure passage of a visa waiver bill. Copies of the resolution, if passed, will be sent to other Congressional leaders to make our position known with them as well.

Senator, I would sincerely appreciate your timely consideration of this resolution. A prompt hearing by your Committee will help make it possible for Alaska to get on record in support of this important program.

Thank you.

/wtl
Attachments

— Memo from original sponsor, Rep. Rieger, to Sen. Zharoff —

SCS CS HJR 20 (L&C)

CHAIRMAN SHOULD MOVE FOR THE ADOPTION OF THE L&C SCS;

Trans Polar route

THIS RESOLUTION ENCOURAGES THE US CONGRESS IN THEIR EFFORT TO PASS A FEDERAL "VISA WAIVER" BILL. PASSAGE OF A VISA WAIVER BILL WILL ENHANCE TOURISM BY ALLOWING ELIGIBLE INTERNATIONAL AIRLINE PASSENGERS AND ELIGIBLE NONIMMIGRANTS TO VISIT IN THE UNITED STATES.

A VISA WAIVER AS DEFINED IN FEDERAL LEGISLATION IS SPECIAL PERMISSION FOR A NONIMMIGRANT VISITOR, FROM AN ELIGIBLE FOREIGN COUNTRY, TO REMAIN IN THE U.S. FOR UP TO 90 DAYS WITHOUT HAVING OBTAINED THE CUSTOMARY NON-IMMIGRANT VISA.

THE LABOR AND COMMERCE CS MADE MINOR CHANGES AT THE SUGGESTION OF THE SPONSOR, AND IT EXPANDED THE LANGUAGE TO REFLECT THE BENEFITS TO ALL STATES AS WELL AS ALASKA.

THE ALASKA VISITORS ASSOCIATION, THE ANCHORAGE CONVENTION AND VISITORS BUREAU, AND THE DIVISION OF TOURISM SUPPORT SUPPORT SUCH A PROGRAM.

Currently law requires nonimmigrant visitors to have a valid nonimmigrant visa before being admitted into the US. Most nonimmigrant visitors must obtain a visa in their home country before beginning a trip. The current process of applying for a visa is time consuming and involves considerable pre planning.

Chairman's Information:

1) CSHJR 20: "Relating to visa waivers for international airline passengers"

   a) Introduced: Rep Reiger
   b) Co-Sponsors:

2) INTENT: This resolution encourages the US Congress in their effort to pass a visa waiver bill. Passage of a visa waiver bill would enhance tourism by allowing eligible international airline passengers and eligible nonimmigrants to visit in the United States.

   FISCAL NOTE: none
   NOTE: Need to move for the adoption of SCS

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption? We have a SCS for CS HJR 20 (L&C)

Ford
4/12/85

Original sponsors: Rieger, Pearce,
Collins, et al

INDICATES CS LANGUAGE

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 20 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to visa waivers for international airline passengers.

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

WHEREAS visa waivers would encourage eligible international airline passengers and other eligible nonimmigrants to visit the United States; and

WHEREAS all the states of the nation would realize an increase in tourism by granting visa waivers to eligible nonimmigrants; and

WHEREAS Alaska is particularly interested in securing a visa waiver program because tourism is an important element in the state's immediate future and a vital part of ensuring stable and continuing economic growth; and

WHEREAS 1,500,000 international airline passengers annually transit the Anchorage International Airport on the transpolar route between Europe and Asia; and

WHEREAS research by the Anchorage Convention and Visitors Bureau reveals that among the annual airport transpolar passengers, 84 percent indicated an interest in the state, 80 percent vacation at least once a year in the period from September to May when the state needs more visitors, 62 percent like winter-oriented vacations, 50 percent could have planned a stopover in Anchorage, 50 percent would stop for four to seven days, and 76 percent are frequent transpolar route passengers and previously have landed in Anchorage; and

WHEREAS state revenue from transpolar passengers constitutes more than 50 percent of the revenue necessary to operate all international airports in the state; and

WHEREAS there is the strong likelihood that carriers on the transpolar route will no longer need this state as a refueling stop in the foreseeable future and passenger interest in visits or stopovers in the state will be the only incentive for transpolar air carriers to continue to stop in the state; and

WHEREAS one of several obstacles to a stopover in Alaska or any other state is the present requirement of a United States visa; and

WHEREAS last year Congress considered but failed to pass legislation providing for the granting of visa waivers;

BE IT RESOLVED that the Alaska State Legislature requests the President and the Congress of the United States to support the renewed effort to secure the waiver of visa requirements for eligible international airline passengers and other eligible nonimmigrants wishing to exercise stopover privileges in Alaska and other states.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable Robert Dole, Majority Leader of the Senate, the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Offered: 3/15/85
Referred: Rules

Original sponsors: Rieger, Pearce, Collins, et al

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 20 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to visa waivers for international airline passengers.

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

WHEREAS tourism is an important element in the state's immediate future and a vital part of ensuring stable and continuing economic growth; and

WHEREAS 1.5 million passengers annually transit the Anchorage International Airport on the transpolar route between Europe and Asia; and

WHEREAS research by the Anchorage Convention and Visitors Bureau reveals that among the annual airport transpolar passengers, 84 percent indicated an interest in the state, 80 percent vacation at least once a year in the period from September to May when the state needs more visitors, 62 percent like winter-oriented vacations, 50 percent could have planned a stopover in Anchorage, 50 percent would stop for four to seven days, and 76 percent are frequent transpolar route passengers and previously have landed in Anchorage; and

WHEREAS state revenue from transpolar passengers constitutes more than 50 percent of the revenue necessary to operate all international airports in the state; and

WHEREAS there is the strong likelihood that carriers on the transpolar route will no longer need this state as a refueling stop in the foreseeable future and passenger interest in visits or stopovers in the state will be the only incentive for transpolar air carriers to continue to stop in the state; and

WHEREAS one of several obstacles to a stopover in the state is the

present requirement of a United States visa; and

WHEREAS last year Congress considered but failed to pass legislation providing for the granting of visa waivers;

BE IT RESOLVED that the Alaska State Legislature requests the President and the Congress of the United States to support the renewed effort to secure the waiver of visa requirements for transpolar passengers wishing to exercise stopover privileges in the state.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable Robert Dole, Majority Leader of the Senate, the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the House of Representatives; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HJR

23

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HJR 23: "Relating to US Customs Service Offices on the West Coast"

Urges the US Customs Service to maintain its current uniform jurisdiction over all west coast ports, and also to increase the number of customs inspectors to expedite trade thru west coast ports.

Discussions are being held on a federal level to separate Alaska, Washington, and Oregon into a jurisdiction headquartered in Chicago Illinois, and there is a concern that the proposed separation would be interuptive to uniform customs operations and detrimental to international trade activities.

HJR 23 "RELATING TO U.S. CUSTOMS SERVICE OFFICES ON THE WEST COAST"

CURRENTLY, DISCUSSIONS ARE BEING HELD AT THE FEDERAL LEVEL TO SEPARATE ALASKA, WASHINGTON, AND OREGON INTO THE JURISDICTION OF A CUSTOMS OFFICE HEADQUARTERED IN CHICAGO, ILLINOIS.

THIS RESOLUTION URGES THE U.S. CUSTOMS SERVICE TO MAINTAIN ITS CURRENT UNIFORM JURISDICTION OVER ALL WEST COAST PORTS, AND TO INCREASE THE NUMBER OF CUSTOMS INSPECTORS TO EXPEDITE TRADE THRU WEST COAST PORTS.

Chairman's Information:

1) HJR 23: "Relating to US Customs Service Offices on the West Coast"

   a) Introduced: Rep Martin

   b) Co-Sponsors:

2) INTENT: This resolution urges the US Customs Service to maintain its current uniform jurisdiction over all west coast ports, and to increase the number of customs inspectors to expedite trade through west coast ports.

   FISCAL NOTE: none
   NOTE:

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?