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REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD

P.O. BOX V, JUNEAU 99811
(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE
SUB-COMMITTEE

FEBRUARY 12, 1987

M E M O R A N D U M

TO: REPRESENTATIVE JOHN SUND, CHAIR
HOUSE JUDICIARY COMMITTEE

FROM: REPRESENTATIVE DAVE DONLEY

RE: AMENDMENTS TO CS HB 43 (L&C)

MANY THANKS FOR PROMPTLY SCHEDULING HB 43, RELATING TO RETURN TRANSPORTATION FOR WORKERS, FOR A HEARING BEFORE THE JUDICIARY COMMITTEE.

ATTACHED IS A COPY OF AN AMENDMENT TO HB 43 I'D LIKE THE JUDICIARY COMMITTEE TO CONSIDER. THE AMENDMENT ADDRESSES CONCERNS VOICED BY HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS ABOUT POSSIBLE CONSTITUTIONAL AND ADMINISTRATIVE PROBLEMS WITH THE BILL.

SPECIFICALLY, THE AMENDMENT NEUTRALIZES LANGUAGE IN THE BILL THAT COULD BE INTERPRETED TO DISCRIMINATE AGAINST NONRESIDENTS AND REMOVES LANGUAGE DEFINING AN EMPLOYER.

THE REASON FOR THE FIRST PART OF THE AMENDMENT IS THAT RESIDENCY OF ANY GIVEN WORKER IS NOT THE ISSUE. THE PURPOSE OF THIS MEASURE IS TO ASSURE THAT WORKERS ARE NOT LEFT AS "STRANGERS IN A STRANGE LAND". IT DOESN'T MATTER WHERE THEY RESIDE, ONLY THAT THEY GET RETURN TRANSPORTATION TO THEIR POINT OF HIRE, HOME, OR A POINT AGREED UPON BY BOTH PARTIES.

THE SECOND PART OF THE AMENDMENT DELETES LANGUAGE DEFINING AN EMPLOYER. THIS LANGUAGE WAS ADDED IN THE HOUSE LABOR AND COMMERCE COMMITTEE TO ASSURE THAT THE STATE EXTENDS THE SAME RIGHTS TO WORKERS THAT THE LAW DEMANDS OF THE PRIVATE SECTOR. WE HAVE SINCE FOUND OUT THAT THE STATE DOES OFFER RETURN TRANSPORTATION FOR WORKERS AND THAT THIS LANGUAGE IS UNNECESSARY.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN: SPENARD

P.O. BOX V, JUNEAU 99811

(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

FEBRUARY 16, 1987

TO: MEMBERS, HOUSE JUDICIARY COMMITTEE

FROM: REPRESENTATIVE DAVE DONLEY

RE: HB 43 - RETURN TRANSPORTATION FOR WORKERS

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE
SUB COMMITTEE

HOUSE BILL 43 AMENDS AS 23.10.380 TO ASSURE THAT WORKERS EMPLOYED IN ALASKA ARE PROVIDED WITH RETURN TRANSPORTATION TO THEIR POINT OF HIRE AS A CONDITION OF EMPLOYMENT.

UNDER EXISTING STATUTE, FIRST ADOPTED IN 1949, IT WAS RECOGNIZED THAT THE WELFARE OF THE STATE (THEN THE TERRITORY) DEMANDED THAT ADEQUATE PROVISION BE MADE FOR FINANCING THE RETURN TRANSPORTATION OF WORKERS TO THEIR PLACE OF RECRUITMENT ON TERMINATION OF EMPLOYMENT. (AS 23.10.375).

THE REASON FOR THIS POLICY WAS OBVIOUS. WORKERS RECRUITED FROM OUTSIDE ALASKA WERE OFTEN STRANDED HERE WITHOUT ADEQUATE FUNDS TO CARE FOR THEMSELVES AND THEIR FAMILIES ON TERMINATION OF EMPLOYMENT. THE STATE WAS OBLIGATED MORALLY AND LEGALLY TO PROVIDE PUBLIC ASSISTANCE FOR THESE INDIVIDUALS, AN EXPENSE THAT SORELY TAXED OUR MEAGER RESOURCES.

HB 43 MAKES THREE MAJOR CHANGES TO EXISTING LAW: 1) REQUIRES EMPLOYERS TO NOTIFY EMPLOYEES OF THEIR RIGHT TO RETURN TRANSPORTATION, 2) PUTS A ONE YEAR (THE DEPARTMENT OF LABOR SUGGESTS TWO YEARS) LIMIT ON THE RIGHT TO RETURN TRANSPORTATION AND, 3) ENTITLES EMPLOYEES TO RETURN TRANSPORTATION IF THEY WERE RECRUITED FROM OUTSIDE THE STATE, REGARDLESS OF WHETHER THEIR TRANSPORTATION TO THE STATE WAS PAID BY THEIR EMPLOYER.

HB 43 ALSO ALLOWS MORE OPTIONS FOR RETURN TRANSPORTATION; POINT OF HIRE, PLACE OF RESIDENCE, OR A POINT MUTUALLY AGREED UPON BY EMPLOYER AND EMPLOYEE. THE DEPARTMENT OF LABOR, IN THEIR POSITION PAPER, ASKS THAT HB 43 BE AMENDED TO PROVIDE THAT AN AGREEMENT ABOUT RETURN TRANSPORTATION BE MADE PRIOR TO EMPLOYMENT. I SUPPORT THIS AMENDMENT.

FURTHER, UNDER A SEPARATE MEMORANDUM, I'VE ASKED THE HOUSE JUDICIARY COMMITTEE TO CONSIDER AMENDING HB 43 TO ELIMINATE LANGUAGE THAT IS EITHER UNNECESSARY OR SUBJECT TO A POSSIBLE CONSTITUTIONAL CHALLENGE.

ALTHOUGH HB 43 MAY HAVE THE EFFECT OF ENCOURAGING EMPLOYERS TO HIRE LOCALLY RATHER THAN OUTSIDE THE STATE, ITS PURPOSE IS TO PROTECT WORKERS AND TO ASSURE THAT THEY ARE AWARE OF THEIR RIGHTS TO RETURN TRANSPORTATION.

ADDITIONALLY, DUE TO ALASKA'S GEOGRAPHICAL SITUATION AND THE EXPENSE OF TRANSPORTATION TO AND FROM THE CONTINENTAL UNITED STATES, OUR STATE HAS A UNIQUE INTEREST IN PROVIDING SUCH PROTECTION FOR WORKERS.

HB 43 IS A REASONABLE WAY TO PROTECT WORKERS RIGHTS AND IS IN THE BEST INTEREST OF THE STATE. I URGE YOU TO CONSIDER THE MEASURE FAVORABLY AND TO PASS IT OUT OF COMMITTEE WITH YOUR HEARTY RECOMMENDATION.

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-3892



Labor and Commerce Committee

January 26, 1987

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair **D**
House Labor and Commerce Committee

Re: HB 43 - Return transportation for workers

House Bill 43 amends AS 23.10.380 to assure that workers employed in Alaska are provided with return transportation to their point of hire as a condition of employment.

Under existing statute, first adopted in 1949, it was recognized that the welfare of the state (then the Territory) demanded that adequate provision be made for financing the return transportation of workers to their place of recruitment upon termination of employment. (AS 23.10.375)

The reason for this policy was obvious. Workers recruited from outside Alaska were often stranded here without adequate funds to care for themselves and their families on termination of employment. The State was obligated morally and legally to provide public assistance for these individuals, an expense that sorely taxed our meager resources.

In 1949, the primary problem was cannery workers. In 1987 the jobs have changed, but the problem remains the same. In spite of our current unemployment crisis, workers are still being recruited and hired from outside the State for what too often turns out to be short-term jobs.

HB 43 makes two major changes to existing law: 1) requires employers to notify employees of their right to return transportation, and 2) entitles employees to return transportation if they were recruited from outside the State, regardless of whether their transportation to the State was paid by their employer.

I have prepared a Committee Substitute for HB 43 for your consideration. The CS adds language that removes the requirement for return transportation if a worker is employed for one year or more. In addition, the CS amends AS

23.10.380(b), so that an employers obligation to provide subsistence (room and board), after termination and until return transportation is available, is clearly stated. This section applies only if the employer originally provided subsistence as part of the job.

Although HB 43 may have the effect of encouraging employers to hire locally rather than outside the State, its purpose is to protect workers and to assure that they are aware of their rights to return transportation.

Additionally, due to Alaska's geographical situation and the expense of transportation to and from the continental United States, our State has a unique interest in providing such protection for workers.

HB 43 is a reasonable way to protect workers rights and is in the best interest of the State. I urge you to consider the measure favorably and to pass it out of Committee with your hearty recommendation.

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

H. JUD.	3-5-87	1:30 p.m.
H. JUD.	2-20-87	1:30 p.m.
H. JUD.	2-16-87	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/4/87

FURTHER REFERRALS:

DATE: 3-5-87

The Judiciary Committee has considered HB 43

"An Act relating to return transportation for workers."

RECOMMENDS:

- replace with CS 11343 (T. L. ...) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

Sen Git

Mike Gavane

~~Robert L. Taylor~~

James W. Barnes

Walter J. Greenberg

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Do Not Pass Robin L. Taylor

No Lee - Sorry Wrenghine

Needs Amendment

[Signature]

Chairman's signature

5-0234L
Cramer
2/25/87

Original sponsors: Donley, Koponen
and Davidson

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 43 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to return transportation for
7 workers."

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

9 * Section 1. AS 23.10.380(a) is repealed and reenacted to read:

10 (a) An employer shall furnish a person entitled to transporta-
11 tion under this section with return transportation to the place of
12 hire from which transportation was furnished or financed, to the
13 person's place of residence at the time of hire, or to a destination
14 agreed upon by the parties if

15 (1) the employment terminated within one year after the
16 person's first day of employment with the employer in the state;

17 (2) the department determines that the termination of
18 employment was for a good and sufficient cause beyond the control of
19 the person, or if the contract of employment or a renewal of the
20 contract terminates; and

21 (3) the person or the department requests return transpor-
22 tation within 45 days after the termination of employment.

23 * Sec. 2. AS 23.10.380 is amended by adding new subsections to read:

24 (c) An employer who agrees to hire a person shall notify the
25 person of the person's rights to transportation under this section.

26 ~~The notice shall be in writing or by posting.~~

27 (d) A person is entitled to return transportation rights under
28 this section if

29 (1) an employer furnished, financed, agreed to furnish or

1 finance, or in any way provided transportation for the person from the
 2 place of hire to a point inside or outside the state to employ the
 3 person; or

4 (2) the person ^{is located} resided outside the state when the employer
 5 agreed to employ the person for work inside the state and the person
 6 has not established residency in the state after agreeing to work for
 7 the employer.

8 * Sec. 3. AS 23.10 is amended by adding a new section to article 5 to
 9 read:

10 Sec. 23.10.402. DEFINITION. In AS 23.10.375 - 23.10.402 "em-
 11 ployer" means a person who employs at least one other person and
 12 includes the state and a political subdivision of the state.

13 * Sec. 4. The amendments proposed by this Act apply to persons hired on
 14 or after the effective date of this Act.

Original sponsors: Donley, Koponen
and Davidson

1 IN THE HOUSE

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12 hire from which transportation was furnished or financed, to the
13 person's place of residence at the time of hire, or to a destination
14 agreed upon by the parties at the termination of employment if

15 (1) the employment terminated within one year after the
16 person's first day of employment with the employer in the state;

17 (2) the department determines that the termination of
18 employment was for a good and sufficient cause beyond the control of
19 the person, or if the contract of employment or a renewal of the
20 contract terminates; and

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25 person of the person's rights to transportation under this section.
26 The notice shall be given in writing to the employee or by posting.

27 (d) A person is entitled to return transportation rights under
28 this section if

29 (1) an employer furnished, financed, agreed to furnish or

1 finance, or in any way provided transportation for the person from the
2 place of hire to a point inside or outside the state to employ the
3 person; or

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7 work for the employer.

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13 * Sec. 4. The amendments proposed by this Act apply to persons hired on
14 or after the effective date of this Act.

Introduced: 1/19/87
 Referred: Labor & Commerce and
 Judiciary

1 IN THE HOUSE

BY DONLEY AND KOPONEN

2

HOUSE BILL NO. 43

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

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 12 hire from which transportation was furnished or financed, to the
 13 person's place of residence at the time of hire, or to a destination
 14 agreed upon by the parties

15 (1) on or after the termination of employment for a cause
 16 considered good and sufficient by the department, beyond the control
 17 of the person, or on or after the termination of the contract of
 18 employment or a renewal of the contract; and

19 (2) upon the request of the person or the department made
 20 within 45 days after the termination of employment.

21 * Sec. 2. AS 23.10.380 is amended by adding new subsections to read:

22 (c) An employer who agrees to hire a person residing outside the
 23 state shall notify the person of the person's rights to transportation
 24 under this section.

25 (d) A person is entitled to return transportation rights under
 26 this section if

27 (1) an employer furnished, financed, agreed to furnish or
 28 finance, or in any way provided transportation for the person from the
 29 place of hire to a point inside or outside the state to employ the

Offered: 2/4/87
Referred: Judiciary

Original sponsors: Donley and Koponen

at the time of termination if:

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 43 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to return transportation for workers."

8

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13

person's place of residence at the time of hire, or to a destination

14

agreed upon by the parties *if Amended*

15

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16

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17

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20

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22

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23

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25

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26

under this section. *in writing or by posting*

27

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28

this section if

29

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Donley amendment
sk
Done
Done

two

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

February 27, 1987

SUBJECT: CSHB 43(Judiciary)
Return transportation for workers

TO: Representative John Sund
Chairman, House Judiciary Committee

FROM: Teresa B. Cramen *TBC*
Legislative Counsel

You have requested an opinion concerning whether there are constitutional problems inherent in CSHB 43(Judiciary), which requires that an employer furnish return transportation to two different classes of employees: employers who provide transportation from the place of hire to the worksite and employers who agree to employ a person who resided outside the state for employment inside the state. In my opinion, the second requirement, which applies only to employers who hire nonresidents, may be constitutionally infirm under either the equal protection clause of the state constitution or the privileges and immunities clause of the federal constitution.

Under HB 43, employers who choose to employ a nonresident have a potential liability for transportation costs after a job ends that employers without nonresident employees do not have. The Alaska Supreme Court has held that under the state's equal protection clause, in cases not involving fundamental rights or suspect classifications, legislation must be based on a legitimate public purpose and the classification must 'be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Wilson v. Municipality of Anchorage, 669 P.2d 569, at 572, (1983) (citations omitted). The employer's interest in freedom from an economic burden is an economic one. The court stated in Wilson, 669 P.2d at 572, that

(e)conomic interests have traditionally been afforded minimal protection under equal protection analyses. . . . accordingly although the relationship between the classification and the legitimate governmental objective must be fair and substantial, a less than perfect fit between the means and ends will be tolerated.

A possible objective of the bill is to assist nonresident workers whose employment has ended to return to their home states, and to help insure that Alaskan communities are not harmed by their presence. Factually, this may be hard to support since a nonresident entitled to the return transportation may plan to remain in Alaska without establishing residence here regardless of being employed (an example would be a family member of someone stationed here because of military service). Unless there is some showing that the continued presence of people who were hired as nonresidents creates a problem for the state, it is hard to support this justification.

Another possible objective is to discourage the hiring of nonresidents. In Lynden Transport, Inc. v. State, 532 P.2d 700, at 711, (Alaska 1975), the court held that benefiting economic interests of residents over nonresidents is not a purpose which may constitutionally vindicate discrimination against nonresidents under either the federal or the state equal protection clauses.

While HB 43 grants nonresidents rights that are not granted to residents, it can also be viewed as placing the nonresident worker at a disadvantage when competing with a resident for employment in the state because of the extra cost to the employer. Either the person or the department may request transportation. The bill does not address whether or to what extent the nonresident may waive the right. If a nonresident is able to waive rights to return transportation, then the bill would not place nonresidents at a disadvantage in the competition for employment. However, because the department can make the request for return transportation on behalf of a nonresident, it is not clear that an employee would be held to have waived his rights under the statute.

To the extent that the added cost of employing nonresidents discourages employers from hiring nonresidents, a court might find that the legislation infringed on the nonresident

job applicant's fundamental right to travel and therefore violated the equal protection clause of the state and federal constitutions. Under the state constitution, to justify an infringement of a fundamental right, the state would bear a higher burden of showing a fair and substantial relation between the problem posed by nonresidents and the remedy implemented by the legislation.

The legislation is also subject to scrutiny under the privileges and immunities clause of the federal constitution, Article IV, Section 2. The clause provides:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

As noted by the Alaska Supreme Court in Francis v. Robison, 713 P.2d 259 (Alaska 1986), the primary purpose of the privileges and immunities clause is to prevent states from discriminating against nonresidents for reasons of economic protectionism. The clause does not prohibit all discrimination against a nonresident. It protects fundamental rights, and employment has been held to be such a right. If a statute impairs a fundamental right of nonresidents, discrimination is only permitted where there is a substantial reason that justifies it. To find a substantial reason, there must be a showing that nonresidents are 'a peculiar source of the evil' which the state's action is meant to remedy. There must also be a close relationship between the means employed by the statute to remedy the problem and the goal the statute seeks to accomplish. The availability of less restrictive means to accomplish that goal is relevant.

The first question to be considered is whether there is a substantial justification for the requirement for return transportation. A nonresident who provided his own transportation to the place of employment would ordinarily expect to get himself elsewhere at the conclusion of the job. To support the bill, the state would have to point to serious problems caused to the community or to workers by these nonresident employees who failed to leave after the end of their employment. It would also have to show that granting all nonresidents the right to return transportation was the best available way to solve the problem. A serious problem in a single industry, for example, would not validate the extensive reach of the bill.

Representative Sund
February 27, 1987
Page 4

There may be justifications not addressed in this memorandum that satisfy the constitutional standards. Whether the legislation would survive scrutiny depends on what the problem is and how closely the legislation is tailored to answer that problem.

If I may be of further assistance, please advise.

TC:mkr
m9/061



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

April 2, 1987

M E M O R A N D U M

TO: Representative *W*first*W*last*W*
FROM: Representative Dave Donley *DD*
RE: HB 43 - Return Transportation for Workers

HB 43, relating to return transportation for workers, will be before the full House for a vote on Friday, April 3.

For your information I've attached a recent Attorney General's opinion drafted in response to my questions about possible constitutional concerns with the measure.

As you can see, the AG finds no constitutional problems with HB 43 and further states the measure is defensible and will withstand a court challenge.

I would appreciate your support for HB 43 on Friday. If you would like to join as a co-sponsor on the measure, please call my office at 3892.

MAR 26 1987

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 25, 1987

REPLY TO:

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

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

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

465-3603

The Honorable Dave Donley
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: CS HB 43 (Judiciary), Return
Transportation for Workers

Dear Representative Donley:

By memorandum dated March 16, 1987, you requested our advice on whether CS HB 43 (Judiciary) could withstand a court challenge on constitutional grounds. In general, the bill provides that under proper circumstances, workers are entitled to return transportation when hired at a place different from that of the place of actual employment.

This bill amends a law which has been in effect for more than 35 years. During that 35 years, the law has not been challenged on constitutional or other legal grounds. We understand your concern to be that the current bill modifies that law by making the payment of return transportation mandatory for a worker who is located outside of the state at the time of hire and who does not establish residency in the state after agreeing to work for that particular employer, assuming of course that the person is otherwise entitled to return transportation rights under the statute.

We do not think that this or any other portion of the bill raises constitutional problems on its face. To the extent that we may opine about the constitutionality of a particular bill with certainty, in our opinion CS HB 43 (Judiciary) is defensible and can withstand a court challenge.

The Honorable Dave Donley
Re: CS HB 43(Judiciary), Return
Transportation for Workers

March 25, 1987
Page 2

If you have further questions please feel free to
contact this office at your convenience.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Gary I. Amendola
Assistant Attorney General

GIA:jh

AMENDMENT #1

BY: SUND

Offered in the House Judiciary Committee
TO: CSHB 43(L&C)

Page 1, line 27:
Delete subsection (d)

AMENDMENT #2

BY: SUND

Offered in the House Judiciary Committee
TO: CSHB 43(L&C)

Page 2, line 6:
Delete Section 3

AMENDMENT #3

BY: SUND

Offered in the House Judiciary Committee

TO: CSHB 43(L&C)

Page 1, line 14:

After "parties" add: "at the time of termination"

Page 1, line 15:

Delete "one" insert "two"

Page 1, line 25:

After "person" insert "in writing"

2/14/87
DONLEY

A M E N D M E N T

OFFERED IN THE HOUSE JUDICIARY COMMITTEE

BY.....

To: CSHB43 (L&C)

PAGE 1, LINE 24, AFTER "PERSON", DELETE:

"RESIDING OUTSIDE THE STATE"

AND INSERT:

"TO WHOM THIS SECTION APPLIES"

PAGE 2, LINE 4, DELETE THE WORD "RESIDED" AND INSERT "SITED"

PAGE 2, DELETE LINES 8-10, SEC.23.10.402. DEFINITION.

RENUMBER REMAINING BILL SECTIONS ACCORDINGLY.

Taylor and Barnes

AMENDMENT HR 43 *

* CSHB 43(L&C)

On page 1 line 26 add the following sentence:

The employer shall at the same time inform the person that the employee's right to return transportation under this section shall be forfeited if the person takes any act to establish residency in the state as defined in subsection (e) of this act.

Page 1 line 29 - delete the "(1)" and move the sentence following the (1) to the end of line 28.

~~Page 2 line 3 - delete "; or" and replace with a period.~~

~~Page 2 lines 4-5 - delete.~~

Page 2 after line 3 add the following subsection:

(e) An employee claiming a right to return transportation under this section shall forfeit the right to return transportation if the person takes any act to establish residency in the state. Acts which shall be interpreted as establishing residency in the state include but are not limited to the following: application for a permanent fund dividend payment, application for an Alaskan drivers license or a resident Alaska vehicle registration, application for a resident Alaska fishing or hunting license, application for an individual post office box, registering to vote, claiming Alaska residency when applying for work in the state, any act or combination of acts which gives rise to the objective implication that the person is claiming residency or any benefit as the result of that person's length of domicile in the state.

is punishable by a fine of not more than \$500, or by imprisonment for not more than 90 days, or by both. (§ 7 ch 73 SLA 1949)

NOTES TO DECISIONS

Cited in Whitney-Fidalgo Seafoods, Inc. v. Beukers, Sup. Ct. Op. No. 1277, file No. 2654, 554 P.2d 250 (1976).

Article 5. Transportation of Employees.

<p>Section 375. Policy 380. Right to return transportation 385. Enforcement by civil action</p>	<p>Section 390. Construction of contracts 395. Orders and regulations 400. Penalty</p>
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Collateral references. — 51B C.J.S., Labor Relations, § 1158.

Sec. 23.10.375. Policy. The welfare of the state demands that adequate provision be made for financing the return transportation of certain persons to their place of recruitment inside and outside the state upon termination of employment. (ch 67 SLA 1949)

Sec. 23.10.380. Right to return transportation. (a) An employer who furnishes, finances, agrees to furnish or finance, or in any way provides transportation for a person from the place of hire to a point inside or outside the state to employ the person shall provide the person with return transportation to the place of hire from which transportation was furnished or financed, or to a destination agreed upon by the parties, with transportation to be furnished or financed

(1) on or after the termination of employment for a cause considered good and sufficient by the department, beyond the control of the person, or on or after the termination of the contract of employment or a renewal of the contract; and

(2) upon the request of the person or the department made within 45 days after the termination of employment.

(b) Upon the termination of employment the subsistence of the employee may not continue longer than 10 days after the termination or until transportation is available, whichever occurs first. (§ 1 ch 67 SLA 1949; am § 1 ch 136 SLA 1959; am § 1 ch 164 SLA 1960)

Sec. 23.10.385. Enforcement by civil action. (a) The department may take a written assignment of a right of action provided by AS 23.10.380, and may prosecute the action. The department may join

various emp action.

(b) The ge brought by t brought und

Sec. 23.10.390. 23.10.400 ar transportatio of the state t

Sec. 23.10.400. issue orders a — 23.10.400.

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Arti

Section
405. Legislative
410. Limitation of
in mines
415. Penalties

Cross referen
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Sec. 23.10.400. in underground placer mines, i other undergro gerous to life a

Sec. 23.10.400. (a) A person r underground le lode or placer v more than eigh shift is made, ex otherwise going

imprisonment for (1949)

various employees in one claim and in case of suit may join them in one action.

(b) The general provisions of law respecting wage collection suits brought by the department in behalf of employees apply in an action brought under this section. (§ 2 ch 67 SLA 1949)

Sec. 23.10.390. Construction of contracts. AS 23.10.375 — 23.10.400 are considered a part of every contract of hire involving transportation of an employee to and from this state or from one part of the state to another. (§ 2(a) ch 67 SLA 1949)

Sec. 23.10.395. Orders and regulations. The department may issue orders and adopt regulations necessary to carry out AS 23.10.375 — 23.10.400. (§ 4 ch 67 SLA 1949)

Sec. 23.10.400. Penalty. An employer who violates AS 23.10.375 — 23.10.400 is, in addition to any civil liability, guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000. (§ 3 ch 67 SLA 1949)

Article 6. Employment in Underground Mines.

Section

- 405. Legislative declaration of hazard
- 410. Limitation on period of employment in mines
- 415. Penalties

Cross references. — For industrial safety generally, see AS 18.60.

48A Am. Jur. 2d. Labor and Labor Relations, § 2640.

Collateral references. — Am. Jur. 2d, New Topic Service, Occupational Health and Safety Acts, §§ 27-36.

51B C.J.S., Labor Relations, § 1065.

Sec. 23.10.405. Legislative declaration of hazard. Employment in underground coal mines, underground lode mines, underground placer mines, in underground coal, lode or placer workings, or in all other underground mines or workings is injurious to health and dangerous to life and limb. (§ 43-2-1 ACLA 1949)

Sec. 23.10.410. Limitation on period of employment in mines.

(a) A person shall not be employed in an underground coal mine, underground lode mine, underground placer mine, underground coal, lode or placer workings, or other underground mine, or workings for more than eight hours in 24 hours, except on a day when a change of shift is made, excluding, however, an intermission of time for meals, or otherwise going to or from the place where the work is actually carried

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST

Revision Date: _____
 Title: "An Act relating to return
 transportation for workers."
 Sponsor: Rep. Donley & Koponen
 Requestor: House Judiciary

Bill Version: CSHB 43 (L&C)

Publish Date: _____

Agency Affected: Public Safety
 BRU: All

Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
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 FUNDS	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)

We do not expect an immediate fiscal impact based on fewer new hires anticipated.

Prepared by: Kathy Niles, Admin Assistant

Phone: 465-4336

Division: Commissioner's Office

Date: 2/17/87

Approved by Commissioner: [Signature]

Date: 2/17/87

Agency: Public Safety

Distribution (by preparer):

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

JNL
2/17/87

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB 43
Publish Date: _____

Revision Date: _____

Agency Affected: Labor
BRU: Labor Standards and Safety

Title: "An Act relating to return
transportation for workers."

Sponsor: Donley and Koponen

Components: wage and hour

Requestor: Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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: Tom Stuart *[Signature]*
Division: Labor Standards and Safety

Phone: 465-4870
Date: 1/23/87

Approved by Commissioner: Jim Sampson *[Signature]*
Agency: Labor

Date: 1/23/87

Distribution (by preparer):

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

Bill No.

House Bill 43

Date

January 23, 1987

Title

"An Act Relating to the
Transportation of Workers"

Contact:

Eileen Plate
465-2700

Tom Stuart
465-4870

Section 1: AS 23.10.380(a). This section simplifies the wording of the repealed section and adds a third option to the points to which an employee may be returned upon termination of employment. The third option, added, is "to the person's place of residence at the time of hire". Subsections AS 23.10.380(a)(1) and (a)(2) all not affected by this act.

Section 2: AS 23.10.380(c) added, requires that a person to be hired and transported into this state for the purpose of employment be notified of the employee's right to return transportation.

AS 23.10.380(d)(1) added, incorporates, essentially, the language repealed in AS 23.10.380(a).

AS 23.10.380(d)(2) added, makes an employee eligible for return transportation if the employee resided outside of Alaska when the employment offer was tendered. In the past many employees were given job offers, but told they would not be hired when they arrived in Alaska unless they paid their own travel expenses.

Section 3: Makes this act prospective as opposed to retroactive.

FISCAL NOTE

Bill Version : CSHB 43 (L&C)

Publish Date : _____

REQUEST: _____

Revision Date: _____

Agency Affected: Labor

Title: "An Act relating to return transportation for workers."

BRU: Labor Standards and Safety

Sponsor: Donley and Koponen

Components: Wage and Hour

Requestor: Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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: ^{AB} Tom Stuart, Director *Tom Stuart* Phone: 465-4870
 Division: Wage and Hour Division Date: 2/9/87

Approved by Commissioner: ^{AB} Jim Sampson *Jim Sampson* Date: 2/9/87
 Agency: Labor

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

Bill No. Committee Substitute for
House Bill 43 (L&C)

Date February 13, 1987

Title "An Act relating to return
transportation for workers."

Contact: Tom Stuart
465-4870

Eileen Plate
465-2700

Committee Substitute for House Bill 43 (L&C) clarifies and strengthens provisions in AS 23.10.380 which deal with workers' rights to return transportation.

Specifically CSHB 43:

- (1) adds a third option to the destinations to which an eligible worker may be returned upon termination of employment. Under current law, an employer is responsible for return transportation to either the place of hire from which transportation was originally furnished or to another destination agreed upon by the employer and the worker. Under CSHB 43, transportation to the worker's place of residence at the time of hire is also included as an option;
- (2) limits an employer's liability for payment of return transportation to those workers terminated within one year of the date they were employed. The current law is silent in this regard;
- (3) adds a new provision requiring employers who hire workers residing outside of the state to notify such workers of their rights to return transportation;
- (4) provides that a worker who was residing outside the state when the employer tendered an offer of employment is entitled to return transportation. Under current law, a worker is entitled to return transportation only if the employer provided transportation to the place of employment at the time of hire; and
- (5) clarifies that the return transportation provisions are applicable to the State of Alaska as well as all other employers. This is consistent with the Department's present application of this law.

In its enforcement of the return transportation law, the Department has observed the following practices which are aimed at circumventing the overall intent of the return transportation law.

- Some employers offer employment to workers residing outside the state and advise them to report to a designated location in the state. When the workers arrive, they are then informed that they will not be hired unless they pay their own travel expenses. Since under the current law return transportation is required only in those situations where the employer paid transportation to the place of employment, this practice effectively exempts the employer from his responsibilities under the return transportation law. The provisions in Section 2 of CSHB 43 would preclude employers from circumventing their obligations in this regard.

POSITION PAPER/Department of Labor

- Some employers also use the practice described above to reduce their liability for return transportation. For example, under current law a worker residing inside or outside the state can be offered a job in Nome and told to report to Anchorage or Fairbanks. The employer then pays the worker's transportation costs only from Anchorage or Fairbanks to Nome; and thereby reduces his liability for return transportation. The amendment in Section 1 of this bill which entitles the worker to return transportation to his place of residence would prevent circumvention of the intent of the law in this way.

The notification requirement in Section 2 of the bill is appropriate in order that a workers' right to return transportation is not forfeited solely because he was not aware of his entitlement. This is particularly important since a worker's right to request return transportation must be exercised within 45 days after termination of employment.

The one year limitation on rights to return transportation provided in Section 1 of the bill is an effort to apply a standard of reasonableness to the return transportation law. The law is aimed at providing return transportation to workers who incur such costs in connection with employment on a particular assignment or project that is not of a permanent or on-going nature. However, to assure its applicability to perhaps somewhat longer term but nonetheless non-permanent employment, such as could be encountered on a larger construction project, the Department would recommend that return transportation be required for terminations occurring within two years, instead of the one year period proposed.

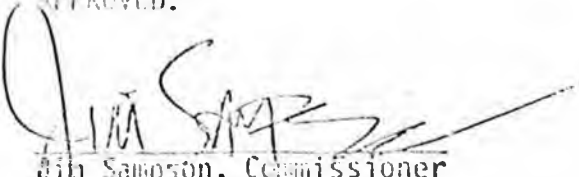
The Department would also request an additional clarification of the current law. AS 23.10.380(a) permits an employer and a worker to mutually agree upon the destination to which return transportation will be paid. A clarification is needed to assure that this negotiation takes place at the time of termination in order that workers' rights to return transportation are not diminished as a condition of employment.

The following amendments to CSIB 43 (L&C) would incorporate the Department's recommendations:

1. Amend line 14 on page 1 to read:
agreed upon by the parties at the time of termination if
2. Amend line 15 on page 1 to read:
(1) the employment terminated within two years after the

The Department supports CSIB 43, which is designed to assist in preventing the exploitation of workers. It will not have a fiscal impact on the Department.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 43 (L&C)
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: An Act Relating to Return
Transportation for Workers
Sponsor: Donley and Koponen
Requestor: _____

Agency Affected: A11
BRU: A11
Components: A11

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
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

CSHB 43 deals with paying return transportation costs for workers whose employment is terminated within the first year.

Provision for financing the return transportation of new employees to their original place of residence upon termination of employment has been public policy since 1949. The significance of CSHB 43 is that the proposed definition of "employer" would, for the first time, make the law applicable to State employees.

Prepared By: Diana DeSimone *Diana DeSimone* Phone: 465-4430
Division: Personnel Date: 1/30/87

Approved by Commissioner: Garrey Peska *Garrey Peska* Date: 1/31/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For CSHB 43

In FY 86, the State expended \$1,232,000 for moving and relocation costs. This figure includes legislative relocation costs which totaled \$219,100 in FY 86. Deducting costs for legislative moves leaves approximately \$1,000,000 for moving other State employees. The average cost of moving these employees is between \$10,000 and \$15,000. (Costs are higher because these are permanent versus temporary moves.) At an average of \$12,500 per move, this equates to about 80 moves of "regular" State employees.

We estimate that only about 10 percent of these paid moves are to entice new employees to join the State workforce, the only situation to which CSHB 43 would apply. (Paying moves of "on-board" State employees is usually associated with getting a seasoned, trained employee to change their location for the good of the service.)

In the eight situations to which CSHB 43 is applicable, it is unlikely that more than one or two of the employees would terminate within the first year. Therefore, the associated moving costs could be absorbed with existing resources.

A M E N D M E N T

Offered in the LABOR AND COMMERCE COMMITTEE

By Furnace

TO: HB 43

Page 2, after line 3, insert:

"* Sec. 3. AS 23.10 is amended by adding a new section to article 5 to read:

— Sec. 23.10.402. DEFINITION. In AS 23.10.375 - 23.10.402 'employer' means a person who employs at least one other person and includes the state and a political subdivision of the state."

Renumber remaining bill section accordingly.

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Judiciary

DATE: TUESDAY, JAN 27, 1987

The Labor and Commerce Committee has considered HB 43

"An Act relating to return transportation for workers."

RECOMMENDS:

- replace with CS HB 43 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

James K. Douley

Ellis

Cliff Davidson

Walt Furnace

Steve Kozman

SIGNING OTHER RECOMMENDATIONS:

Walt Furnace *Do not pass without clear constitutional opinion*

Do not pass without amendments

Bill needs work

James K. Douley
Chairman's signature