

SB

40

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 40  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title Construction of Highways by DOT&PF BRU Construction and CIP Support  
Component All Regional Components  
Sponsor Cowdery  
Requester S TRA Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

If approved, SB 40 would prohibit the department from using state forces to construct (Force Account Construction or FAC) highway projects if the value of the project was greater than \$250,000. The majority of projects that are considered for force account construction are federally funded. Federal provisions require that prior to approval of a force account project, the state must determine that this method will result in cost savings.

Since it is not possible to determine which projects will be considered for FAC over the next six years, we will base the projected savings on Calendar Year 2002. The estimated savings on 2002 force account projects (greater than \$250,000) was \$4,267,700. Assuming the amount of force account projects remains constant over the next six years, the lost savings would total \$25,606,200.

Prepared by: Dennis R. Poshard Phone 465-3904  
Division: Special Assistant to Commissioner Date/Time 2/18/03 11:07 AM  
Approved by: Acting Commissioner Mike Barton Date 2/18/2003  
Agency: Alaska Department of Transportation and Public Facilities



**Sen. John J. Cowdery, Chair**

**Senate Transportation Committee**

Call: 465-4921 Fax: 465-2069

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**CONTENTS OF PACKET: SB 40**

- A SB 53 version 23-LS0381\A**
- B Fiscal Note (*pending*)**
- C Sponsor Statement**
- D ABC position paper**
- E DOT force account report**

- Sen. Pres. THERIAULT
- Sen. WAGONER
- Sen. LINCOLN
- Sen. OLSON

# DOT&PF FORCE ACCOUNT REPORT

By Calendar Year - Dollar Amounts are in Thousands

**Labor** = The "Labor" column includes State owned equipment charges. And, where applicable, it includes small contracts let to entities that supplemented State Force Account work.

**Other** = Material, rental equipment, etc. costs are shown in the "Other" column. Where only an estimated overall cost was available, the cost was placed solely in the "Labor" column. This results in an inflated estimate of the Labor costs associated with Force Account projects.

## 1998

Number	Name	M&O	Local Agency	Village Safe Water	Labor \$	Other \$
001	NR NHS Road Pave & Bridge Refurb	X			1,764.0	1,386.0
002	CE NHS Crack Sealing & Bridge Repair	X			670.0	249.3
003	KTN-Cent Bus Dist Sidewalk Imp.		X		134.5	70.3
004	NR Surface Maintenance & Bridge Rehab.	X			1,064.0	
005	Selawik Boardwalk Improvements		X		75.0	310.0
006	Rural Ak. Sanitation Rds.-Chitgenik Lagoon			X	350.0	450.0
007	SE Gold Rush Centennial Enhancements	X			20.2	7.0
008	SE NHS/Non Pave & Bridge Refurb.	X			500.0	
009	Konglignak Sanitation Boardwalk			X	250.0	450.0
010	SE Jnu-Hazard Elimination	X			48.7	
011	KTN-Waterfront Promenade		X		82.2	17.5
<b>Totals</b>					<b>\$ 4,958.6</b>	<b>\$ 2,940.1</b>

Total dollars committed to surface transportation funding for 1998 was \$ 406.3 million.

1998 FA work performed = 1.94 % of the total surface transportation program

**\$ 7,898.7**

## 1999

001	NR FFY 99 NHS Prev. Maint. & Repairs	X			2,000.0	1,850.0
002	CE Bridge Maint/Repair FY 99	X			284.3	74.8
003	NR FFY 99 Non-NHS Maint. & Repairs	X			836.0	1,064.0
004	CE Crack Seal Program FY 99	X			643.4	224.3
005	SE NHS Pavement Rehab.	X			147.0	653.0
006	CE Asphalt Pave. Surface Refurb. FY 99	X			383.9	399.6
007	Force Account (AMHS) Wireless Com.	X			33.4	135.6
008	SE Non-NHS Pave. Rehab. FY 99	X			600.0	
009	NR Dalton Hwy. Erosion Control	X			15.3	102.7
010	NR Surface Treatment, Brenwick/Craig	X			73.6	129.4
011	CE FY 99, Non-NHS Fed. Crack Seal Pro.	X			200.4	69.3
<b>Totals</b>					<b>\$ 5,217.3</b>	<b>\$ 4,702.7</b>

Total dollars committed to surface transportation funding for 1999 was \$ 524.0 million.

1999 FA work performed = 1.89 % of the total surface transportation program

**\$ 9,920.0**

## 2000

001	NR FFY 00 NHS M&O Prev. Maint.	X			2,215.6	1,604.4
002	NR FFY 00 CTP M&O Prev. Maint.	X			1,725.5	1,249.5
003	CE: FY 00 Central Region Crack Seal Crew	X			704.3	189.4
004	SE Non-NHS Pavement Rehab. (FFY00)	X			256.7	576.1
005	SE Road Surface Treatment (FFY00)	X			253.6	552.4
006	CE: Interstate Maint. & Bridge Repair FY00	X			260.4	139.3
007	Proj. #66740, Russian Mission AWOS Pad		X		47.2	
008	Proj. #66740, Russian Mission Airport Clearing		X		122.0	
009	CE: Bridge Maint./Repair Non-NHS FY 00	X			278.0	121.5
010	CE: Cascade Shop Reconstruction	X			82.0	230.0
011	SE Haines-Litak Rd. Storm Drain	X			207.0	
012	Cheforak Sanitation Boardwalk			X	262.2	1,117.8
013	CE: FY00 Non-NHS Fed. Crack Seal Pro.	X			580.6	227.8
014	SE Haines-Chilkat Lake Rd.	X			310.0	190.0
015	SE Skagway-Taiya River Erosion Control	X			90.0	
016	Married Man's Trail Lighting		X		40.6	22.1
017	St. Mary's Airport Rd. Rehab.	X			1,205.6	1,793.9
018	SE Wrangell Airport Control Reg. Shelter	X			11.9	
019	Nunapitchuk Sanitation Boardwalk			X	399.0	1,701.0
<b>Totals</b>					<b>\$ 9,052.2</b>	<b>\$ 9,715.2</b>

Total dollars committed to surface transportation funding for 2000 was \$ 463.8 million.

2000 FA work performed = 4.05 % of the total surface transportation program

**\$ 18,767.4**

### 2001

001	NR FFY 01 M&O Preventive Maintenance	X		7,150.0	
002	CE: FY 01 Non-NHS Fed. Crack Sealing Prog.	X		339.4	86.5
003	NR FFY 01 CTP Pavement Markings	X		7.3	43.3
004	South Naknek Airport Repairs		X	30.0	15.0
005	CE: Bridge Maint./Repair NHS FY 01	X		325.5	35.6
006	Kwigillingok Sanitation Road		X	764.2	2,235.8
007	Cordova Sidewalks Asbestos Removal	X		14.2	2.7
008	CE: Bridge Maint./Repair Non-NHS FY 01	X		373.6	74.0
009	CE: FY 02 NHS Crackseal IPM	X		701.1	210.6
010	CE: FY 02 Non-NHS Crackseal Program	X		670.6	185.6
<b>Totals</b>				<b>\$ 10,375.9</b>	<b>\$ 2,889.1</b>

Total dollars committed to surface transportation funding for 2001 was \$ 380.0 million.

2001 FA work performed = 3.49 % of the total surface transportation program

**\$ 13,265.0**

### 2002

001	NR FFY 02 M&O Preventative Maintenance	X		8,860.0	
002	SE Region Road Surface Treatment	X		527.0	
003	Dalton Hwy. Painted Traffic Markings	X		113.6	61.4
004	CR Bridge M& R. NHS FY '02	X		118.5	200.0
005	Soldotna: East Redoubt Ave., Improvements		X	633.0	
006	Statewide Emergency Sign & Traffic Signals	X	X	430.0	
007	Northern Region Winter Trail Marking		X	182.8	111.0
008	King Cove Lagoon Bridge		X		5.0
<b>Totals</b>				<b>\$ 10,864.9</b>	<b>\$ 377.4</b>

Total dollars committed to surface transportation funding for 2002 was \$ 505.0 million.

2002 FA work performed = 2.23 % of the total surface transportation program

**\$ 11,242.3**

**The average of all FA work performed (1998 - 2002) = 2.68 %**

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB40-DOT-CO-3-26-04  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title Construction of highways by DOT&PF RDU Administration & Support  
Component Commissioner's Office  
Sponsor Cowdery  
Requester Senate Finance Component No. 530

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
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Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Nona Wilson Phone 465-6973  
Division: Legislative Liaison Date/Time 3/26/04 9:54 AM  
Approved by: John MacKinnon Date 3/26/2004  
Agency: Deputy Commissioner

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 40  
(S) Publish Date: 3/20/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title: Construction of Highways by DOT&PF BRU: Construction and CIP Support  
Component: All Regional Components  
Sponsor: Cowdery  
Requester: STRA Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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Since it is not possible to determine which projects will be considered for FAC over the next six years, we will base the projected savings on Calendar Year 2002. The estimated savings on 2002 force account projects (greater than \$250,000) was \$4,267,700. Assuming the amount of force account projects remains constant over the next six years, the lost savings would total \$25,606,200.

Prepared by: Dennis R. Poshard Phone 465-3904  
Division: Special Assistant to Commissioner Date/Time 2/18/03 11:40 AM  
Approved by: Acting Commissioner Mike Barton Date 2/18/2003  
Agency: Alaska Department of Transportation and Public Facilities

## **re: SB 40 alternatives:**

### **Is DELIVERY ORDER CONTRACTING an alternative?**

- DOC is used by, and was developed by, the Department of Defense (it's called JOC by the Army, SABER by the Air Force) and is being increasingly used by local governments and educational facilities.
- DOC is a competitively bid, fixed price, indefinite quantity, indefinite delivery (IDIQ), general construction contract.
- The contract typically has a base year with 2 to 4 option years.
- The contract sets parameters such as location of work, type of work to be done, design criteria, etc.
- A DOC contract uses unit price guides (UPG) and/or a unit-price book (UPB) to establish a price for a multitude of line items of work. A typical UPB has about 40,000 line items in order to cover just about every imaginable task. Items that are not in the book are then negotiated, priced, and added to the UPB. A UPG uses computer cost databases, etc.
- The contractor bids a coefficient that is a markup or a markdown to the UPB items, rather than a dollar price.

### **What you get with a Delivery Order Contract:**

- On-call general contractor where prices for line items of work are predetermined.
- A contract that is easy to manage.
- A contract that puts more money into "hard construction" instead of soft upfront costs.

Need  
CS  
Final

23-LS1879\D  
Bullock  
3/31/04

**CS FOR SENATE BILL NO. 382(TRA)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATE TRANSPORTATION COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to replat approval; relating to the platting of right-of-way acquired**  
2 **through eminent domain proceedings; and providing for an effective date."**

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

4 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **PURPOSE AND INTENT.** (a) The purpose of this Act is to confirm the municipal  
7 role in eminent domain proceedings while at the same time clarifying that that role is not  
8 intended to require the same substantive review or procedures for review of replats for the  
9 acquisition of property by the state or a municipality as required in replats for private  
10 landowner subdivisions or zoning reviews. Regulations adopted by the Department of  
11 Transportation and Public Facilities shall be the primary and governing authority for these  
12 replat approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains  
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to  
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to  
5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska  
6 v. Hinkel, 3AN-04-4768 CI.

7 \* Sec. 2. AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality  
9 acquiring property in fee that results in a boundary change located within a  
10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall  
11 conform to this section and AS 44.42.085 by obtaining preliminary approval of a  
12 replat showing clearly the location of the proposed public street or other acquisition of  
13 property. The platting authority may establish applicable review procedures and  
14 standards, consistent with AS 44.42.085 and regulations adopted under that section,  
15 for a replat made for the purpose of a right-of-way acquisition or condemnation. If no  
16 municipal standards and procedures are in effect, then the provision of AS 44.42.085  
17 and the regulations adopted under that section shall apply. Final approval of replat  
18 shall also be obtained. However, if a state agency clearly demonstrates an overriding  
19 state interest, a waiver of the municipal approval requirements in this section may be  
20 granted by the governor.

21 \* Sec. 3. AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right of way acquired through eminent domain**  
23 **proceedings.** (a) Except as provided in (c) of this section, the department shall  
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities  
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260, ..

26 (b) The department shall adopt regulations providing for uniform procedures  
27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be consistent with AS 09.55.240 - 09.55.460, AS 34.60 010 -  
29 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real  
30 Property Acquisition Policies Act of 1970), as amended;

31 (2) must provide for a review by the platting authority of the

1 municipality in which the property subject to the eminent domain proceeding is  
2 located; and

3 (3) may allow the municipal authority to elect to provide preliminary  
4 and final replat approval.

5 (c) The department is exempt from municipal platting requirements that are in  
6 conflict with this section and the regulations adopted by the department under (b) of  
7 this section.

8 (d) Neither the adequacy of the municipal replat process or standards, if any,  
9 nor the failure of a municipality to follow its own replat process and standards, shall  
10 deprive the state of the authority to exercise its power of eminent domain.

11 \* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 RETROACTIVITY. Sections 1 and 2 of the Act are retroactive to July 1, 1999.

14 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).



# Alaska State Legislature

Senate Majority Web: <http://www.akrepublicans.org>

Sponsor: Senator John J. Cowdery  
Current Version: CSSB40 (FIN)  
Contact: Richard F. Schmitz

## Fact Sheet for: SB40

**Short Title:** Construction of Highways by DOT-PF

### Summary:

1. SB40 addresses the use of force account spending for construction projects by the Department of Transportation (AkDOT-PF)
2. Construction projects paid for by force accounts do not go through the competitive bid process and use state employees instead of private sector contractors.
3. SB40 limits the use of force accounts to projects under \$250,000.

### Benefits:

1. SB40 insures that public construction projects go through a competitive bid process, while allowing DOT-PF employees to take care of minor or routine maintenance.
2. SB40 insures transparency in the spending of public funds, and will help insure private sector Bacon-Davis wages are paid to as many construction workers as possible.
3. SB40 brings DOT-PF in line with state statute, which requires that public spending on construction projects be done by private sector contractors on a competitive bid basis.

### Background:

In 1999, a \$4 million road project in Saint Mary's was completed by force account, and not by competitive bid. State law has no cap on the amount that can be spent by force account on a construction project.

The aim of SB40 is to place a \$250,000 cap on force account spending, while insuring that Alaska's contractors will have the opportunity to bid on projects above that figure.

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**2003 LEGISLATIVE SESSION**

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 Title Construction of Highways by DOT&PF BRU Construction and CIP Support  
 Component All Regional Components  
 Sponsor Cowdery  
 Requester S TRA Component No. \_\_\_\_\_

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<b>CAPITAL EXPENDITURES</b>						
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**FUND SOURCE** (Thousands of Dollars)

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**ANALYSIS:** (Attach a separate page if necessary)

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Prepared by: Dennis R. Poshard Phone 465-3904  
 Division Special Assistant to Commissioner Date/Time 2/18/03 11:40 AM  
 Approved by: Acting Commissioner Mike Barton Date 2/18/2003  
 Agency Alaska Department of Transportation and Public Facilities

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSSB 40(FIN)  
 (S) Publish Date: 3/31/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title Construction of highways by DOT&PF RDU Administration & Support  
 Component Commissioner's Office  
 Sponsor Cowdery  
 Requester Senate Finance Component No. 530

**Expenditures/Revenues (Thousands of Dollars)**

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**POSITIONS**

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Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Nona Wilson Phone 465-6973  
 Division: Legislative Liaison Date/Time 3/26/04 9:54 AM  
 Approved by: John MacKinnon Date 3/26/2004  
 Agency: Deputy Commissioner



# Alaska State Legislature

Senate Majority Web: <http://www.akrepublicans.org>

Sponsor: Senator John Cowdery  
Current Version: CSSB 40 (FIN)  
Contact: Richard Schmitz, 465-4921  
Date: April 5, 2004

CSSB 40  
(FIN)  
(Ad S)

## Fact Sheet for: Senate Bill 40

**Short Title:** Construction of Highways By DOT-PF

### Summary:

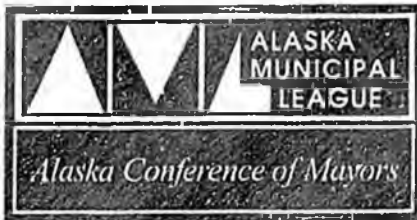
- Limits the use of force account spending for construction projects by the Alaska Department of Transportation & Public Facilities to projects under \$250,000 when it is in the best interest of the State.
- Sunsets in 2008.

### Benefits:

- Ensures that large public construction projects go through a competitive bid process, while allowing DOT-PF employees to take care of minor or routine maintenance.
- Ensures transparency in the spending of public funds, and helps ensure private sector Davis-Bacon wages are paid to as many construction workers as possible.
- Brings DOT-PF in line with state statute, which requires that public spending on construction projects be done by private sector contractors on a competitive bid basis.

### Background:

Construction projects paid for by force accounts do not go through the competitive bid process and use state employees instead of private sector contractors. In 1999, a \$4 million road project in Saint Mary's was completed by force account, and not by competitive bid. State law has no cap on the amount that can be spent by force account on a construction project. The aim of SB 40 is to place a \$250,000 cap on force account spending, while ensuring that Alaska's contractors will have the opportunity to bid on projects above that figure.



217 Second Street, Suite 200 • Juneau, Alaska 99801  
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

RECEIVED BY

FEB 18 2003

February 18, 2003

Senator Cowdery, Chair  
Transportation Committee  
State Capitol, Room 101  
Juneau, AK 99801

Re: SB 40

Dear Senator Cowdery,

The AML Public Works and Infrastructure Subcommittee reviewed SB 40 and recommends against its adoption.

This summer a number of public and private organizations worked on a compromise that took into consideration all of the aspects of this complex issue. The result is Administrative Order 199. I believe that all of the public and private groups involved in the discussions support working with new procedures.

Sincerely

Kevin Ritchie

Executive Director

SENATOR  
JOHN J. COWDERY  
Anchorage



Committees  
Chair: Rules  
Chair: Transportation  
Chair: World Trade &  
State/Federal Relations  
Legislative Council

Senate

January - May:  
State Capitol, Suite 101  
Juneau, Alaska 99801-1182  
Tel: 907-465-3879  
Toll Free: 888-269-3879  
Fax: 907-465-2069

May - December:  
716 W. 4th Avenue  
Anchorage, Alaska 99501  
Tel: 907-269-0222  
Fax: 907-269-0223

Senator\_John\_Cowdery@legis.state.ak.us

## **SPONSOR STATEMENT FOR SB40**

---

*"An Act relating to the construction of highways by the Department of Transportation and Public Facilities."*

**I**n order to maintain transparency and to make certain public funds are spent efficiently, statute requires construction and maintenance contracts be awarded on the basis of a competitive bid. In the case of small projects or repairs, however, the law allows the state, for the purpose of efficiency, to fund a project in-house through what's termed a "force account."

The purpose of SB40 is to reserve the competitive bid process for projects costing more than \$250,000, while continuing to allow the use of force accounts to fund smaller, local projects at the discretion of the (most often) Department of Transportation (DOT-PF).

To date, force account spending by DOT-PF has been consistently used to fund projects costing considerably more than \$250,000. In each case, the check-and-balance protection of a competitive bid has been lost. This can result in the state paying more for a project, while wages paid on an in-house project may be substantially lower than those paid by a private-sector contractor.

Specifically, contractors generally pay "Davis-Bacon" wages, while force account workers are often lower-paid temporary state employees.

Contractors employ skilled managers and maintain an inventory of specialized equipment. Therefore, construction work done in the public sector requires similar staffing as well as inventory, thus resulting in increased cost to the ratepayer.

SB40 also allows the use of force accounts on projects above the \$250,000 threshold when there is no responsive bidder.

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 1/29/03

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3/18/03

Transportation Committee considered SENATE BILL NO. 40

**SB 40 CONSTRUCTION OF HIGHWAYS BY DOTPF**

"An Act relating to construction of highways by the Department of Transportation and Public Facilities."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DOTPF	2/18		<input checked="" type="checkbox"/>	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Donald C. Colton</i>		<input checked="" type="checkbox"/>		
<i>Gene Hepiault</i>			<input checked="" type="checkbox"/>	
<i>Thomas H. Wagoner</i>			<input checked="" type="checkbox"/>	
<i>Debra J. ...</i>		<input checked="" type="checkbox"/>		
<b>CHAIR:</b> <i>John J. ...</i>	<input checked="" type="checkbox"/>			

## About ABC

Associated Builders and Contractors, Inc. (ABC) is a national construction trade association dedicated to advancing the free enterprise system. We strive to improve the environment in which our members operate and provide our members with a competitive advantage in the industry.

ABC is the largest merit construction trade association in the world and has grown to more than 23,000 members with over 80 chapters throughout the United States. Representing general contractors, specialty contractors, suppliers and associate members equally, ABC is considered to be one of the most influential lobbying groups in Washington.

Founded in early 1997, ABC of Alaska was chartered as a full service chapter in May of 2000. The chapter has been built around a belief in the merit philosophy, which states:

*A project should be awarded to the most responsive bidder, based on safety, quality and price; whether workers choose to be union or open-shop.*

This idea may occasionally put ABC and labor unions on opposite sides of legal and legislative issues, but to say ABC is anti-union is inaccurate. In fact, merit shop is often best described as union and non-union crafts working side by side to complete a project on time and under budget.

**ABC Supports Free Enterprise:** We believe in the right to do business free from outside interference and in the freedom to compete openly and fairly. We are advocates for our members.

**ABC Brings You New Business:** People prefer to do business with those they know. ABC provides many opportunities to make new connections and increase your bottom line through networking with other contractors. Many members have expanded their business relationships by attending ABC functions.

**ABC Keeps You Informed:** Members receive timely information year-round on local and national political issues and changes in the construction industry environment. Information is provided in targeted communications (faxes and email), in ABC national's *Construction Executive* monthly magazine, ABC of Alaska's *Network* bi-monthly newsletter, and other literature.



# Legislative Positions

March 15, 2004

## Alaska Chapter

### SB 276 / HB 403 – Alaska Insurance Guaranty Association Assessments

ABC of Alaska has a significant concern about the impact of this legislation on the construction industry. While we have identified no reluctance on the part of the industry to support an increase in assessments to cover shortfall in the Alaska Insurance Guaranty Association pool, the timing of implementation on any assessment increase will be critical.

Contractors are now bidding their work for the prime construction season which will run from spring through the end of the year. Bids consider existing Worker's Compensation rates to be static until each employer's renewal. If rates increase in the midst of an insurance year, contractor margins, already slim, will be significantly impacted.

In the construction industry, Worker's Compensation costs can be averaged from 10% to 12% of payroll costs. Last year's construction payroll was \$881 million and the Alaska Department of Labor Research & Analysis Division estimates a 3-5% increase this year. If we estimate a 4% increase, we are looking at total construction payroll of \$916 million in 2004. At 10%, the total worker's compensation rate for the industry can be estimated at \$91.6 million for 2004. A two percent increase will be \$1.8 million for the year. If we assume that by June the balance of the season's work has been awarded and contracted, then the industry will absorb up to a \$900,000 dollar hit on projects already bid and contracted for the year. Where in a normal environment costs are shared with construction buyers, in this scenario, the full brunt of the cost increase will be born by the industry.

The simple way to avoid this impact is to ensure that the change to the Worker's Compensation fee structure is a "new and renewal change" rather than an "in force" change. If increases are incorporated in Worker's Compensation fees at renewal, the contractor is already looking ahead to increases or adjustments in that expense as he or she is bidding.

### SB 360 / HB 497 – Safety Code Commission

While ABC of Alaska generally supports a re-structuring of the system for approving building and life safety codes, we have significant concerns over the proposed structure of a Building and Life Safety Code Commission. The current composition relies heavily on contractors and slights the contributions that can be made by designers. Designers provide the technical background on the scientific and engineering basis for code provisions and the contractors provide the necessary knowledge of how buildings and their systems are constructed. Both are essential and any Code Commission must achieve a balance between these two groups.

To provide the necessary balance, we suggest that the Commission be comprised of a civil engineer who specializes in structural engineering, a mechanical engineer, an electrical engineer, a general contractor, three specialty contractors, an architect and either a fire marshal, building official or general industry representative. The total Commission structure would be nine, evenly balanced between the design and construction communities. Unless this balance is achieved, we cannot support this legislation.

A proposed amendment to implement this recommendation may be obtained by contacting Colin Maynard, PE (907-274-2236, [cmaynard@bbfm.com](mailto:cmaynard@bbfm.com)).

### **SB 323 – Project Owner's Liability for Worker's Compensation**

ABC Supports SB 323. Current law governing project owner liability for contracted work has been interpreted by the courts to extend liability to the owner so long as the owner retains any control over the contractor work, including any required submission of project safety plans. With this broad interpretation of liability by the courts, the only method a project owner has to protect him or herself from liability is to completely step away from an active role in running a safe project. Providing any disincentive for an owner to engage in project safety is a disservice to Alaska's workers. It is important to bring the project owner into clear responsibility for workers' safety and that responsibility is rightly the workers' compensation system. With that responsibility comes the protection of exclusivity, ensuring that those who are responsible for providing workers' compensation are not at additional at risk of tort liability.

The Alaska Workers' Compensation Act is intended to provide injured workers with reasonable compensation for their work related injuries without regard to fault or the cause of the injury. If the current benefits are not adequate to fully compensate injured workers, then the amount and type of recoverable benefits should be reviewed. Leaving project owners on the hook for tort liability is not a solution that protects worker's interests. Extending the exclusivity protection of workers' compensation to project owners brings those owners fully into the arena of worker protection as those protections and rights are established by state law. This protection also eliminates a circumstance where construction contractors have been at double risk regarding worker injury.

The courts interpretation of project owner liability has encouraged owners to shift liability risk back to their contractors through indemnity provisions in contracts. In the event an injured worker is successful in filing suit against an owner and prevails in court, the owner simply turns to the contractor's indemnification clause for compensation. The workers' compensation exclusion is then effectively waived for the contractor. In short, this legislation addresses significant loopholes in existing workers' compensation law.

### **HB 268 – Limiting specialty contractor exemption from design requirements**

This legislation effectively narrows the specialty contractor exemption from architecturally licensed design for work within the contractor's specialty. This legislation is an example of an attempt to modify underlying statute to resolve a problem occurring out of lack of enforcement.

Current regulations require that any specialty contractor on commercial work will operate under the direction of a general contractor. The general contractor is responsible for obtaining a safety code review of project plans by the Dept. of Public Safety. This requirement, if enforced, ensures that the public health, safety and welfare is met.

Enforcement of existing statute and regulation is a much cleaner solution than developing new legislation that will require full architectural drawings on any commercial project, no matter how small. Envision a regulation that requires full architectural drawings for every tenant improvement project that might require a fence to be installed, a non-structural partition to be moved or installed, an outlet or fixture to be added or any other non-structural modification. ABC of Alaska opposes this legislation and supports enforcement of existing statute and regulation to ensure the safety of Alaska's citizens.

### **SB 253 – Exempts the Gasline Authority from State Procurement Code**

The protections inherent in the state procurement code are the foundation of a competitive environment in governmental procurement. We believe any deviation from this code must be extremely limited in scope and have requested that SB 253 be amended to limit the scope of any Gasline Authority exemption from the code.

### **Other Legislation**

ABC Supports: SB 311 / HB 450 – Structural overhaul of the Worker's Compensation system.

ABC Supports: HB 350 – Limits damages for a defect in design, construction and remodeling of certain dwellings.



# Regulatory Review Priorities

March 15, 2004

## Alaska Chapter

### Contractor Licensing

Contractor Licensing requirements are not enforced throughout the state. Specifically, outside of the major metropolitan areas there is no inspection system for enforcing licensing requirements. In some areas, handyman licenses are available to individuals who perform repair and construction. There is anecdotal evidence that these provisional license holders are bidding commercial work. This lack of enforcement allows some businesses to operate outside of regulatory requirements, placing compliant companies at a competitive disadvantage.

Effective enforcement of regulations requires real consequences for failure to comply. If there is no consequence for a failure to comply, then the individual or company who is least committed to quality and public safety may easily opt out of the regulatory requirement and achieve a competitive advantage over the contractor committed to compliance. The long-term effects of this behavior are costs to the state in safety, potential legal costs and, most often, tighter regulations that are also not enforced, creating a greater disparity in the industry ad infinitum.

### Electrical & Mechanical Trainee Card Requirements

The regulation established by the Department of Labor requiring that all entrants into the electrical and plumbing trades are enrolled into a registered apprenticeship program is not enforceable as to its intent. Presumably the regulatory intent is to require training for these trades that includes related instruction as well as on-the-job training. Unfortunately, as it currently exists the regulation does not impose any requirement that an individual actually receive training. It is perfectly feasible that an individual might enroll in an apprenticeship program, obtain a trainee certificate from the state and never complete a day's worth of school.

In order to achieve the objective of training, the regulation must require that an individual be successful in apprenticeship in order to receive a renewal certificate and to complete an apprenticeship in order to obtain a journeyman card. If the state cannot impose this type of performance requirement, then the regulation should revert to its original form, establishing on-the-job training as an acceptable training environment for new entrants to the trades.

### Prevailing Wage Surveys and Wage Classifications

Regulatory implementation of prevailing wage statute has effectively become simply a methodology for imposing union work rules and job classifications on the entire industry without review. Recently, changes have been made to the Laborers and Mechanics Minimum Rates of Pay that have significantly expanded the scope of job classifications with no apparent public comment process. Additionally, wages are established by union wage rates without a survey process, even though survey statistics are, apparently, collected by the state.



# Public Policy Positions

March 15, 2004

## Alaska Chapter

### Open Competition

ABC – Associated Builders & Contractors – of Alaska, Inc. envisions a future where all construction projects are awarded based on safety, quality and price without regard for political or labor affiliation. It is this philosophy that drives every effort of the association and its participating members. Fair and open competition in government procurement ensures the best material, labor and management resources are available for each and every project. Our goal is to promote fair and open competition in the construction industry.

### Responsible Regulation

ABC believes that responsible regulation is important to the construction industry and to safe construction in Alaska. It is imperative, however, that each regulation put in place be enforced consistently and equitably throughout the industry. There are numerous examples of un-enforced regulations in this industry, and we have prioritized them for administrative review, but the pertinent fact is that regulation without enforcement allows some businesses to operate outside of regulatory requirements, placing compliant companies at a competitive disadvantage. The long-term effects of this inequity are: costs to the state in safety; potential legal costs; and, most often, tighter regulations that are also not enforced, creating a greater disparity in the industry, ad infinitum.

To break the chain of increasingly unenforceable regulation, the legislature must review and evaluate enforcement of any existing regulation prior to modification of underlying statute. Simultaneously, the Administration must review existing regulations to evaluate the enforcement environment. Regulations that cannot be enforced should be repealed, if they are critical, they must be enforced.

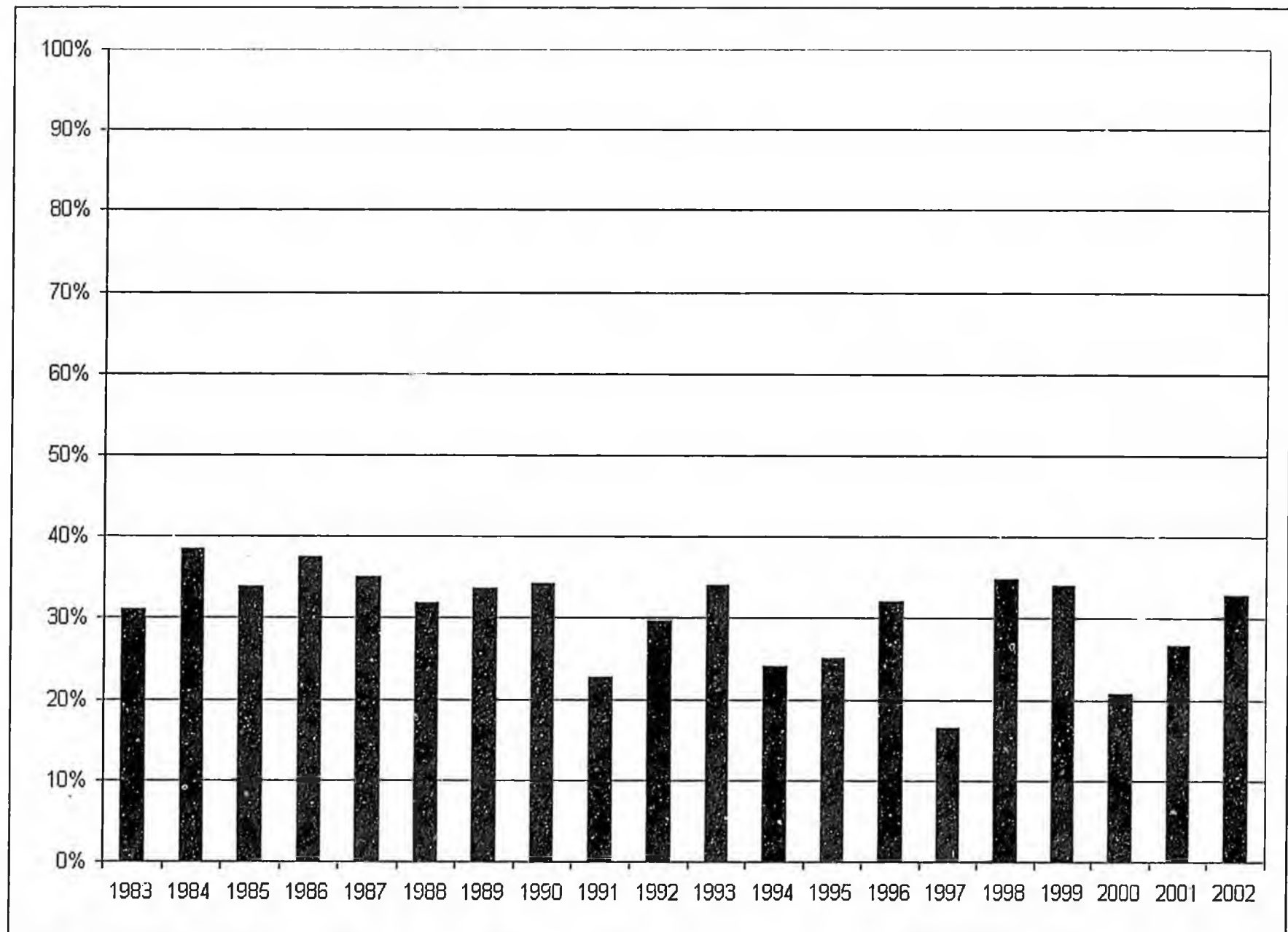
### The Gas Pipeline – Alaskan jobs for Alaskan Workers

The need to provide quality employment and career advancement opportunities to Alaska's workers is a priority for all Alaskans. With this in mind, ABC of Alaska proposes that all construction entities, regardless of whether they are union, non-union, large corporations, or sole proprietors, work together to ensure opportunity for all Alaskans on the Gas Pipeline project. We are confident that, with strong leadership, these groups can work together and provide a cohesive construction team for the benefit of all of Alaska's workers.

While ABC of Alaska consistently promotes open and competitive bidding as the procurement methodology of choice, we understand the state of Alaska is intent on pursuing a project labor agreement in some form on the Alaska Gas Pipeline. Unfortunately, the standard project labor agreement effectively excludes the non-union worker from opportunity on a project. According to the US DOL, 70% of Alaska's construction industry is non-union – it is extremely important, therefore, that any Gas Pipeline agreement provide fair and equal access to employment for the majority of Alaska's construction workers, the open shop (non-union) sector of the industry.

A Project Agreement of Fair Employment and Work Stabilization would meet the expressed needs of the state, standardize training and benefits for all workers on the project and provide opportunity for both union and open shop workers and contractors to participate. With an open and competitive agreement of this type, the project will have access to the broadest base of Alaska workers and the industry will work side by side to complete the project on time and on budget. We welcome the opportunity to work with all concerned parties to develop an agreement for this project that will protect the interests of Alaska's workers.

## Union Density in Construction Industry Alaska – 1983-2002



Data Source: Current Population Survey  
Chart prepared by Public Service Research Foundation

**PROJECT AGREEMENT OF FAIR**  
**EMPLOYMENT AND WORK STABILIZATION**  
**FOR**

(NAME OF PROJECT)

Drafted By

THE COALITION FOR FAIR EMPLOYMENT  
IN CONSTRUCTION

12/18/00

## **PROJECT AGREEMENT OF FAIR EMPLOYMENT AND WORK STABILIZATION**

The **Coalition for Fair Employment in Construction (CFEC)** has prepared this document to assist owners, contractors and unions in drafting a project labor agreement or labor stabilization agreement that is fair to all workers and respects their freedom of association. The format and content of this document has been substantially based upon the "Project Agreement of Fair Employment and Work Stabilization for Denver International Airport."

This document is in no way intended to be a complete and finished product. It is assumed that the reader may want to delete, modify, or add text in order to fit the Owner's specific local needs. It is recommended that the reader obtain legal counsel in the final drafting of any agreement.

The law firm of Cook, Brown & Prager, LLP helped CFEC develop this document. For the reader who wants additional insight into this document, Cook, Brown & Prager can be retained for additional advice by contacting Dennis B. Cook or Jessavel Y. Delumen at (916) 442-3100.

At the back of this document, a list of "unfair" clauses in project labor agreements or labor stabilization agreements has been attached in order to alert the reader to the restrictions in such agreements that prevent non-union workers and contractors from working on a project.

**PROJECT AGREEMENT OF FAIR EMPLOYMENT  
AND WORK STABILIZATION FOR  
(Name of Project)**

THIS PROJECT AGREEMENT OF FAIR EMPLOYMENT AND WORK STABILIZATION (hereinafter referred to as "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2000, by and between the (Name of Owner), (hereinafter referred to as "Owner") together with the contractors who perform construction work at the (Name of the Project) (hereinafter referred to as "Contractors") and the (Name of organized labor's organizations) and the local unions affiliated therewith. The term "Union" or "Unions" as used in this Agreement shall refer to all of the unions listed on the signature page(s) of this Agreement and the (Name of Organized Labor's Council) collectively, while the term "Council" shall apply to the (Name of Organized Labor's Council).

**Intent and Purpose**

WHEREAS, it is essential that the construction work required to build the (Name of the Project) be done in an efficient and economical manner so as to secure optimum productivity and to eliminate delays in the construction operations, thus ensuring timely completion in the work undertaken by the contractors, and

WHEREAS, the Owner has concluded that the adoption of certain requirements for, and uniformity in, wages, hours, and working conditions for work on the Project, as reflected in this Agreement, will promote stability, efficiency, and economy of performance, and

WHEREAS, all parties have as their goal the optimization of opportunities for minority and women employees as well as for Disadvantaged Business Enterprises including Minority, Women, and Disabled Veterans Owned Business Enterprises, and

WHEREAS, it is the intent and purpose of this Agreement to provide, establish and put into practice effective methods for the settlement of labor disputes which may arise on the Project described herein without strike, lockout, work stoppage, or slowdown, to the end that the Project shall be assured of continuity of operations, and

WHEREAS, it is the intent and purpose of this Agreement to provide fair employment and work stabilization without discrimination in any manner, either for or against Union or non-Union contractors, and nothing in this Agreement shall be construed to require any contractor to become signatory to a collective bargaining agreement, or any employee to become a member of any Union,

NOW, THEREFORE, in consideration of these premises, it is agreed as follows:

**ARTICLE I**  
**Definitions**

- 1.1 "Project" shall be defined as the construction of the (Name of the Project), which construction as presently planned shall consist of (Description of the Project), scheduled for initial completion in (Year), consisting of all work done by Contractors under contract to the Owner, and their subcontractors, at the (Name of the Project) site.
- 1.2 "Owner" shall be defined as (Name of the Owner).
- 1.3 "Contractor" or "Contractors" shall be defined as all companies or entities performing construction work under contract with the Owner for the Project, and employing any construction workers. However, this Agreement shall not apply to any contract, the total cost of which is less than (Dollar Amount).
- 1.4 "Subcontractor" or "Subcontractors" shall be defined as all companies or entities performing construction work under a subcontract at any tier which work is also covered under a contract between a Contractor and the Owner for the Project.
- 1.5 "Manager" shall be defined as the Manager of Public Works for the Owner or his or her designated representative.
- 1.6 "Union" or "Unions" shall be defined as all of the Unions listed on the signature page(s) of this Agreement and the (Name of Organized Labor's Council).
- 1.7 "Signatory Contractors" shall be defined as those contractors working on the Project who are signatory to any collective bargaining agreement or agreements (excluding project only agreements) with any of the Unions.
- 1.8 "Nonsignatory Contractors" shall be defined as all contractors working on the Project who are not signatory to any collective bargaining agreements (excluding project only agreements) with any of the Unions.
- 1.9 "Employer" or "Employers" shall be defined as any Contractor or Subcontractor who employs employees to perform work at the Project.

**ARTICLE II**  
**Scope of Agreement**

- 2.1 This Agreement shall apply and is limited to the recognized and accepted definition of construction work under the direction of the Employers at the site of the Project. The Owner, Unions, and Contractors agree to abide by the terms and conditions contained in this Agreement with respect to the administration of construction work at the Project during the duration of the Contract's work at the Project. This Agreement represents the complete understanding of the parties with

respect to the issues covered hereunder and any Contractors and Subcontractors at any tier shall not, by virtue of this Agreement, be required to sign any agreement with the Unions or any other Union insofar as work on the Project is concerned. With regard to Signatory Contractors and Subcontractors, the provisions of this Agreement shall control the construction of this Project and take precedence over the provisions of local or national agreements, which may conflict, with the terms of this Agreement.

- 2.2 This Agreement shall be limited to work historically recognized as construction work, and nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work or function which may occur at the site of the Project or be associated with the development of the Project.
- 2.3 Contractors obligated under this Agreement shall be required to incorporate the Agreement into all subcontracts of whatever tier.
- 2.4 Nothing in the Agreement shall be construed to limit the rights of the Contractor to select any qualified person for employment, except as provided in applicable Collective Bargaining Agreements for those who are Signatory Contractors.
- 2.5 Nothing in this Agreement shall be construed to limit the Owner's right to select the lowest responsive bidder pursuant to state contract statutes for the purposes of awarding construction contracts.
- 2.6 Nothing in this Agreement shall be construed to require any individual to be or to become a member of any union except as provided for in applicable collective bargaining agreements. The parties agree that all employees shall have the right to decide whether they want to join a union or refrain from joining a union.
- 2.7 Nothing in this Agreement shall in any way interfere with MBE/WBE or DVBE programs applicable to the Project.
- 2.8 Any Non-signatory Contractor of any tier shall be bound to all of the terms and conditions of this Agreement except those specifically noted as applying to Signatory Contractors only.
- 2.9 Items specifically excluded from the scope of this Agreement include but are not limited to the following:
  - a. Work of non-manual employees, including but not limited to superintendents, supervisors (except foremen and general foremen), engineers, inspectors, quality control personnel, quality assurance personnel, timekeepers, mail carriers, clerks, office workers, janitors, messengers, guards, emergency medical and first-

aid technicians, and other professional, engineering, administrative, and management employees;

- b. All deliveries to and from the Project site and all work performed off the Project site except as otherwise provided for in Prevailing Wage or Public Works Determinations and regulations issued pursuant thereto;
- c. Equipment and machinery in the care, custody and control of companies other than Contractors, or Subcontractors;
- d. The removal of scrap, surplus, spoilage, and waste materials from a common scrap location to a location off the Project site except as otherwise provided for in the Prevailing Wage Determinations and regulations issued pursuant thereto;
- e. Any work performed on or near or leading to or into the Project site by state, county, city (other than the (Name of the Owner) or similar governmental bodies or their contractors, and/or utilities or railroads or other similar organizations or their contractors; and
- f. Work that is not within the recognized jurisdiction of the Unions.

- 2.10 As items, areas and systems of the Project are inspected and construction tested by the Contractor and finally accepted by the Owner, this Agreement will not have further force or effect on such items, areas, or systems except when the Contractor is directed by the Owner to engage in repairs, modifications, checkout and warranty functions required by its contract. Warranty work by the manufacturer of the equipment shall be at the Owner's discretion.
- 2.11 Delivery of equipment, apparatus, machinery and construction materials to the site shall not be within the scope of this Agreement until in the possession and control of the Owner or a Contractor except as otherwise provided for in the Prevailing Wage Determinations and regulations issued pursuant thereto.
- 2.12 The (Name of Owner) will prominently indicate on bid documents and bid announcements that this Project is covered under the terms of a Project Agreement for Fair Employment and Work Stabilization between the (Name of Owner) and the (Name of Organized Labor's Council).

**ARTICLE III**  
**Management Rights**

- 3.1 The Employer retains full and exclusive authority for the management of its operations. The Employer shall direct its working forces at its prerogative, including but not limited to hiring, promotion, transfer and layoff. No rules, customs or practices shall be permitted to be observed which limit or restrict production, or limit or restrict the working efforts of employees. Suspension or discharge of employees will be subject to just cause.
- 3.2 The designation or determination of the number of foremen or general foremen is the sole responsibility of the Employers. However, Signatory Contractors will be subject to any applicable collective bargaining provisions relating to the designation and determination of foremen or general foremen.
- 3.3 The Employer, in its sole discretion, shall schedule work and shall determine when overtime will be worked.
- 3.4 The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth. The Employer retains all management rights not specifically limited by the terms of this Agreement.
- 3.5 The Employer may utilize any method or technique of construction, tools or other labor-saving devices, and there shall be no limitation or restriction regardless of source or location on the use of machinery, pre-cast, tools or other labor-saving devices, nor shall there be any limitation upon choice of materials, design, or source of materials, provided that the installation, fabrication, assembly, or application of materials at the site of the Project shall be performed by labor or mechanic classifications traditionally and customarily having jurisdiction over such work.
- 3.6 The Employer shall have the right to terminate any employee who fails to satisfactorily, competently, and diligently perform his/her assigned work. Unless otherwise required by law, all grievances, complaints, disputes or controversies involving the termination of an employee performing work at the site of the Project shall be resolved pursuant to Section 11.3 of this Agreement.

**ARTICLE IV**  
**Craft Training**

- 4.1 This Agreement recognizes the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry. Employers may employ apprentices of the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are registered, and subject to any limitations imposed by the

US Department of Labor, Office of Apprenticeship Training Employer and Labor Services.

- 4.2 Employers must comply with applicable apprenticeship statutes and regulations and may employ registered apprentices within all apprenticeable crafts on this Project. Employers will be required to comply with all applicable rules and regulations on the use of apprentices. Employers must provide documentation of compliance with this requirement to the (Name of Owner) prior to the start of work.

**ARTICLE V**  
**Wages and Benefits**

- 5.1 Minimum wage rates and fringe benefit contributions paid on behalf of employees on the Project shall be paid in accordance with the provisions of the State Prevailing Wage law.
- 5.2 Employers shall provide fringe benefits to their employees, which, as a minimum, shall include the following benefits for each employee covered by this Agreement:
1. Health and welfare, and
  2. Pension.

The health and welfare benefit shall not be paid as wages unless the employee already has health and welfare coverage through their spouse, domestic partner or another employer.

- 5.3 The Owner has the obligation to initiate and carry out reasonable and appropriate procedures to enforce compliance with Article V of this Agreement. The Owner reserves the right to require the Contractor and every Subcontractor to provide certified payroll reports and any other documentation necessary to verify compliance with this Agreement.
- 5.4 In the event the Owner has reasonable cause to believe that any Contractor or Subcontractor has failed to or is failing to comply with prevailing wage obligations, the Owner shall notify the Contractor to correct the error. If the failure to comply is not corrected within 15 days, the State of California and the Contractor's bonding company shall be notified.
- 5.5 The Owner may take any other appropriate action provided for by local, state, or federal law relating to the payment of minimum wages and fringe benefits.

**ARTICLE VI**  
**Safety, Health, & Sanitation**

- 6.1 Employees must use diligent care to perform their work in a safe manner and protect themselves and the property of the Employer and the Owner. Failure to do so may result in immediate termination.
- 6.2 In order to protect the safety and health of employees, all parties agree to comply with the applicable provisions of state and federal laws and regulations relating to job safety, health and safe work practices, as well as those specific Project safety rules enacted by the Employers and the Owner in its overall Safety Program.
- 6.3 All employees will use required safety equipment and protective clothing. Willful failure or refusal by an employee to use such protective equipment or clothing is cause for termination.
- 6.4 Substance abuse: The possession of alcohol or illegal drugs or being under the influence of alcohol or illegal drugs on the site is subject to discipline up to and including termination. Any employee who reports for work under the influence of alcoholic beverages or illegal drugs, or who drinks alcoholic beverages or uses illegal drugs on the job site, or who reports to the job site with alcoholic beverages or illegal drugs in his/her possession, shall be subject to discipline up to and including termination. All Contractors shall have a drug testing program in effect that includes pre-hire drug screening, random drug testing, post accident drug screening and "for cause" drug testing, and a provision requiring the Employer to reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, provided that this reasonable accommodation does not impose an undue hardship on the Employer. Nothing in this Article shall be construed to prohibit an Employer from refusing to hire, or discharging an employee who, because of the employee's current use of alcohol or drugs, is unable to perform his or her duties, or cannot perform the duties in a manner which would not endanger his or her health or safety or the health or safety to others.

## ARTICLE VII

### No Discrimination

- 7.1 The Contractors agree to engage in active recruitment of minority and female applicants and to make every effort to employ sufficient numbers of minority and female applicants to assist in meeting employment goals pursuant to this Agreement.

7.2 The following employment goals are a part of this Agreement:

- A.) African American \_\_\_\_\_%
- B.) Hispanic \_\_\_\_\_%
- C.) Asian \_\_\_\_\_%
- D.) Female \_\_\_\_\_%
- E.) American Indian \_\_\_\_\_%

7.3 No party to this Agreement shall discriminate against any employee or applicant for employment because of religion, marital status, veteran status, disabled status, race, creed, color, sex, age, national origin, sexual orientation, or union or non-union affiliation. In addition, the parties hereto agree to take positive affirmative action to ensure full compliance with the rules of all applicable equal employment opportunity statutes, ordinances, and regulations.

**ARTICLE VIII**  
**Local Hiring**

8.1 The Owner has every desire to maximize the use of local residents as employees on this Project. "Local" shall mean any resident or business located within the Owner's jurisdiction. As a minimum, the following minimum goals are to be established relative to local hire on this Project:

- A.) Journeypersons (hours) \_\_\_\_\_%
- B.) Apprentices (hours) \_\_\_\_\_%

8.2 To the extent permitted by law, at least one (1) local apprentice shall be employed in each apprenticeable craft used on this Project.

8.3 It is the goal under this Agreement that at least \_\_\_\_\_(%) of all subcontracted work should be subcontracted to local businesses.

**ARTICLE IX**  
**Working Conditions**

9.1 The Employer shall be the sole judge as to the numbers of foremen and general foremen to be employed, as well as the number of employees to be assigned to any crew, operation or piece of equipment subject to this Agreement and, for Signatory Contractors, subject to applicable Collective Bargaining Agreements.

9.2 There shall be no limit on production by workers nor restrictions on the full use of tools and/or equipment. There shall be no restriction, other than that which may be required by safety regulations or state Prevailing Wage determination, on the number of employees assigned to any crew or to any service, except as provided for in applicable Collective Bargaining Agreements for Signatory Contractors.

- 9.3 Procedures for the control of tools, equipment and materials shall be established by the Contractors and shall be observed by all employees in accordance with applicable jurisdictional standards contained in Article XIII.
- 9.4 The Employer shall use clock or other accountability systems for all employees checking in or out of the Project on a daily basis. All employees shall be at their designated reporting place for work at the starting time and shall return to their designated reporting place at quitting time. Special consideration may be given to unusual conditions. All employees will be at their work places at the conclusion of the lunch break and authorized rest period.
- 9.5 Employees shall be allowed ten minutes prior to the end of each shift to put up their tools and leave their place of work. Clean-up time shall be as specified in applicable Collective Bargaining Agreements for Signatory Contractors. Employees shall not stop work prior to the times designated herein for putting up tools or cleaning-up, or prior to the commencement of the lunch period, without the consent of their employers, except that employees may take authorized rest periods scheduled by the Employer. Repeated infractions of this rule, after appropriate warnings, shall be grounds for termination.
- 9.6 Each employee is expected to give a full day's work for a full day's pay and any violation of the work starting and stopping times will be grounds for termination.
- 9.7 If an employee is unable to report for work as scheduled, he/she is expected to notify the Employer's job office; failure to do so without good reason will be cause for discharge. Automatic termination will take place after three (3) days of unexcused failure to report to work or failure to notify the Employer's job office, unless such failure was caused by circumstances beyond the control of the employee. If an employee is late for work, the time will be deducted from his/her pay.
- 9.8 Chronic absenteeism and tardiness without sufficient verified reason is a cause for termination. The Employer shall be the sole judge of whether there is good reason for a worker's absenteeism or tardiness.
- 9.9 Slow-downs, stand-by crews and featherbedding practices will not be permitted. Neither the Unions nor the Owner will impose conditions, which require the Employer to employ more individuals than the Employer deems necessary to perform the work.
- 9.10 Vendors and suppliers will deliver supplies, equipment, tools, and materials to points on the Project site as designated by the Contractor. There shall be no interferences with vendor and/or supply deliveries to the Project.
- 9.11 A mutually agreeable procedure will be established whereby upon the completion of the installation of any equipment including construction component testing and

prior to system operation testing, the equipment may be tagged as being turned over to the Owner. The determination of completion shall be by the Owner. All work subsequent to the tagging of the equipment may be performed at the discretion of the Owner with personnel of its choice; provided, however, that the employees performing construction work shall not test nor operate equipment, apparatus or machinery unless specifically requested to do so by the Owner or an Employer or a representative of the manufacturer, or some other management technician authorized to give such work order. Persons of its choice shall perform all inspection by the Owner or by the Employer of incoming shipments of equipment, apparatus, machinery, and construction materials of every kind, at the sole discretion of the Owner or the Employer. Such inspection personnel shall perform no repair, alteration, assembly, disassembly or installation of said equipment or materials, unless such personnel are covered by this Agreement.

- 9.12 Any employee who willfully damages the work of any other employee, or any material, equipment, apparatus, or machinery shall be subject to immediate termination.
- 9.13 Any termination of an employee or other personnel action shall be subject to the right of the employee or the Union on behalf of its members to initiate a grievance under the procedures established herein. As for Signatory Contractors, either the employee or the Union acting on behalf of its members may initiate a grievance under the procedures established herein.
- 9.14 Copies of Contractor and Project work rules will be posted in the appropriate locations at the Project site and provided to employees prior to the commencement of work on the Project. All employees will abide by these rules and the appropriate posted rules of respective Employers. Infractions of work rules may be grounds for termination.

#### **ARTICLE X** **No Strikes & Lockouts**

- 10.1 During the life of this Agreement, the Unions agree that they will not collectively or individually engage in or participate in any strike, work slowdown, work stoppage, sympathy strike, refusal to work or picketing against any Employer signatory to this Agreement.
- 10.2 The Owner and the Signatory Contractors agree that they will not lock out any of the employees working under this Agreement.
- 10.3 If any strike, work slowdown, work stoppage, sympathy strike, refusal to work or picketing against any employer working on the Project is not immediately resolved within twenty-four (24) hours of said strike, work slowdown, work stoppage, sympathy strike, refusal to work or picketing, the striking Unions, jointly and severally, and any Unions acting in concert with them, agree to pay Owner a sum

equal to one percent (1%) of the Prime Contract value for each day said strike, work slowdown, work stoppage, sympathy strike, refusal to work or picketing continues. Because the injury resulting from such a violation of this Agreement would be impractical or extremely difficult to ascertain or estimate, this sum is agreed upon as liquidated damages and is intended as compensation for this injury and not as a penalty. The liquidated damages provided by this Section shall be in addition to any other available remedy, and not in lieu thereof.

## **ARTICLE XI**

### **Hours of Work, Overtime, Reporting Time Pay & Holidays**

- 11.1 **Production Shifts:** The standard work day and work week for production crews shall consist of either five (5) consecutive days at eight (8) hours per shift Monday through Friday or, to the extent permitted by law, four (4) consecutive days at ten (10) hours per shift. Nothing herein shall be construed as guaranteeing any employee eight (8) or ten (10) hours of work per day or forty (40) hours of work per week. Regular work hours will be between 6:00 A.M. and 6:00 P.M. There shall be a 30-minute unpaid lunch period, which shall, insofar as practicable, be at the midpoint of the shift or within one-half hour before or one-half hour after the midpoint of the shift. There shall be required rest periods that shall be scheduled by the Employer.
- 11.2 **Make-up Day:** In the event the employer is unable to work forty (40) straight time hours during the scheduled work week due to inclement weather, Saturday may be utilized as a make-up day and all hours worked up to forty (40) in a work week shall be paid at the straight time rate of pay.
- 11.3 An effort will be made to keep overtime work to a minimum but where such work is judged necessary it will be worked at the direction and discretion of the Employer. The Employer will designate which employees will work over-time. If overtime is worked the Employer will make every effort to distribute overtime on an equitable basis wherever practicable and possible.
- 11.4 **Overtime:** All hours worked in excess of eight (8) hours per shift on the five (5) day eight (8) hour shift or in excess of ten (10) hours per shift for the four (4) day ten (10)-hour shift, shall be paid at a minimum of one and a half (1½) times the straight time rate. Hours worked on Holidays listed in paragraph 11.8 shall be paid at a minimum of one and a half (1½) times the basic straight time hourly wage rate. Hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on any seventh consecutive day of work in a workweek shall be paid at double the employees' regular rate of pay.
- 11.5 **Service Shifts:** On operations including but not limited to dewatering, curing and protection of concrete, equipment servicing and maintenance, maintenance of climatic protective devices, and similar operations, the Employer may establish shifts with days off other than Saturdays and Sundays. On such operations, all

overtime hours shall be paid at a minimum of one and one-half (1½) times the basic straight time hourly wage rate.

11.6 Multiple Shifts: Multiple shifts may be established when considered necessary by the Employer. The Employer reserves the right to implement different shift schedules for different operations.

- 1) Signatory Contractors shall notify the Union of the starting and quitting time of all second or third shifts two (2) days before the initiation of said shifts.
- 2) If two (2) five (5) day, eight (8) hour shifts are utilized, employees in both shifts will work eight (8) hours for eight (8) hours' pay, exclusive of lunch and authorized rest periods.

3) On a three (3) shift operation, shift hours and rates will be as follows:

First Shift: 8 hours' work plus ½ hour for lunch for 8 hours' pay.

Second Shift: 7½ hours' work plus ½ hour for lunch for 8 hours' pay.

Third Shift: 7 hours' work plus ½ hour for lunch for 8 hours' pay.

On a three (3) shift operation eight (8) hours shall be credited as time worked for each shift for purposes of fringe benefit payments and overtime calculation.

All hours worked in excess of the established shifts shall be paid at a minimum of one and a half (1½) times the basic straight time hourly wage rate.

- 4) No additional shift premiums shall be required.
- 5) Shifts shall be established for a minimum of five (5) consecutive workdays.
- 6) Safety regulations for the Project may limit the number of hours worked by an individual within a specified time period.

11.7 Reporting Time Pay (applies to all shifts): Any employee who reports for work at a designated time and for whom no work is provided shall, unless notified as herein provided, receive two (2) hours' pay provided the employee remains available for work during the two (2) hour period. If after working two (2) hours the employee is prevented from working a full shift by other than inclement weather, the employee shall be paid for actual time worked but not less than four (4) hours' pay if more than two (2) hours are worked. In the case of inclement

weather shutdown, the employee will be paid for two (2) hours or actual time worked whichever is greater, provided that, at the discretion of the Employer the employee remains immediately available to work the job for the said two (2) hours. The Employer may implement a notification procedure to give prior notification of work cancellation. Notice given to the employee through the designed notification procedure at least two (2) hours prior to the beginning of the employee's shift shall be deemed as timely notice and no reporting time pay would then be required.

Any employee who leaves the job on his/her own accord will be paid for actual hours worked only. Any employee who reports to work in a condition unable to work will not be eligible for reporting time pay.

11.8 The recognized uniform non-paid holidays shall be as follows:

New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, the day after Thanksgiving, and Christmas Day. No employee shall be required to work on a holiday except in an emergency. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. In the event a holiday falls on Saturday, the preceding Friday will be a regular workday at straight time pay.

**ARTICLE XII**  
**Disputes & Grievances**

- 12.1 All parties to this Agreement realize the importance of maintaining continuous and uninterrupted performance of the work on the Project, and agree to resolve disputes in accordance with this Article. Nothing in this Agreement shall restrict any remedies available to individual employees under applicable statutes.
- 12.2 **Grievance Procedure and Arbitration.** It is specifically agreed that in the event any disputes arise out of the interpretation or application of this Agreement, they shall be settled by means of binding arbitration. Any grievances, complaints, disputes and controversies of employees of Signatory Employers or the Unions against Signatory Employers on this Project shall be resolved in accordance with the grievance procedures set forth in their applicable Collective Bargaining Agreement. Any grievances, complaints, disputes and controversies of employees of Nonsignatory Employers or the Unions against Nonsignatory Employers on this Project shall be resolved by means of binding arbitration through the American Arbitration Association. Such arbitration shall be final, binding and conclusive and shall be conducted in accordance with the Construction Industry Dispute Resolution Procedures of the American Arbitration Association. in accordance with applicable statutes.

The expenses of the arbitration, including the arbitrator's fee, shall be borne by the Nonsignatory Contractor and/or the Union, unless otherwise directed by the arbitrator. Each party shall pay its own attorney's fees.

- 12.2 The arbitrator(s) shall not have authority to render a decision involving a jurisdictional dispute or a decision the effect of which would amend, modify, alter, delete from, add to, or supersede any provision of this Agreement or its intent.

**ARTICLE XIII**  
**Jurisdictional Disputes**

- 13.1 The assignment of work for Signatory Contractors will be solely the responsibility of the Employer performing the work involved. In such assignment, the Employer will assign work in accordance with historical practices for building, highway and heavy construction work, and such assignments will be according to area practices, decisions and agreements of record, and in compliance with applicable provisions of Prevailing Wage regulations.
- 13.2 Signatory Contractors agree that all jurisdictional disputes over division of work with crafts affiliated with the Alaska Building and Construction Trades Council, AFL-CIO, will be settled in accordance with the procedural rules and regulations of the Plan for the Settlements of Jurisdictional Disputes in the Construction Industry, effective June 1, 1984, or any successor plan. All Signatory contractors of this Project agree to assign work and be bound to the terms and conditions of the Plan for the Settlement of Unions agree that the assignments of the Employer shall be followed until the dispute is resolved in accordance with the section. It is not the intent of this section to disregard the Jurisdiction of Unions not a party to such resolution. Individuals violating this article shall be subject to immediate discharge. Any Union violating this Article shall forfeit any further claim to the disputed work.
- 13.3 The assignment of work for Nonsignatory Contractors will be solely the responsibility of the Employer performing the work involved. In such assignments the Employer will assign work in accordance with historical practices for building, highway and heavy construction work, and such assignments will be according to area practices and in compliance with applicable provisions of Prevailing Wage regulations. Should a Nonsignatory Contractor be unable to resolve an assignment of work dispute, the Owner shall after investigation resolve the dispute and the Nonsignatory Contractor agrees to abide by the Owner's decision. The Employer's assignment of work shall be adhered to until the dispute is resolved.

**ARTICLE XIV**  
**Construction**

- 14.1 This agreement is deemed to be made, and shall be subject to, construed and enforced in accordance with the laws of the State of Alaska, and the Charter and Revised Codes of the Owner. Venue for any legal action relating to this Agreement shall lie in the \_\_\_\_\_.

**ARTICLE XV**  
**General Savings Clause**

- 15.1 It is not the intent of the parties to this Agreement to violate any Federal, State or local laws governing the subject matter contained herein, and any final determination that any provision of this Agreement violates any law or is otherwise not binding and enforceable shall have no effect on the validity of the remaining provisions of the Agreement. All parties who are signatory to the terms of this Agreement agree that if any of the provisions contained herein is finally held or determined to be illegal, unenforceable, not binding, or void by a court of final and competent jurisdiction, an effort will be made by the parties hereto to promptly enter into negotiations concerning the clauses affected by such decision for the purpose of achieving conformity with the requirements of any applicable law or conflicting law so violated.

**ARTICLE XVI**  
**Local Collective Bargaining Agreements**

- 16.1 This Agreement recognizes that each individual Signatory Contractor, as defined in Article 1.8, is currently signatory to one or more Collective Bargaining Agreements which would otherwise be applicable to and govern portions of the individual Signatory Contractor's construction work performed at this Project. As to each individual Signatory Contractor, this Agreement shall incorporate by reference all provisions, not inconsistent with this Agreement, of said individual Signatory Contractors' current Collective Bargaining Agreement(s) with a Union signatory to this Agreement and shall be binding upon said individual Signatory Contractor and said Union. A copy of each current Collective Bargaining Agreement along with a list of which agreement a Signatory Contractor is currently signatory to shall be on file with the Manager and available for inspection.
- 16.2 In the event the Local Area Collective Bargaining Agreement is revised by mutual agreement of the Signatory Contractors and local Unions who are parties to such agreement, then, if such revision is not inconsistent with the provisions of this Agreement, appropriate changes will automatically be made to reflect such revision in the Local Area Collective Bargaining Agreement at such time as the local Union gives written notice to the Owner of such revisions, with an attached copy of the duly executed Local Area Collective Bargaining Agreement and an updated list of Contractors signatory to the revised Local Area Collective

Bargaining Agreement. Such changes shall be effective as of the effective date of such revision of the Local Area Collective Bargaining Agreement.

- 16.3 In the event of any conflict between the provisions of this Agreement and those of a Local Area Collective Bargaining Agreement, the provisions of this Agreement shall take precedence. This Agreement shall not govern, and shall have no force or effect with respect to any work other than work on this Project for the Owner. No provision of this Agreement shall be construed to require any Contractor or Subcontractor to be bound by or to become signatory to any Collective Bargaining Agreement which the Contractor or Subcontractor is not otherwise bound to or signatory to, and no Nonsignatory Contractor is required to become bound to, abide by or, become signatory to any Local Area Collective Bargaining Agreement by virtue of becoming bound to or signing this Agreement.
- 16.4 No provision in any Local Area Collective Bargaining Agreement shall be incorporated pursuant to Section 16.1 which discriminates against the Project or which was negotiated by the parties thereto to have special application to the Project.

#### **ARTICLE XVII** **Amendment**

- 17.1 No alterations, amendments or modifications hereof shall be valid unless executed by an instrument in writing by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. The Owner shall furnish sufficient copies of such amendments or modifications to the other parties.

#### **ARTICLE XVIII** **Entire Agreement**

- 18.1 The parties agree that this Agreement is intended to cover all matters affecting wages, hours, and terms and conditions of employment on the Project and that, during the term of this Agreement, neither the Contractor, the Owner, nor the Unions will be required to negotiate on any further matters affecting these or any other subjects not specifically set forth in this Agreement except by mutual agreement of the parties involved.

#### **ARTICLE XIX**

**Term of Agreement**

19.1 This Agreement shall be effective as of the date hereinabove written, and shall remain in effect until (date of the final completion and acceptance of the Contractor's work at the Project).

**ARTICLE XX**  
**Project Access**

20.1 Duly authorized representatives of the Unions signatory to this Agreement shall have access to the Project site, provided they do not interfere with the work of employees or the delivery of supplies, equipment, tools or materials to the Project, and provided they comply with job and safety rules established and posted by the Employer(s) and/or the Owner.

**ARTICLE XXI**  
**Signature Page**

IN WITNESS WHEREOF, these parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST

(NAME OF OWNER)

(NAME OF CONTRACTORS)

(NAME OF UNIONS)

RECOMMENDED AND APPROVED:

(Signature, Name, Title, & Name of Each Organization for Owner's representatives, organized labor's representatives and Contractors or their representatives)

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

**"UNFAIR" CLAUSES IN**  
**PROJECT LABOR AGREEMENTS**

The following clauses or variations of these clauses are to be avoided in a Project Labor Agreement (PLA) in order to make the PLA fair for all workers and their employers, regardless of union status:

**UNION SECURITY**

- 7.1 The Contractors/Employers recognize the Union(s) as the sole bargaining representative of all craft employees working on the project(s).
- 7.2 All employees who are employed by Contractors/Employers to work on the Project will be required to become members of and maintain membership in the appropriate Union after seven (7) days of consecutive or cumulative employment on a construction contract subject to this Agreement. Membership under this section shall be satisfied by the tendering of periodic dues and fees uniformly required to the extent required by law.

**REFERRAL**

- 8.1 The Union(s) shall be the primary source of all craft labor employed on the project(s) at any given time. However, Contractors/Employers not already signed to an appropriate collective bargaining agreement shall be permitted to transfer their Journeyman level key personnel, provided they have cleared through the appropriate union hall, as provided in section 8.2, for a specific construction trade, from one job to another into or within any labor market area with the following guidelines: (1) 15% of the positions, for any single Contractor/Employer, may be journey level key personnel at any one point in time. (2) The Contractor is allowed to have a maximum of fifteen (15) key personnel. (3) The Contractor shall be allowed one (1) key personnel regardless of the calculation, as long as one or more person(s) has been dispatched from the local Union Hiring Hall. (4) An employee shall be considered a member of a Contractor/Employer's key personnel for the purpose of this Article if the employee's name appears on the Contractor/Employer's active payroll for 60 of the 100 working days before award of the construction contract.
- 8.2 Contractors/Employers shall be bound by and utilize the registration facilities and referral systems established or authorized by the signatory unions when such procedures are not in violation of federal law.

## BENEFITS

- 9.1 Contractors/Employers agree to pay contributions to the established vacation, pension or other form of deferred compensation plan, apprenticeship, and health benefit funds in the amounts designated in the master agreements of the appropriate local unions. Contractors/Employers shall not be required to pay contributions to any other trust funds to satisfy their obligation under this Article except respective trades shall continue to pay all trust fund contributions as outlined in such collective bargaining agreements.
- 9.2 By signing this Agreement, Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements, as described in 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds.

## APPRENTICESHIP TRAINING

- 11.1 On all construction projects undertaken by the [Name of Public Agency/Entity], regardless of whether a PLA is used on the particular project, an employee from each contractor's or subcontractor's regular workforce must be enrolled and participating in an apprenticeship program which has graduated apprentices annually for at least the past five years.

The above clauses are some of the clauses that are usually utilized in union-only PLAs. These provisions are objectionable to merit shop workers because these workers usually have to pay into union trust funds for benefits that they either already have with their current employer or in which they will never vest because they will not stay with the Union after the PLA project. These clauses also require workers to join the union or to make benefit contributions into the union trust funds along with paying union dues. Under the referral provision of union PLAs, as much as 85% of workers are discriminated against because they have chosen to work for merit shop contractors and are prohibited from working on a project.



Alaska Chapter

## Associated Builders and Contractors Voice of the Merit Construction Industry

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Main  
ABC Goals  
Apprenticeship  
Calendar  
Committees  
Contractor Resources  
Find Your Legislator  
Member Services  
Membership Directory  
Newsletter  
Online Plans Service  
Position Papers  
Project Labor Agreements

ABC NATIONAL

### ABC Goals

#### Project Labor Agreements

Lea

Our Goal: To successfully defeat union-only Project Labor Agreements (PLAs)

Construction unions have recently been aggressively attempting to negotiate union-only Project Labor Agreements (PLAs) with owners to require all workers on a project to join a union as a condition of employment. While in an open shop competitive environment, open shop general contractors may use union contractors and union general contractors may use open shop subcontractors. Project Labor Agreements mean that open shop subcontractors must become signatory to a union in order to get the job. ABC of Alaska works tirelessly in opposition of union-only PLAs through communication, education and grassroots lobbying.

Open shop contractors represent an estimated 75% of the construction workforce in Alaska. ABC is documenting this percentage and educating the general public, legislators and construction buyers on the true make-up of the construction industry in Alaska.

With a larger work force base and no seniority rules, open shop contractors are more flexible in their ability to hire locally. The net effect of union-only agreements is that "travelers" are brought in from outside Alaska to work on projects while local laborers and construction professionals remain unemployed. An open and competitive bidding process assures government and industry that every project has access to the full spectrum of crafts available.

PLA advocates contend they do not prejudice an open shop contractor, but they can sign a job agreement for the project. However, open shop contractors are prejudiced by PLAs because most of their employees will never see a benefit from signing with the union. For specialty trades that are on a project for a short time, employees will not qualify for medical insurance and will not become vested in the retirement program, thereby forfeiting the major part of their fringe benefit package.

In short, competition helps control excesses. It makes no more sense to have a union only construction industry than it does to have only one political party, Republican or Democrat!

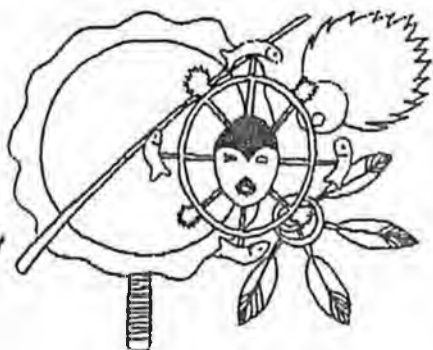
#### ABC Success Stories

With the help of Senator John Cowdery, ABC played a key role in the defeat of a union-only Project Labor Agreement on the Ted Stevens Anchorage International Airport project. Our members sent so many faxes to the Governor's office that they asked Senator Cowdery to call off the fax campaign as his fax machine was jamming!

Nationally, ABC was influential in the development of President Bush's Executive Order 12813.

Order prohibiting the use of PLAs on government projects. ABC filed a brief in support of the Executive Order and continues to support the legal battle to keep the Executive Order in place.

**[Learn more](#)**



## Nunakauyak Traditional Council

TO ALL ALASKA STATE LEGISLATURES

Senator John Cowdery under Senate Bill 40 and Representative Jim Holm under House Bill 67 have introduced the bills which will affect the capital projects by "Force Account" in which we know will have devastating impact in our region and local economy.

With limitation on State-funded projects to no more than \$250,000 will not support local economy whatsoever. This limitation and phasing out construction jobs under force account will not help high unemployment rate in rural communities. Big construction companies and non-residents will only benefit from construction jobs instead..

Villages do not even have economic base in which to support their own projects whether they are funded by the State or Federal government. The tribes or Tribal organizations have exercised their right to govern themselves by handling projects under force account thereby guaranteeing jobs to local residents who are jobless and have families to support. Big construction firms from outside of or even those based in Alaska do not always have that guarantee and instead bring in crews with them. This type of construction project do not support local economy.

The Alaska State Legislatures would be more lenient to its constituent's needs and well-being by helping them to protect their interest and allow them to continue to handle their own projects under force account. As a long time Tribal Council employee, I see many benefits that local force account projects provides to those who took part in construction projects which also help provide local economy little by little.

On the behalf of Nunakauyak Traditional Council (NTC) and many tribal governments and tribal organizations within AVCP/Calista region, I would like to humbly ask Senator Cowdery and Representative Holm to listen and reconsider or withdraw their bills immediately.

Last but not least, I would like to ask all Alaska State Legislatures to vote these bills down if the bills are not withdrawn by its original authors.

ON THE BEHALF OF NUNAKAUYAK TRADITIONAL COUNCIL

James Charlie, Sr., Director  
Tribal Support Services

cc: Mr. David B. Tim, NTC Chairman  
Editor, The Delta Discovery  
Editor, The Tundra Drums

**NATIVE VILLAGE OF TUNUNAK  
TUNUNAK IRA COUNCIL  
PO BOX 77; TUNUNAK, ALASKA 99681  
PHONE: (907) 652-6527 FAX: (907) 652-6011**

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**TO: ALASKA STATE LEGISLATORS**

*Date: March 12, 2003*

**FROM: James G. James, Tribal Administrator**



**Re: Senate Bill 40 and House Bill 67**

**MESSAGE:**

Once again the construction of capital projects by force account within the State of Alaska has been put into place in question.

The Bill which has been sponsored by Senator John Cowdery and Representative Jim Holm would limit the construction of state funded capital projects by force account to those projects under \$250,000.00.

It will have a big impact especially to rural areas in which the majority of village members are in dire need of jobs and economic opportunities because of high costs of living.

I have seen many of our people that are in need to feed their baby and to clothe them with proper clothings during harsh winter months. A can of evaporated milk costs \$1.55 per can and the baby formula can costs nearly \$20.00 or more depending on the price market up. The clothings price are devastating compare to Anchorage prices. Although, people that are on welfare or on any assistance through State and Federal Assistance programs are just a quarter worth.

We urge you not to pass those two bills because it won't help the real Alaskans who needs it the most.  
Thank You.



## Position Paper on Force Account Construction

ABC Alaska believes in a system of free enterprise and open competition. This premise is generally embraced by the State of Alaska as evidenced by the language existing in Alaska Statutes AS 19.10.170 and AS 35.15.010 which state it is the general policy of the state to require construction under bid contract in accordance with the state procurement code. Additionally, Alaska Statutes require: "*A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010, 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 intent of the Legislature is clear: public works ought regularly to be constructed in compliance with state procurement code and shall be regulated by "Little Davis Bacon" laws establishing prevailing wage rates. Force Account Construction by the state subverts this intent, bypassing the competitive bid process inherent in the state procurement code and hiring its own forces to complete construction work at sub-standard wages.

The two compelling arguments for Force Account Construction are cost savings and local hire. The cost savings are claimed by reduced labor costs and by the fact that the state does not have to make a profit. The payment of lower than prevailing wage has been used as the justification for avoiding federal procurement law by citing reduced project costs. In effect, the state is paying sub-standard construction wages on government work, eliminating opportunities for private sector employers who would be required to conform to federal Davis-Bacon or Little Davis Bacon regulations on that same work. In short, this practice places the state in direct competition with private sector employers, a practice in direct conflict with privatization goals that have been expressed by the legislature over the past several years.

It may be argued that the published prevailing wage does not reflect local conditions. If this is the case, there is a mechanism in place to address the variation. 8 AAC 30.050 states "*A region may be subdivided into zones if the commissioner determines that the prevailing wage rate has local variations within the region...*" and "*Special prevailing wage rate determinations may be requested for special projects or special worker classifications, if the work to be performed does not conform to traditional public construction for which a prevailing wage rate has been established under (a) of this section.*" This would be in keeping with the intent of the Legislature and also protect the rights of the workers.

The contention that the state does not have to make a profit and therefore can operate at a lower cost is also misleading. While the state may not include a risk factor in its estimate, risk is still there. Delays and cost overruns will be borne solely by the state. Under bid contract, these risks and costs are borne by the contractor. The state will have no incentive for cost control and innovation as is routine in the competitive bid process. The notion that the State can compete with private industry on a level playing field is highly questionable and again flies directly in the face of the state privatization goal.

The local hire issue is also compelling and should not be ignored. Again, local residents are best served by a level playing field. Providing an accurate prevailing wage and including "helpers" in the job classifications will allow local residents the best opportunity to compete in the marketplace.

Senate Bill No. 40 and House Bill No. 67 will help limit the State's ability to engage in force account construction. The same language should be added to AS 44.33.300 and we, as a community, should then focus our efforts on improving the implementation of existing prevailing wage regulations to provide opportunities for local hire in a free and open competitive bidding environment.