

SB

276

Alaska State Legislature

DURING SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
(907) 465-4843 (800) 892-4843
FAX: (907) 465-3871



DURING INTERIM
716 W. FOURTH AVE
ANCHORAGE, AK 99501-2133
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SENATOR CON BUNDE
District P

E-MAIL
Senator.Con.Bunde@legis.state.ak.us

Sponsor Statement **Senate Bill 276**

Project labor agreements require contractors to make fringe benefit payments into union health and pension plans on behalf of non-union workers. However, more often than not, those workers never see the benefit of these contributions. When non-union workers are employed on a project covered by an unfair project labor agreement, they end up making contributions to union health, training and pension plans of no benefit to them because the duration of the project does not allow them to meet the vesting thresholds of the union plan.

A class action lawsuit filed after TAPS addressed this issue, but unfortunately, only a certain percentage of the plaintiffs were allowed to participate in the suit, and those who did settle for pennies on the dollar.

It is discriminatory to ask Alaska workers to forfeit the benefits they have earned. It is fiscally irresponsible to force workers to make contributions to a pension plan that will never be returned to them.

Senate Bill 276 says if the State of Alaska mandates that a project be covered by a project labor agreement, then it is appropriate for the state to ensure that the project labor agreement contains adequate safeguards to protect non-union workers and ensure that they receive the full benefit of their pension, and other trust fund contributions.

This bill states that any project labor agreement mandated by the State of Alaska must permit employees who are not signatory to a local collective bargaining agreement to execute a "Benefits Election Declaration." The Benefits Election Declaration would allow the employee the option to have all fringe benefit payments and/or contributions made on his or her behalf to either the employer's existing fringe benefit programs or have the fringe benefit contributions deducted and paid to the applicable union trust fund. It's a matter of fairness and equity.

Please join me in supporting all workers in Alaska by allowing them to keep the money/benefits they have earned.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 8, 2008

SUBJECT: Project Labor Agreements (Work Order No. 25-LS1247A)

TO: Senator Con Bunde
Attn: Jane Alberts

FROM: Dan Wayne 
Legislative Counsel

Enclosed is the draft bill you requested, amending the state procurement code and AS 43.90 with regard to project labor agreements required by the state on public construction projects. The purpose of the bill is to allow employees who earn fringe benefits on those projects to select the account the employer contributes the benefits to; this is so that the employee might avoid being denied access to benefits kept in an account selected by a labor union, for example, because the employee does not meet minimum length of membership requirements imposed by the account administrator.¹ As requested, I have restricted the bill draft's application to state projects only.

As Ms. Alberts and I have discussed, federal law regulates private-sector labor unions and, through ERISA, private-sector employee benefits. There is, therefore, a substantial risk that, if this bill is adopted, federal law in one or both of these areas could pre-empt it. Use in the bill draft of the phrases "as permitted by law" and "project(s) where the state acts as a market participant" is intended to reduce the risk of federal preemption, and based on the *Lampkin* decision and other reported cases I have reviewed, they will be effective in that regard, although some risk remains.²

Section 1 of the bill adds language to the procurement code allowing the state to require project labor agreements on certain projects, as the court ruled in *Lampkin*, and defining "project labor agreement." AS 43.90.130 already contains similar language but is limited to proposals under the Alaska Gasline Incentive Act (AGIA).

¹ This problem was alleged to have occurred on a project that was the subject of a legal dispute in *Laborers Local 942 v. Lampkin, et al.*, 956 P.2d 422 (Alaska 1998).

² *Id.* See also, *Building and Construction Trades v. ABC of Massachusetts and Rhode Island, Inc.*, 507 U.S. 218 (1993), and *Building and Construction Trades v. Albaugh*, 295 F.3d 28 (D.C. Cir. 2002).

Senator Con Bunde
February 8, 2008
Page 2

I've added an applicability section intended to limit the otherwise substantial risk of a successful legal challenge by applicants, or prospective applicants, were the state to apply provisions in the draft bill to projects for which bids have already been submitted.

If I may be of further assistance, please advise.

DCW:ljw
08-067.ljw

Enclosure

25-LS1247A
Wayne
2/8/08

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY SENATOR BUNDE

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to project labor agreements."**

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

3 *** Section 1. AS 36.30 is amended by adding a new section to read:**

4 **Sec. 36.30.405. Project labor agreements. (a) A construction contract on a**
5 **project in which the state acts as a market participant may require that a contractor**
6 **commit to negotiate, before construction, a project labor agreement to the maximum**
7 **extent permitted by law.**

8 **(b) A project labor agreement under (a) of this section must, to the extent**
9 **permitted by law, include a requirement that each employee eligible to earn fringe**
10 **benefits because of the agreement may sign a declaration of benefits. The declaration**
11 **must allow the employee to elect that, if an employer makes any contribution of fringe**
12 **benefits on the employee's behalf in connection with the project, the employer shall**
13 **make the contribution to a fringe benefits program selected by the employee from**
14 **among fringe benefits programs participated in or administered by**

15 **(1) the employer who makes the contribution;**

1 (2) another employer of the employee; or

2 (3) the labor representative that negotiated the project labor agreement.

3 (c) In this section,

4 (1) "contractor" means a person who executes a contract with the state;

5 (2) "project labor agreement" means a comprehensive collective
6 bargaining agreement between the contractor or the contractor's representative and the
7 appropriate labor representatives to ensure expedited construction with labor stability
8 for the project by qualified residents of the state;

9 (3) "state" has the meaning given to "agency" in AS 36.30.990.

10 * Sec. 2. AS 43.90.130(17) is amended to read:

11 (17) commit to negotiate, before construction, a project labor
12 agreement to the maximum extent permitted by law; a project labor agreement
13 under this paragraph must, to the extent permitted by law, include a requirement
14 that each employee who is eligible to receive fringe benefits because of the
15 agreement may sign a declaration of benefits; the declaration must allow the
16 employee to elect that, if an employer makes any contribution of fringe benefits
17 on the employee's behalf in connection with the project, the employer shall make
18 the contribution to a fringe benefits program selected by the employee from
19 among fringe benefits programs participated in or administered by (A) the
20 employer who makes the contribution, (B) another employer of the employee, or
21 (C) the labor representative that negotiated the project labor agreement; in this
22 paragraph, "project labor agreement" means a comprehensive collective bargaining
23 agreement between the licensee or its agent and the appropriate labor representatives
24 to ensure expedited construction with labor stability for the project by qualified
25 residents of the state;

26 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 APPLICABILITY. (a) AS 36.30.405, added by sec. 1 of this Act, applies to
29 construction contracts under AS 36.30 for which the deadline to submit responsive proposals
30 to the state occurs 10 days or more after the effective date of this Act.

31 (b) AS 43.90.130(17), amended by sec. 2 of this Act, applies to construction contracts

1 under AS 43.90 for which the application period closes 10 days or more after the effective
2 date of this Act.



ARCTIC LIGHTS ELECTRIC INC.

RESIDENTIAL • COMMERCIAL • INDUSTRIAL

1107 West 36th Avenue • Anchorage, AK 99503

Phone: (907) 345-7896 • Fax: (907) 345-7874

February 19th, 2008

To: All Alaska State Senators
Urge to Support Legislation

Sponsor Statement
Senate Bill 276

Project labor agreements require contractors to make fringe benefit payments into union health and pension plans on behalf of non-union workers. However, more often than not, those workers never see the benefit of these contributions. When non-union workers are employed on a project covered by an unfair project labor agreement, they end up making contributions to union health, training and pension plans of no benefit to them because the duration of the project does not allow them to meet the vesting thresholds of the union plan.

A class action lawsuit filed after TAPS addressed this issue, but unfortunately, only a certain percentage of the plaintiffs were allowed to participate in the suit, and those who did settled for pennies on the dollar. It is discriminatory to ask Alaska workers to forfeit the benefits they have earned. It is fiscally irresponsible to force workers to make contributions to a pension plan that will never be returned to them.

Senate Bill 276 says if the State of Alaska mandates that a project be covered by a project labor agreement, then it is appropriate for the state to ensure that the project labor agreement contains adequate safeguards to protect non-union workers so they will indeed benefit from the pension contributions that they make. This bill states that any project labor agreement mandated by the State of Alaska must permit employees who are not signatory to a local collective bargaining agreement to execute a "Benefits Election Declaration." The Benefits Election Declaration would allow the employee the option to have all fringe benefit payments and/or contributions made on his or her behalf to either the employer's existing fringe benefit programs or have the fringe benefit contributions deducted and paid to the applicable union trust fund. It's a matter of fairness and equity.

Please join me in supporting ALL workers in Alaska by allowing them to keep the money/benefits they have earned. However you feel about the existence of PLA's for the large projects considered in our State, this issue of where the non-signatory worker benefits wind up has always been a concern to me. I have several friends who were part of the class-action suit who wound up getting nothing when all through their tenure on the project, the Teamsters got a significant chunk of the payroll withholdings without having to contribute or support anything for these workers. In other words, it was a legal cash payoff that went right to the union bottom-line, and then who knows where after that. That is unfair and immoral, and you should insure that such policies are checked and eliminated.

On behalf of the many non-signatory workers, thank you.

Sincerely yours,

Brian D. Miller
President



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HOMEWORKS

Constance Hartle

From: Monika Switzer [mswitzer@klebsheating.com]
Sent: Monday, February 18, 2008 8:14 AM
To: Sen. Con Bunde
Subject: SB 276

*Jan 16
for Bob
Yackey*

Senator Bunde:

Please support SB 276 to assure that non-union workers receive fair compensation for the retirement contributions.

Sincerely,

Monika Switzer
Commercial Accounting Administrator
Klebs Mechanical, Inc.
1107 E 72nd Ave
Anchorage, AK 99518

Constance Hartle

From: Michael Samson [ms@sei-ak.com]
Sent: Sunday, February 17, 2008 2:00 PM
To: Sen. Con Bunde
Subject: SB-276

Senator Bunde:

I'd like to thank you for co-sponsoring SB276. This is good legislation that will go a long ways towards helping the construction workers of Alaska prepare for their future. The Labor Unions defined benefit plans discriminate against the non-vesting workers. These men and women, under SB276 will have the opportunity to save their hard earned pension money in a plan that guarantee's it will be there for their own retirement, not as a benefit to vesting union members.

Sincerely,

Michael Samson
2031 Van Horn Ct
Fairbanks, AK 99701

Constance Hartle

From: James Christian [jchristian@udelhoven.com]
Sent: Monday, February 18, 2008 1:26 PM
To: Sen. Con Bunde
Subject: SB 276

Senator Bunde:

I support SB 276, and would appreciate your consideration in that as well.

Thanks

Sincerely,

James Christian
Project Engineer
UOSS
184 E 53rd Ave
Anchorage, AK 99518

Constance Hartle

From: Nick Pepperworth [npepperworth@udelhoven.com]
Sent: Monday, February 18, 2008 8:44 AM
To: Sen. Con Bunde
Subject: SB 276

Senator Bunde:

Thank you for this effort to make the playing field fair for Merit Shop Contractors if a PLA is allowed on Projects.

Sincerely, Nick Pepperworth

Nick Pepperworth
Vice President
Udelhoven Oilfield System Services, Inc.
184 E 53rd Ave
Anchorage, AK 99518

Constance Hartle

From: William Slayden [bill@slaydenplumbing.com]
Sent: Saturday, February 16, 2008 6:19 PM
To: Sen. Con Bunde
Subject: SB276

Senator Bunde:

I support SB276 completely and thank you for sponsoring it.

Sincerely,

William Slayden
3339 Spruce Branch Dr
North Pole, AK 99705

20

KLEBS Heating
Plumbing
Air Quality

February 21, 2008

Senator Con Bunde
State Capitol, Room 504
Juneau, AK 99801-1182

Re: SB 276 & HB 391

Dear Senator Bunde:

I am writing to thank you for sponsoring SB 276 which affords equal pay for non-union employees working on construction projects mandated to have a Project Labor Agreement (PLA) by the State of Alaska. As a founding member of Associated Builders and Contractors, Inc., and President of Klebs Mechanical Inc., I offer my support of this important senate bill.

Klebs Mechanical Inc. will not participate in any construction projects where a Project Labor Agreement is required. Project Labor Agreements only serve special interest groups. They also reduce competition by reducing or eliminating the number of non-union (Merit) contractors who would normally participate in the bidding process of particular construction projects. This, in turn, increases the cost of construction which is bad for any tax paying person because it amounts to less building for our tax dollars.

Project Labor Agreements are bad for our employees because the unions receive all of the fringe benefit payments. Our employees should receive every penny that they earn and not be limited by a vesting schedule set up by a union.

At Klebs Mechanical Inc. we support HB 391 and SB 276. These important bills allow Merit Shop Contractors, who may wish to overlook the fact that PLA's are a non-competitive way to spend our tax dollars, a way to at least give their employees all of the money that they have earned.

Thank you again for sponsoring this important bill, and please let me know if I can assist you in any way in passing this legislation.

Sincerely,
Gary Klebs
Gary Klebs
President

GK/ms

Slayden Plumbing & Heating, Incorporated

1999 RICHARDSON HWY

NORTH POLE, ALASKA 99705

PHONE: (907) 488-3359

FAX: (907) 488-2711

E-MAIL: slayden@ptialaska.net

Originated @ North Pole Office

3230 EAST PALMER/WASILLA HWY

WASILLA, ALASKA 99687

PHONE (907) 376-7890

FAX: (907) 376-7891

E-MAIL: sphi@mtaonline.net

February 20, 2008

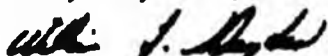
Representative Mike Kelly
State Capitol, Room 513
Juneau, AK 99801-1182
Reference: SB 276, HB 391

Dear Representative Kelly ,

As a founding member of Associated Building Contractors, Inc.'s Alaska Chapter and President of a mechanical contracting firm that employs more than a 100 Alaskans, I support Senate Bill 276 and House Bill 391. Thank you for sponsoring HB 391. I look forward to all Alaskan workers being treated fairly by their State.

Please let me know if I can be of any assistance to insure passage of this important legislation.

Very Truly Yours,



William L. Slayden,

President, Slayden Plumbing & Heating, Inc.

Constance Hartle

From: Jeff Robinson [JRobinson@klebsheating.com]
Sent: Friday, February 22, 2008 3:38 PM
To: Sen. Con Bunde; Sen. Lyda Green
Cc: Rep. Mike Kelly
Subject: HB 391 - Fairness & Equity for Alaska Worker Benefits

Senators Green & Bunde –

Wow – now this is a common sense bill if I ever saw one. Giving the non-union worker a retirement benefit choice when working a PLA. That's good for the employee and with organized labor's constant assertion that 'we must look out for the individual worker', they should be on board as well, right? Good luck with that – as a "business" the union administration will loose money and forget all about the employee. I'll bet they gain hundreds of thousands of dollars each year from non-union and or non-vested workers who work short projects and never see a dime of that money

As a senior manager in this company that employs ~85 workers, I can think of another benefit. Companies that are open or merit shop that choose to work PLA's as signatory have to pay twice. Once to the union scale and if they value their employees, continue to contribute to their existing retirement fund, usually a 401k plan.

I support this bill and thank you for yours as well.
A special Thanks to Rep. Kelly for introducing this bill!

Jeff Robinson
Service & Installation
Division Manager
(907) 365-2514 direct

KLEBS

1107 E. 72nd Avenue
Anchorage, AK 99518
(907) 365-2500 main
(907) 365-2550 fax
www.klebsheating.com



February 22, 2008

Senator Con Bunde
State Capital, Room 504
Juneau, AK 99801-1182

Reference: SB 276, HB 391

Dear Senator Bunde:

As a board member of Associated Building Contractors, Inc., Alaska Chapter, and vice president of a general contracting firm that employs more than 80 Alaskans, I support Senate Bill 276 and House Bill 391.

Thank you for sponsoring SB276.

Very truly yours,

Dave DeRoberts
Vice President

2820 Commercial Drive
Anchorage, AK 99501-3015
907-277-3200 / Fax: 907-272-8544
E-mail: daved@critteriongeneral.com



UDELHOVEN

184 East 53rd Avenue
Anchorage, Alaska 99518-1222
(907) 344-1577 Fax (907) 522-2541

February 22, 2008
Senator Con Bunde
State Capitol, Room 504
Juneau, AK 99801-1182
Reference: SB 276, HB 391

Dear Senator Bunde,

As president of Udelhoven and a past chairman of ABC of Alaska, I support Senate Bill 276 and House Bill 391. Thank you for sponsoring SB276. I look forward to all Alaskan workers being treated fairly by their State.

Please let me know if I can be of any assistance to ensure passage of this important legislation.

Very Truly Yours,

Jim Gilbert

Jim Gilbert
President
Office (907)344-1577
Email jgilbert@udelhoven.com

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 276
 () Publish Date: _____

Identifier (file name): SB276-DOT-CA-02-26-08 Dept. Affected: DOT&PF
 Title: Project Labor Agreements RDU: Admin & Support
 Sponsor: Senator Bunde; Green Component: Contracting & Appeal
 Requester: Senate State Affairs Component Number: 2355

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts		0.0						
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

SB 276 allows for project labor agreements that create an alternate method for non union members to pay into a "fringe benefit program".

Prepared by: Mary Siroky
 Division: Commissioner's Office, DOT&PF
 Approved by: Nancy Slagle
Administrative Services Director, DOT&PF

Phone 465-4772
 Date/Time 2/26/08 4:23 PM
 Date 2/26/2008