

LEG. FINANCE - BILLS 1983 - 1984 1812

CSSSHB 58 - HB 63

1812

COMMITTEE REPORT
SENATE

4/27/83

FURTHER:

FINANCE

Date:

June 30, 1983

Mr. President:

HESS

CS SS HB 58(Fin)

The Committee on _____ has had _____

Relating to participation in counseling or treatment required by a court or the division of corrections.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING

DO PASS

Rick Halford
Paul Fisher

MEMBERS HAVING

OTHER RECOMMENDATIONS

V. Fischer - depans
Acting Vice CHAIRMAN

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSSSHB 58 (Judiciary)
 Title: "Probation revoked"
 Sponsor: Repr. Lindauer
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Admin. of Justice
 BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

I. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 12, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General
 Department: Department of Law

Date: April 12, 1983

tribution:

6/21/83
 These Fiscal
 Notes accompanied
 CSSS HB 58 (Fin)
 when the bill
 was received in
 Committee.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHB 58 (Judiciary)
 Title: "Probation revoked"
 Sponsor: Repr. Lindauer
 Requestor: House Finance Committee

NO 2

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Admin. of Justice
 BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING					-0-	-0-

CAPITAL

REVENUE

FUNDING: (Thousands of Dollars)

GENERAL FUND	
FEDERAL FUNDS	
OTHER (Specify Source)	

POSITIONS:

FULL-TIME	
PART-TIME	
TEMPORARY	

6/21/83
These Fiscal
Notes accompanied
CSSS HB 58 (Fin)
when the bill
was received in
Committee.

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 12, 1983

Approved by Commissioner: Richard I. Pegues/for/
Norman C. Gorsuch, Attorney General
 Department: Department of Law

Date: April 12, 1983

Distribution:

CSSSHB 58 (Judiciary)
Fiscal Note
Analysis

Violation of conditions for release on probation is already grounds for revocation of probation. Likewise, prisoners released on parole are not considered for parole until they have completed those rehabilitative and counseling programs deemed appropriate and made available by Corrections. Prisoners on work release furloughs also must participate in such rehabilitative programs, when appropriate, as a condition of work release. Consequently, this bill will not have a fiscal impact on the Department of Law.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

7001
Bill/Resolution No.: CS for SS for HB 58
Title: ".prisoner..refusing..treatment"
Sponsor: House Judiciary
Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU Program of Subprogram(s) Affected:
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
Division: Adult Corrections Date: April 13, 1983

Approved by Commissioner: *Robert London Smith M.D.* Date: 4/14/83
Department Health & Social Services

Distribution:

Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)

of

IV. ANALYSIS

The earlier fiscal note prepared on House Bill No. 58 assumed a loss of good time by inmates refusing to participate in counseling or treatment. Subsequent testimony at the House Judiciary Committee indicated that it was not the intent of the legislation to take away good time. This is also the opinion of the Office of the Attorney General. Therefore, enactment of this bill would have no fiscal impact on the Division of Adult Corrections.

100
100
100
A

100
100

POSITION PAPER
House Bill No. 58

"An Act requiring certain prisoners to serve a full sentence."

House Bill No. 58 adds a new section to AS 30.30 which states that a prisoner who refuses to participate in counseling or other programs required or recommended by the sentencing judge may not be released, paroled, or furloughed until the prisoner's sentence is fully served.

State Statute 33.30.100 authorizes the Commissioner of Health and Social Services to designate the facility where a sentence is to be served. AS 33.30.120 authorizes the Commissioner to transfer prisoners from one facility to another. This provides Adult Corrections the flexibility to effectively manage prison population and to give consideration to prisoner needs.

- It is the goal of Adult Corrections to provide a complete rehabilitative process for every prisoner; however, this is not always possible due to availability of certain types of programs, maintaining the integrity of programs, overcrowding, prisoner motivation, length of sentence, etc. At the time of sentencing, all of those factors are not known. It is the duty of the classification committee to identify and evaluate whatever factors may be relevant in each case; including the recommendations of the court. The placement of a prisoner reflects both the prisoner's needs and the needs/capabilities of the system. It should be recognized that factors of individual and system needs may conflict and that it is the responsibility of adult corrections to determine the most appropriate placement and programming.

Prisoners are classified within 30 days of admission to an institution and within 30 days following sentencing. The purpose of this classification is to work with each prisoner to develop a plan of incarceration to meet the prisoner's needs within the constraints of the correctional system. The classification committee addresses institutional placement, custody level, housing, work, program (including counseling) and furlough. Each prisoner's classification is reviewed a minimum of once every six months during the sentence.

The classification committee considers the availability of beds in correctional facilities in relationship to the type of security required for each prisoner; i.e. maximum, medium, minimum. The committee also considers the prisoner's program/counseling needs in relationship to the custody level. In some cases, prisoners cannot be placed in correctional facilities where specific program/counseling is available due to their custody level; i.e. a maximum custody prisoner would not be placed in a minimum/medium custody setting because of the risk to staff, prison population, and the public presented by the maximum security prisoner.

Alaska's prison system does not have the same programs/counseling available at every institution; therefore, we are required to consider security needs before program/counseling needs.

The enactment of House Bill No. 58 would increase the length of time to be served for the certain group of prisoners. Alaska's already overburdened correctional facilities would have to provide additional and very costly new beds to house the prisoners required to serve their full sentences.

Although the intent of this legislative proposal is both positive and admirable, it is not clear that coercion will cause a cure. In fact, it appears that the cure may cost considerably more than the problem and may be constitutionally questionable mechanism to alleviate a relatively minor problem in terms of the small number of uncooperative prisoners. We believe that the correctional division already possesses sufficient resources to deal with this problem through better and more sound prisoner classification and management.

Because of the reasons stated, the Department of Health and Social Services does not support passage of House Bill No. 58.

Recommended by:

for

Roger C. Lunge

Roger V. Endell, Director
Division of Adult Corrections

Date:

FEB. 28, 1983

Approved by:

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date:

3/1/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT



Bill No: SSHB 58 Date on Bill: 1/26/83
 Title: "An Act requiring certain prisoners to serve a full sentence."
 Sponsor: Representative Lindauer
 Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		-0-	-0-	-0-
Total		-0-	-0-	-0-

b. Revenues:

Revenue				
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2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions:

This bill requires that a prisoner who refuses to participate in court ordered counseling while incarcerated may not be released until he has served his full sentence. The bill is not expected to have an appreciable impact on prosecution functions, as the prisoner will have already been convicted and sentenced by the time the question of his release arises. The bill may require the commitment of additional corrections resources, however.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey, Chief Prosecutor Phone: 465-3428
 Division: Criminal Division Date: 1/28/83
 Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3/2/83
 Department: Department of Law

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Sponsor Substitute

Bill No: House Bill No. 58 Page 1 of 2 Date on Bill: January 18, 1983

Title: "An Act requiring certain prisoners to serve a full sentence."

Sponsor: Reps. Lindauer, Barnes, Abood, Pestinger, and Liska

Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital			438.0			
Operating			-0-			73.8
Total	-0-	-0-	438.0	-0-	-0-	73.8

b. Revenues:

Revenue	-0-	-0-	-0-	-0-	-0-	-0-
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2. Source of funds to offset fiscal impact of bill:

The funding source to offset the fiscal impact of this bill was not identified by the sponsors.

3. Assumptions:

Statistical data is not available regarding the number of inmates currently refusing to participate in counseling or other programs required or recommended by sentencing judges. It is, therefore, assumed that two (2) inmates per year with an average sentence length of six (6) years would refuse to participate in rehabilitation programs required or recommended by the sentencing judge. A prisoner who must fully serve his/her sentence loses all good time. The amount of good time earned during a six (6) year sentence is one and one-half (1½) years.

The fiscal impact in the State's correctional system would be three (3) additional beds (2 inmates per year for an additional 1½ years). It is assumed these individuals would require a medium security setting. The cost for the beds, which would be needed in

Prepared By: Roger C. Lange
Division: Adult Corrections

Roger C. Lange

Phone: 465-3376
Date: Feb. 28, 1983

Approved by Commissioner:
Department: W/SS

Robert London Smith

Date: 3/1/83

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83

3. Assumptions: (continued)

approximately four years, is calculated to be:

$$3 \times \$146,000 = \$ 438,000.$$

Based on an estimate of one staff position for every 2.5 inmates, one additional position would be necessary, beginning in FY 1988. Other costs include primarily food, clothing, and medical care, also beginning in FY 1988

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Sponsor Substitute

Bill No: House Bill No. 58 Page 1 of 2 Date on Bill: January 18, 1983
 Title: "An Act requiring certain prisoners to serve a full sentence."
 Sponsor: Reps. Lindauer, Barnes, Abood, Pestinger, and Liska
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital			438.0			
Operating			-0-			73.8
Total	-0-	-0-	438.0	-0-	-0-	73.8

b. Revenues:

Revenue	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

2. Source of funds to offset fiscal impact of bill:

The funding source to offset the fiscal impact of this bill was not identified by the sponsors.

3. Assumptions:

Statistical data is not available regarding the number of inmates currently refusing to participate in counseling or other programs required or recommended by sentencing judges. It is, therefore, assumed that two (2) inmates per year with an average sentence length of six (6) years would refuse to participate in rehabilitation programs required or recommended by the sentencing judge. A prisoner who must fully serve his/her sentence loses all good time. The amount of good time earned during a six (6) year sentence is one and one-half (1½) years.

The fiscal impact in the State's correctional system would be three (3) additional beds (2 inmates per year for an additional 1½ years). It is assumed these individuals would require a medium security setting. The cost for the beds, which would be needed in

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: Feb. 28, 1983
 Approved by Commissioner: Robert London Smith Date: 3/1/83
 Department: AG/SS

5. Distribution:
Original to Legislative Finance

POSITION PAPER

CS for SS for House Bill No. 58 (Finance)

"An Act relating to a prisoner serving a sentence in full or having probation revoked for refusing to participate in counseling or treatment required by the court."

Section I

Sec. 12.55.080 Suspension of sentence and probation is amended by giving the court the authority to require available alcohol, drug, sex offender or other mental health treatment as a condition of probation.

Section II

AS 12.55.085 Suspending imposition of sentence (b) is amended by giving probation officers and the court the authority to re-arrest a person on probation status in instances of where the probationer refuses to participate in treatment required by the sentencing judge.

Section III

AS 12.55.100 Conditions of probation (a) is amended by adding "(5) to participate in available alcohol, drug, sex offender or other mental health treatment" as a condition of probation which may be required.

Section IV

AS 12.55.110 Notice and grounds for revocation suspension is amended to include refusal by a defendant to participate in available alcohol, drug, sex offender or other mental health treatment required by the court as a condition of probation as good cause for revocation of a suspended sentence.

Section V

AS 33.15.080 Granting of parole is amended by including the provision that parole may not be granted to a prisoner who has refused available alcohol, drug, sex offender or other mental health treatment recommended by the sentencing judge.

Section VI

AS 33.30.250 Work Furlough (g) as amended would prohibit prisoners who refuse to participate in available alcohol, drug, sex offender or other mental health treatment required by the Division of Adult Corrections from being granted work furlough.

Summary

It is understood that the intent of this legislation is to help assure that offenders participate in treatment programs as determined by the court and professional correctional staff.

The Department supports the concept of the CS for SS for House Bill No. 58.

Recommended by: for Roger C. Lunge
Roger V. Endell, Director
Division of Adult Corrections

Date: 4-25-83

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 4/28/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST
 Bill/Resolution No.: CS for SS for HB 58
 Title: "..prisoner..refusing..treatment"
 Sponsor: House Finance
 Requestor: House Rules

II. FISCAL DETAIL
 Agency Affected: Health & Social Services
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: April 13, 1983
 Approved by Commissioner: Robert London Smith, Ph.D. Date: 4/28/83
 Department: Health & Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

FISCAL NOTE
CS for SS for House Bill No. 58 (Judiciary)
Page 2

IV. ANALYSIS

The earlier fiscal note prepared on House Bill No. 58 assumed a loss of good time by inmates refusing to participate in counseling or treatment. Subsequent testimony at the House Judiciary Committee indicated that it was not the intent of the legislation to take away good time. This is also the opinion of the Office of the Attorney General. Therefore, enactment of this bill would have no fiscal impact on the Division of Adult Corrections.

Offered: 4/20/83
Referred: Rules

Original sponsors: Lindauer, Barnes,
Abood, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to participation in counseling or
7 treatment required by a court or the division of
8 corrections."

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

10 * Section 1. AS 12.55.080 is amended to read:

11 Sec. 12.55.080. SUSPENSION OF SENTENCE AND PROBATION. Upon
12 entering a judgment of conviction of a crime, or at any time within 60
13 days from the date of entry of that judgment of conviction, a court,
14 when satisfied that the ends of justice and the best interest of the
15 public as well as the defendant will be served thereby, may suspend
16 the imposition or execution or balance of the sentence or a portion
17 thereof, and place the defendant on probation for a period and upon
18 the terms and conditions as the court considers best. The court may
19 require available alcohol, drug, sex offender or other mental health
20 treatment as a condition of probation, if the circumstances of the
21 crime indicate that it is needed.

22 * Sec. 2. AS 12.55.085(b) is amended to read:

23 (b) At any time during the probationary term of the person
24 released on probation, a probation officer may, without warrant or
25 other process, rearrest the person so placed in the probation offi-
26 cer's [HIS] care and bring the person [HIM] before the court, or the
27 court may, in its discretion, issue a warrant for the rearrest of the
28 person and may revoke and terminate the probation, if the interests of
29 justice require, and if the court, in its judgment, has reason to

1 believe that the person placed upon probation is violating the con-
2 ditions of [HIS] probation, or engaging in criminal practices, or has
3 become abandoned to improper associates, [OR] a vicious life, or who
4 refuses to participate in treatment required by the sentencing judge.

5 * Sec. 3. AS 12.55.100(a) is amended by adding a new paragraph to read:

6 (5) to participate in available alcohol, drug, sex offender
7 or other mental health treatment.

8 * Sec. 4. AS 12.55.110 is amended to read:

9 Sec. 12.55.110. NOTICE AND GROUNDS FOR REVOCATION OF SUSPENSION.

10 When sentence has been suspended, it shall not be revoked except for
11 good cause shown. Good cause includes a refusal by a defendant to
12 participate in available alcohol, drug, sex offender or other mental
13 health treatment, if it is required by the court as a condition of
14 probation. In all proceedings for the revocation of a suspended
15 sentence, the defendant is entitled to reasonable notice and the right
16 to be represented by counsel.

17 * Sec. 5. AS 33.15.080 is amended to read:

18 Sec. 33.15.080. GRANTING OF PAROLE. If it appears to the board
19 from a review that a prisoner eligible for parole will, in reasonable
20 probability, live and remain at liberty without violating the laws, or
21 without violating the conditions imposed by the board, and if the
22 board determines that the prisoner's release on parole is not incom-
23 patible with the welfare of society, and the prisoner has not refused
24 alcohol, drug, sex offender or other mental health treatment recom-
25 mended by the sentencing court and made available by the division of
26 corrections, or determined appropriate and made available by the
27 division of corrections, the board may authorize the release of the
28 prisoner on parole. However, no prisoner may be released on parole
29 who has not served at least one-third of the period of confinement to

1 which the prisoner has been sentenced.

2 * Sec. 6. AS 33.30.250(g) is amended by adding a new paragraph to read:

3 (8) who refuses to participate in available alcohol, drug,
4 sex offender or other mental health treatment required by the division
5 of corrections.

POSITION PAPER

CS for SS for House Bill No. 58 (Finance)

"An Act relating to a prisoner serving a sentence in full or having probation revoked for refusing to participate in counseling or treatment required by the court."

Section I

Sec. 12.55.080 Suspension of sentence and probation is amended by giving the court the authority to require available alcohol, drug, sex offender or other mental health treatment as a condition of probation.

Section II

AS 12.55.085 Suspending imposition of sentence (b) is amended by giving probation officers and the court the authority to re-arrest a person on probation status in instances of where the probationer refuses to participate in treatment required by the sentencing judge.

Section III

AS 12.55.100 Conditions of probation (a) is amended by adding "(5) to participate in available alcohol, drug, sex offender or other mental health treatment" as a condition of probation which may be required.

Section IV

AS 12.55.110 Notice and grounds for revocation suspension is amended to include refusal by a defendant to participate in available alcohol, drug, sex offender or other mental health treatment required by the court as a condition of probation as good cause for revocation of a suspended sentence.

Section V

AS 33.15.080 Granting of parole is amended by including the provision that parole may not be granted to a prisoner who has refused available alcohol, drug, sex offender or other mental health treatment recommended by the sentencing judge.

Section VI

AS 33.30.250 Work Furlough (g) as amended would prohibit prisoners who refuse to participate in available alcohol, drug, sex offender or other mental health treatment required by the Division of Adult Corrections from being granted work furlough.

Summary

It is understood that the intent of this legislation is to help assure that offenders participate in treatment programs as determined by the court and professional correctional staff.

The Department supports the concept of the CS for SS for House Bill No. 58.

Recommended by: *for Roger C. Lange*
Roger V. Endell, Director
Division of Adult Corrections

Date: 4-25-83

Approved by: *Robert London Smith*
Robert London Smith, Ph.D.
Commissioner

Date: 4/28/83

Introduced: 2/28/83
Referred: State Affairs
and Finance

1 IN THE HOUSE

BY LINDAUER AND GRUSSENDORF

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 62

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the use of public money for the
7 payment of nonresident individuals or businesses."

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

9 * Section 1. FINDINGS AND PURPOSE. The legislature finds that the
10 state often employs nonresident consultants, advisors, and businesses to
11 provide expertise and services to the state. In some instances this prac-
12 tice results in qualified Alaska individuals and businesses being over-
13 looked. In other instances, where there may be no qualified Alaska indi-
14 vidual or business, the legislature further finds that the practice of
15 employing nonresidents addresses only a specific problem or need without
16 necessarily encouraging the development of needed expertise or services
17 within the state. The purpose of this Act is to assist the state in iden-
18 tifying and encouraging the development of those services and areas of
19 technical expertise that are lacking in Alaska.

20 * Sec. 2. AS 37.10 is amended by adding a new section to read:

21

ARTICLE 5. MISCELLANEOUS.

22

Sec. 37.10.110. USE OF PUBLIC FUNDS TO PAY NONRESIDENTS. (a)

23

The state and a nonprofit corporation may not spend public money to
24 employ or contract with a nonresident person to provide expertise or
25 services to the state unless a written report is filed with the Office
26 of the Governor, the Department of Education, the University of
27 Alaska, and the legislative audit division. The report shall include
28 a brief description of the work to be done by the nonresident person,
29 the reasons why the state or the nonprofit corporation spending public

1 money failed to identify an Alaskan person, the effort made to locate
2 a qualified Alaskan person, and a recommendation for the development
3 of qualified Alaskan persons to satisfy projected future needs of the
4 state. The legislative audit division shall prepare the forms neces-
5 sary to comply with this section.

6 (b) In this section "state" includes any state department, state
7 agency, state university, borough, city, village, school district or
8 other state subdivision.

STATE OF ALASKA
FISCAL NOTE

Revision Date: _____, 1983

I. REQUEST

Bill/Resolution No.: HB 62
 Title: Nonresident Contractual Services
 Sponsor: Lindauer
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: General Government
 BRU, Program of Subprogram(s) Affected: General Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		81.8				
200 TRAVEL						
300 CONTRACTUAL		139.0				
400 COMMODITIES		3.9				
500 EQUIPMENT		10.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		235.2				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		235.2				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3.0				
PART-TIME						
TEMPORARY						
		36.0				

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Link
 Division: General Services & Supply

Phone: 465-2250
 Date: May 6, 1983

Approved by Commissioner: Lisa Rudd
 Department: ADMINISTRATION

Date: 6/1/83

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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

Fiscal Note, HB 62 cont'd analysis, 5/6/83

Personal Services

Admin. Asst. II (R14)	\$25,740	
Clerk III (R8)	18,360	
Clerk II (R7)	16,896	
	<u>\$60,996</u>	
Benefits (.2208)	13,468	
Health Ins.	7,033	
Legal Trust	<u>270</u>	\$ 81.8

Contractual Services

Phones	\$ 4.0	
Printing-forms & Leg. Audit review	5.0	
Terminal rental (2)	10.0	
Legislative Audit Review	20.0	
System Development	<u>100.0</u>	\$139.0

Supplies and Materials

Office Supplies	\$ 3.0	
Filing Cabinets	<u>.9</u>	\$ 3.9

Equipment

Work Stations	\$ 10.5	\$ <u>10.5</u>
		\$235.2

Filing of forms alone does not satisfy the intent of the bill. The forms and the data on them must be compiled and turned into information which will enable the State to develop expertise as described by the bill.

HOUSE BILL NO. 62

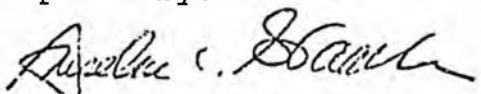
POSITION PAPER

HB 62 would require that a written report be filed with the Office of the Governor and the Division of Legislative Audit where public money is paid to a nonresident individual or business. Information to be provided includes a work description, reasons a nonresident was chosen, efforts made to use residents and recommendations to use residents in the future.

The use of resident contractors is certainly desirable. Our concern is that there are lower cost methods to conduct the information gathering and review function attempted by this bill. The Division of Legislative Audit or other agency could conduct a performance review of employment of nonresident contractors, targeting those areas necessary. They can do this with much greater efficiency and without the cost of additional resources, forms, further bureaucracy, etc.

It is necessary that the bill define "nonresident" so there is no confusion as to which group this bill is to be applied to; also to insure consistency with any other legal rulings as to the definition of residency.

Prepared by:



Anselm Staack, Deputy Commissioner

3/28/83

Date



Lisa Rudd, Commissioner

3/28/83

Date

(3/28/83)

11862

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST SSHB 62
 Bill/Resolution No. _____
 Title An Act relating to the use of public money for the payment of non- (+)
 Requested by Reps. Lindauer and Grussendorf Date _____

(+) resident individuals or businesses.

II. FISCAL DETAIL Legislative Audit Division
 Agency Affected _____
 Program Category Affected _____
 BRU, Program, or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 84	FY '85	FY 86	FY87	FY 88	FY 89
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES	1.0	1.0	1.0			
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

	FY 84	FY '85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	1.0	1.0	1.0			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 84	FY '85	FY 86	FY 87	FY 88	FY 89
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Form design and printing costs

IV. DATE March 7, 1983 PREPARED BY Gerald L. Wilkerson
 AGENCY Division of Legislative Audit
 PHONE 465-3830
 Original: Legislative Finance
 cc: OMB
 Prime Sponsor (First Legislator Named)

The following individuals are expected to testify on SS HB 62:

Representative John Lindauer, prime sponsor

Anselm Staack, Deputy Commissioner, Department of Administration

DRAFT

STATE OF ALASKA
FISCAL NOTE

Rec'd 6/14/83

Revision Date: June 1, 1983

I. REQUEST

Bill/Resolution No.: SCSSHB 62
Title: Nonresident Contractual Services
Sponsor: Lindauer & Grussendorf
Requestor: Senate Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Administration
Program Category Affected: General Government
BRU, Program of Subprogram(s) Affected: General Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL						
300 CONTRACTUAL		-0-		50.0		
400 COMMODITIES		-0-				
500 EQUIPMENT		.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		.5		50.0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		.5		50.0		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Link *Bob Link*
Division: General Services & Supply

Phone: 465-2250
Date: _____

Approved by Commissioner: Lisa Rudd *Lisa Rudd*
Department: ADMINISTRATION

Date: 6/9/83

Distribution:

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3/8/83

DRAFT

FISCAL NOTE SCSSHB 62

Assumptions

This note differs from the previous one due to revised assumptions based on the changes in the Committee Substitute. It is now clear that the bill only applies to those professional services defined in AS 36.98. This will reduce the annual workload to a maximum of 3,000 forms. The forms would be filed by professional service category. During fiscal year 1986 the forms would be reviewed with the intent of identifying and encouraging the development of those professional services and areas of technical expertise lacking in Alaska.

Equipment

Filing cabinets and materials	.5
-------------------------------	----

Contractual services

Final review	<u>50.0</u>
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Total -	\$ 50.5
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STATE OF ALASKA
FISCAL NOTE

Rec'd 5/25/83

Revision Date: May 24, 1983

I. REQUEST

Bill/Resolution No.: SSHB 62
 Title: Nonresident Contractual Services
 Sponsor: Lindauer & Grussendorf
 Requestor: Senate Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: General Government
 BRU, Program of Subprogram(s) Affected: General Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		81.8				
200 TRAVEL						
300 CONTRACTUAL		139.0				
400 COMMODITIES		3.9				
500 EQUIPMENT		10.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		235.2				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		235.2				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3.0				
PART-TIME						
TEMPORARY						
		36.0				

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Link *BL*
 Division: General Services & Supply

Phone: 465-2250

Date: 5-24-83

Approved by Commissioner: Lisa Rudd *LR*
 Department: ADMINISTRATION

Date: 5/24/83

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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

Personal Services

Admin. Asst. II (R14)	\$25,740	
Clerk III (R8)	18,360	
Clerk II (R7)	16,896	
	<u>\$60,996</u>	
Benefits (.2208)	13,468	
Health Ins.	7,033	
Legal Trust	<u>270</u>	\$ 81.8

Contractual Services

Phones	\$ 4.0	
Printing-forms Leg. Audit	5.0	
Terminal rental (2)	10.0	
Legislative Audit Review	20.0	
System Development/Tracking, Matching	<u>100.0</u>	\$139.0

Supplies and Materials

Office Supplies	\$ 3.0	
Filing Cabinets	<u>.9</u>	\$ 3.9

Equipment

Work Stations	\$ 10.5	\$ <u>10.5</u>
		\$235.2

Filing of forms alone does not satisfy the intent of the bill. The forms and the data on them must be compiled and turned into information which will enable the State to develop expertise as described by the bill. This bill applies to all purchases made by any State agency, State university, borough, city, village, school district or other State subdivision. Not included in this fiscal note is the cost of time necessary to fill out all these forms. This version of the bill also requires that the form be filed with the Department of Education and University of Alaska in addition to Office of the Governor and Legislative Audit. The bill further includes non-profit corporations that use State money as well as State agencies, etc. as previously defined.

STATE OF ALASKA
THE LEGISLATURE

FOUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 7, 1983

SUBJECT: Constitutional of SSHB 62
TO: Representative ^{AS}unsel, Lindauer
FROM: Thomas A. Sofo ^{AS}
Legislative Counsel

This memo supplements my earlier memo to you of February 25, 1983, regarding the constitutionality of SSHB 62. The recent (February 28, 1983) decision of the United States Supreme Court in White v. Massachusetts Council of Construction Employees, Inc. may add strength to arguments supporting the constitutionality of SSHB 62. I have attached a copy of the slip decision in that case for your review.

The case certainly seems to stand for the proposition that the state, as a market participant rather than regulator, may prefer its own residents without a violation of the Commerce Clause. The Court did not decide whether there is a Privileges and Immunities Clause violation. Inasmuch as SSHB 62 involves the use of the state's own money in providing services to the state, the parallel to the White case may support a defense to a challenge to the bill in the basis of its constitutionality.

TAS:ljb

Enclosure .
1/011

RECEIVED
U.S. DEPARTMENT OF JUSTICE

MAR 6 8 1983

APR 7 8 9 10 11 12 1 3 4 5 6

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WHITE, MAYOR OF BOSTON, ET AL. *v.* MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

No. 81-1003. Argued November 1, 1982—Decided February 23, 1983

Petitioner Mayor of Boston, Mass., issued an executive order requiring all construction projects funded in whole or in part by city funds or funds that the city had authority to administer to be performed by a work force at least half of which are bona fide residents of the city. The Massachusetts Supreme Judicial Court held the order unconstitutional under the Commerce Clause.

Held: The Commerce Clause does not prevent the city from giving effect to the Mayor's executive order. Pp. 2-11.

(a) When a state or local government enters the market as a participant, it is not subject to the restraints of the Commerce Clause. *Hughes v. Alexandria Scrap Corp.*, 426 U. S. 794; *Reeves, Inc. v. Stake*, 447 U. S. 429. In a case like the instant one, the only inquiry is whether the challenged program constituted direct state or local participation in the market. Pp. 2-4.

(b) Insofar as the city expended only its own funds in entering into construction contracts for public projects, it was a market participant and entitled to be treated as such under the rule of *Alexandria Scrap Corp.* Even if implementation of the Mayor's order might have a significant impact on specialized construction firms employing out-of-state residents, this is not relevant to the inquiry of whether the city is participating in the marketplace when it provides funds for construction. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, for only in the former case need it be determined whether any burden on interstate commerce is permitted by the Commerce Clause. And, even if the Mayor's order is characterized as sweeping too broadly, such

II WHITE v. MASS. COUNCIL OF CONSTR. EMPLOYERS

Syllabus

characterization is relevant only if the Commerce Clause imposes restraints on the city's activity and is no help in deciding whether those restraints apply. Pp. 5-7.

(c) Insofar as the Mayor's order was applied to projects funded in part with funds obtained from certain federal programs, the order was affirmatively sanctioned by the pertinent regulations of those programs. Where the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress, then no dormant Commerce Clause issue is presented. Pp. 7-9.

384 Mass. 466, 425 N. E. 2d 346, reversed and remanded.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, MARSHALL, POWELL, STEVENS, and O'CONNOR, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, in which WHITE, J., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 1-1003

KEVIN H. WHITE, J ET AL., PETITIONERS *v.*
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[February 23, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1979 the mayor of Boston, Massachusetts, issued an executive order¹ which required that all construction projects funded in whole or in part by city funds, or funds which the city had the authority to administer, should be performed by a work force consisting of at least half *bona fide* residents of Boston.² The Supreme Judicial Court of Massachusetts decided that the order was unconstitutional, observing that

¹The executive order provides:

"On any construction project funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract, the worker hours on a craft-by-craft basis shall be performed, in accordance with the contract documents established herewith, as follows:

- a. at least 50% by bona fide Boston residents;
- b. at least 25% by minorities;
- c. at least 10% by women."

Only the residency requirement is being challenged.

²In 1980, of approximately \$482 million expended on construction in the City of Boston, some \$54 million, or 11%, was spent on projects to which the executive order applied. Of this latter amount, approximately \$34 million represented projects being funded in part through federal Urban Development Action Grants (UDAGs).

2 WHITE v. MASS. COUNCIL OF CONSTR. EMPLOYERS

the Commerce Clause "presents a clear obstacle to the city's order." 384 Mass. 446, 425 N. E. 2d 346 (1981). We granted certiorari to decide whether the Commerce Clause of the United States Constitution, Art. I, § 8, cl. 3, prevents the city from giving effect to the mayor's order. 455 U. S. 919 (1982). We now conclude that it does not and reverse.

I

We were first asked in *Hughes v. Alexandria Scrap Corp.*, 426 U. S. 794 (1976), to decide whether state and local governments are restrained by the Commerce Clause when they seek to effect commercial transactions not as "regulators" but as "market participants." In that case, the Maryland legislature, in an attempt to encourage the recycling of abandoned automobiles, offered a bounty for every Maryland-titled automobile converted into scrap if the scrap processor supplied documentation of ownership. An amendment to the Maryland statute imposed more exacting documentation requirements on out-of-state than in-state processors, who in turn demanded more exacting documentation from those who sold the junked automobiles for scrap. As a result, it became easier for those in possession of the automobiles to sell to in-state processors. "The practical effect was substantially the same as if Maryland had withdrawn altogether the availability of bounties on hulks delivered by unlicensed suppliers to licensed non-Maryland processors." 426 U. S., at 803, n. 13. In upholding the Maryland statute in the face of a Commerce Clause challenge, we said that "[n]othing in the purpose animating the Commerce Clause prohibits a State, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others." *Id.*, at 810 (footnotes omitted). Because Maryland was participating in the market, rather than acting as a market regulator, we concluded that the Commerce Clause was not "intended to require independent justification," *id.*, at 809, for the statutory bounty.

We faced the question again in *Reeves, Inc. v. Stake*, 447 U. S. 429 (1980), when confronted with a South Dakota policy to confine the sale of cement by a state operated cement plant to residents of South Dakota. We underscored the holding of *Hughes v. Alexandria Scrap Corp.*, saying:

“The basic distinction drawn in *Alexandria Scrap* between States as market participants and States as market regulators makes good sense and sound law. As that case explains, the Commerce Clause responds principally to state taxes and regulatory measures impeding free private trade in the national marketplace. [Citation omitted]. There is no indication of a constitutional plan to limit the ability of the States themselves to operate freely in the free market.” 447 U. S., at 436–437.³

We concluded that South Dakota, “as a seller of cement, unquestionably fits the ‘market participant’ label” and applied the “general rule of *Alexandria Scrap*.” *Id.*, at 440.

Alexandria Scrap and *Reeves*, therefore, stand for the proposition that when a state or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause. As we said in *Reeves*, in this kind of case there is “a single inquiry: whether the challenged ‘pro-

³We also noted the policy in support of this limitation on the Commerce Clause:

“Restraint in this area is also counseled by considerations of state sovereignty, the role of each State ‘as guardian and trustee for its people.’ *Heim v. McCall*, 239 U. S. 175, 191 (1915), quoting *Atkin v. Kansas*, 191 U. S. 207, 222–223 (1903), and ‘the long recognized right of trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal.’ *United States v. Colgate & Co.*, 250 U. S. 300, 307 (1919). Moreover, state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants. Evenhandedness suggests that, when acting as proprietors, States should similarly share existing freedoms from federal constraints, including the inherent limits of the Commerce Clause.” 447 U. S., at 438–439 (footnotes omitted).

4 WHITE v. MASS. COUNCIL OF CONSTR. EMPLOYERS

gram constituted direct state participation in the market." *Id.*, at 436, n. 7. We reaffirm that principle now.

The Supreme Judicial Court of Massachusetts concluded that the City of Boston is not participating in the market in the sense described in *Alexandria Scrap Corp.* and *Reeves* because the order applies where the city is acting in a nonproprietary capacity, has a significant impact on interstate commerce, is more sweeping than necessary to achieve its objectives, and applies to funds the city receives from federal grants. 384 Mass., at —, 425 N. E. 2d, at 354-355. For the same reasons the court found that the city is not a market participant, it concluded that the executive order violated the substantive restraints of the Commerce Clause.⁴ *Ibid.*

II

Petitioners and respondents both, to a greater or lesser extent, seek to have us decide questions not presented by the record in this case. In support of the Massachusetts court's finding that the city is acting in a nonproprietary capacity, respondents urge that much of the construction subject to the mayor's order involved nonpublic projects that were financed largely through private funds. While the mayor's order by its terms would appear to apply to such construction, there is simply nothing in the record before us to support the conclusion that city funds were used for these types of construction projects. Respondents, had they wished to raise this question, were obligated to offer some evidence that city funds and private funds were used jointly to finance construction of some of the projects which were in fact subjected to the provisions of the mayor's order; nothing in the record supports such a conclusion.⁵ The only issues before us, then, are the

⁴ Respondents made several other challenges to the order, none of which are before us. Respondents also directed challenges to resident preferences contained in other state and local laws. None of these provisions is before us.

⁵ The case was submitted below on an agreed statement of facts. The

propriety of applying the mayor's executive order to projects funded wholly with city funds and projects funded in part with federal funds. We address first the application of the order to city funded projects.

The Supreme Judicial Court of Massachusetts expressed reservations as to the application of the "market participation" principle to the city here, reasoning that "the implementation of the mayor's order will have a significant impact on those firms which engage in specialized areas of construction and employ permanent works crews composed of out-of-State residents." 384 Mass., at —, 425 N. E. 2d, at 354. Even if this conclusion is factually correct,⁶ it is not relevant

only reference in that statement to the funds affected by the order provides:

"The approximate dollar value of construction, both private and public, within the City of Boston in 1980 was \$482,886,000; of that amount approximately \$4,421,040 represented construction projects funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract' to which the Executive Order, by its terms, was applicable. Of that \$4,421,040 approximately \$34,000,000 represented projects involving Urban Development Action Grants." Agreed Statement of Facts, at A42.

The record does not readily support a finding of "significant impact" on firms employing out-of-state residents. The parties stipulated that a "small number of plaintiff contractors are out-of-state contractors who have regular and permanent work crews comprised entirely of out-of-state residents. These contractors for the most part are those who perform specialty work. . . ." Agreed Statement of Facts, at A41 (emphasis added). Although the parties also stipulated that some out-of-state workers who would otherwise have been employed on the projects would be unemployed and that some out-of-state contractors would be discouraged from bidding on public construction work, Agreed Statement of Facts, at A-37, the record does not reveal that any significant number of out-of-state workers or contractors has withdrawn from the construction market because of the order. Furthermore, the data in the record does not show that the increased employment of city residents in publicly funded construction projects has been accompanied by a decline in the percentage of

WHITE v. MASS. COUNCIL OF CONSTR. EMPLOYERS

to the inquiry of whether the city is participating in the marketplace when it provides city funds for building construction. If the city is a market participant, then the Commerce Clause establishes no barrier to conditions such as these which the city demands for its participation. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, for only in the former case need it be determined whether any burden on interstate commerce is permitted by the Commerce Clause.

The same may be said of the Massachusetts court's finding that the executive order sweeps too broadly, creating more burden than is necessary to accomplish its stated objectives. *Id.*, at —, 425 N. E. 2d, at 355. While relevant if the Commerce Clause imposes restraints on the city's activity, this characterization is of no help in deciding whether those restraints apply. The Massachusetts court relied in part on our decision in *Hicklin v. Orbeck*, 437 U. S. 518 (1978), saying that "as in *Hicklin*, *supra*, there is a broadly drawn statute which sweeps far wider than merely favoring unemployed or underemployed local residents." *Ibid.*

In *Hicklin* we considered an Alaska statute which required employment in all work connected with oil and gas leases to which the State was a party to be offered first to "qualified" Alaska residents in preference to nonresidents. The State sought to justify the "Alaska Hire" law on the ground that the underlying oil and gas were owned by the State itself. Analyzing the case under the Privileges and Immunities Clause of Art. IV, §2, cl. 1, we held that mere ownership of a natural resource did not in all circumstances render a state regulation such as the "Alaska Hire" law immune from attack under that clause. We summarized our view of the Alaska statute in these words:

out-of-state residents. See Agreed Statement of Facts, at Appendix E.

WHITE v. MASS. COUNCIL OF CONSTR. EMPLOYERS 7

"In sum, the Act is an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the State's residents." 437 U. S., at 531.

Even though respondents no longer press the Privileges and Immunities Clause holding of *Hicklin* in support of their Commerce Clause argument, we note that on the record before us the application of the mayor's executive order to contracts involving only city funds does not represent the sort of "attempt to force virtually all businesses that benefit in some way from the economic ripple effect" of the city's decision to enter into contracts for construction projects "to bias their employment practices in favor of the [city's] residents."

The Supreme Judicial Court of Massachusetts also observed that "a significant percentage of the funds affected by the order are received from Federal sources." 384 Mass. at —, 425 N. E. 2d, at 354. The record does indicate that of approximately \$54 million expended on projects affected by the mayor's executive order, some \$34 million represented projects being funded in part through Urban Development

JUSTICE BLACKMUN's opinion dissenting in part, *post.* argues that the mayor's order goes beyond market participation because it regulates employment contracts between public contractors and their employees. We agree with JUSTICE BLACKMUN that there are some limits on a state or local government's ability to impose restrictions that reach beyond the immediate parties with which the government transacts business. Cf. *Hicklin v. Orbeck*, 437 U. S. 518, 529-531 (1978). We find it unnecessary in this case to define those limits with precision, except to say that we think the Commerce Clause does not require the city to stop at the boundary of formal privity of contract. In this case, the mayor's executive order covers a discrete, identifiable class of economic activity in which the city is a major participant. Everyone affected by the order is, in a substantial if informal sense, "working for the city." Wherever the limits of the market participation exception may lie, we conclude that the executive order in this case falls well within the scope of *Alexandria Scrap and Recves*.

8 WHITE v. MASS. COUNCIL OF CONSTR. EMPLOYERS

Action Grants (UDAGs).⁸ While the record assigns specific dollar amounts only for UDAGs, the parties also have stipulated that the executive order applies to Community Development Block Grants (CDBGs) and Economic Development Administration Grants (EDAGs).⁹

But all of this proves too much. The Commerce Clause is a grant of authority to Congress, and not a restriction on the authority of that body. See *American Power & Light Co. v.*

⁸ Not all UDAG projects in Boston have been subjected to the executive order. HUD publications indicate that in 1980 Boston received \$23,600,000 through UDAGs and that this money was to be spent on projects costing a total of \$397,000,000. UDAG Project Approval List, Region I, Department of Housing and Urban Development, at 1 (Boston, Mass., Feb. 9, 1982). While we do not know what percentage of the \$34,000,000 spent on projects affected by the executive order was in fact UDAG money, we do know that overall UDAG funds comprised 7% of the total costs of projects they were expended on.

⁹ UDAGs are administered by the Department of Housing and Urban Development pursuant to the Housing and Community Development Act of 1977, 42 U. S. C. § 5318 (Supp. IV 1980). The HUD regulations governing the program are found at 24 CFR Part 570, Subpart G (1982). CDBGs are administered by HUD pursuant to the Housing and Community Development Act of 1974, 42 U. S. C. § 5301 et seq. (1976 & Supp. IV 1980), and the implementing regulations at 24 CFR Part 570 (1982). EDAGs are administered by the Department of Commerce in accordance with the Public Works and Economic Development Act of 1965, 42 U. S. C. § 3131 et seq. (1976 and Supp. IV 1980), and the implementing regulations at 13 CFR Part 305 (1982).

Respondents have asserted in this Court that the executive order also applies to funds the city receives from the Department of Transportation. In the Agreed Statement of Facts the parties stipulated that a resident preference in a state statute challenged below applied to DOT funds. Agreed Statement of Facts, at A45. There is, however, nothing in the record to indicate that DOT funds are affected by the order. In fact, the parties stipulate that the affected federal funds come from UDAGs, CDBGs, and EDAGs. Agreed Statement of Facts, at A43-A44. Without support in the record for a contrary conclusion, we decide this case as though DOT funds are not involved. See *Ramsey v. UMW*, 401 U. S. 302, 312 (1971); *Tyrrell v. District of Columbia*, 243 U. S. 1, 4-6 (1917).

WHITE v. MASS. COUNCIL OF CONSTR. EMPLOYERS 9

SEC. 329 U. S. 90 (1946); *Gibbons v. Ogden*, 9 Wheat. 1 (1824). Congress, unlike a state legislature authorizing similar expenditures, is not limited by any negative implications of the Commerce Clause in the exercise of its spending power. Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce. *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 769 (1945). Thus, if the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress then no dormant Commerce Clause issue is presented.

An examination of the applicable statutes reveals that these federal programs were intended to encourage economic revitalization, including improved opportunities for the poor, minorities, and unemployed.¹⁹ Examination of the regulations set forth in the margin indicates that the mayor's executive order sounds a harmonious note; the federal regulations for each program affirmatively permit the type of parochial favoritism expressed in the order.²⁰

¹⁹See 42 U. S. C. § 5318 (Supp. IV 1980) (UDAGs); 42 U. S. C. § 5301 (1976 and Supp. IV 1980) (CDBGs); 42 U. S. C. 3131 (1976) (EDAGs).

²⁰In issuing implementing regulations to carry out its authority under the UDAG program, HUD requires that a city certify that its project would not be undertaken by the private sector without public funds and that the project will alleviate economic distress by helping the poor, minorities, and unemployed. 24 CFR § 570.453(c) (1982). The regulations further provide that the city must "comply with . . . Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations at 24 CFR Part 135." 24 CFR § 570.453(c)(14)(ix)(D) (1982). The regulations implementing that Act provide that "to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing in the area of such project. . . ." 24 CFR § 135.1(a)(2)(i) (1982) (emphasis added).

Similarly, CDBG regulations provide that a recipient of funds must "comply with section 3 of the Housing and Urban Development Act of 1968,

III

We hold that on the record before us the application of the mayor's executive order to the contracts in question did not violate the Commerce Clause of the United States Constitution.¹² Insofar as the city expended only its own funds in en-

as amended, requiring that to the greatest extent feasible *opportunities for training and employment be given to lower-income residents of the project area* and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project." 24 CFR § 570.207(m) (1982) (emphasis added).

EDAG regulations provide that

"[t]he maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct grants and loans. Accordingly, every contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall be required to employ in carrying out such contract work, qualified persons who regularly reside in the designated area where such project is to be located, or in the case of economic development centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the economic development district. . . ." 13 CFR § 305.54(a) (1982) (emphasis added).

¹² Respondents ask us to decide whether the executive order offends the Privileges and Immunities Clause of Art. IV, § 2, cl. 1, which provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in several States." In addressing this issue, the Massachusetts court said:

"The preference is for inhabitants of the city, and its 'negative' effect is felt in significant part by other citizens of the Commonwealth, as well as by residents of other States. In such circumstances it may be more difficult to find a violation of the privileges and immunities clause because the discrimination adversely affects citizens of the Commonwealth as well." 384 Mass., at —, 425 N. E. 2d, at 354.

Because of its disposition under the Commerce Clause, however, the court did not resolve this issue.

This question has not been, to any great extent, briefed or argued in this Court. We did not grant certiorari on the issue and remand without passing on its merits. See *General Talking Pictures Corp. v. Western Electric Co.*, 304 U. S. 175, 177-178 (1938).

tering into construction contracts for public projects. it was a market participant and entitled to be treated as such under the rule of *Hughes v. Alexandria Scrap Corp.*, *supra*. Insofar as the mayor's executive order was applied to projects funded in part with funds obtained from the federal programs described above, the order was affirmatively sanctioned by the pertinent regulations of those programs. The judgment of the Supreme Judicial Court of Massachusetts is therefore reversed, and the case is remanded to that court for proceedings not inconsistent with this opinion.

It is so ordered.

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

Bill Sheffield, Governor

POUCH C (MS 0210)
JUNEAU, ALASKA 99811

(907) 465-2150

March 8, 1982

COPY

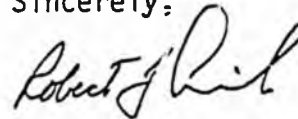
Honorable John Lindauer
Alaska State Legislature
House of Representatives
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Lindauer:

Re: HB 62

After discussion with you and further thought I find that I agree with your points regarding HB 62. Though it would be easier to apply if "resident" and "expertise or services" were defined, it would not be impossible to implement the bill as is.

Sincerely,



Robert Link
Acting Director

RL/dlr
6/0308-01/6GSS2
cc: Commissioner Lisa Rudd
Department of Administration

*written before position paper
was prepared*

OFFICIAL DEPARTMENT POSITION

HOUSE BILL NO. 62

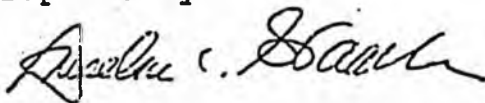
POSITION PAPER

HB 62 would require that a written report be filed with the Office of the Governor and the Division of Legislative Audit where public money is paid to a nonresident individual or business. Information to be provided includes a work description, reasons a nonresident was chosen, efforts made to use residents and recommendations to use residents in the future.

The use of resident contractors is certainly desirable. Our concern is that there are lower cost methods to conduct the information gathering and review function attempted by this bill. The Division of Legislative Audit or other agency could conduct a performance review of employment of nonresident contractors, targeting those areas necessary. They can do this with much greater efficiency and without the cost of additional resources, forms, further bureaucracy, etc.

It is necessary that the bill define "nonresident" so there is no confusion as to which group this bill is to be applied to; also to insure consistency with any other legal rulings as to the definition of residency.

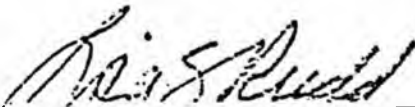
Prepared by:



Anselm Staack, Deputy Commissioner

3/28/83

Date



Lisa Rudd, Commissioner

3/28/83

Date

(3/28/83)

SECTIONAL ANALYSIS OF SPONSOR SUBSTITUTE OF HB 62

Section 1 of SSHB 62 states the legislative findings and purpose of the proposed legislation.

Section 2 of SSHB 62 amends AS 37.05 to add a new section:

Sec. 37.10.110.

- a) Public monies may not be spent to employ or contract with a non-resident person unless a written report is filed with the Governor's office, the Department of Education, the University of Alaska, and the legislative audit division. The report shall include:
 - 1) a brief description of the work to be done;
 - 2) reasons for failing to identify an Alaskan person to perform service;
 - 3) efforts made to locate qualified Alaskan person;
 - 4) recommendation for development of qualified Alaskan persons to satisfy projected future needs.

- b) Defines 'state' in this section to include any state department, state agency, state university, borough, city, village, school district or other state subdivision.

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508



While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

May 3, 1983

TO: House Finance Committee

FROM: Representative John Lindauer *J. Lindauer*

RE: Sponsor Substitute for House Bill 62: "An Act relating to the use of public money for the payment of nonresident individuals or businesses."

The purpose of this bill is to assist the state and its educational institutions in the identification of the career opportunities and educational needs of the youth of Alaska.

It is the state's policy to encourage our youth to stay in Alaska. For that reason we have for some years forgiven a portion of our student loans in the event that student borrower resides in Alaska after graduation.

The retention of Alaska's youth requires that we provide them with an educational system which trains them for the jobs which exist in the Alaskan economy. This requires that the state identify those areas for which there are not enough trained Alaskans. This bill will identify the occupational areas and training where our scarce educational dollars can be best concentrated.

Introduced: 2/28/83
Referred: State Affairs
and Finance

1 IN THE HOUSE

BY LINDAUER AND GRUSSENDORF

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 62

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the use of public money for the
7 payment of nonresident individuals or businesses."

8

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

9

* Section 1. FINDINGS AND PURPOSE. The legislature finds that the
10 state often employs nonresident consultants, advisors, and businesses to
11 provide expertise and services to the state. In some instances this prac-
12 tice results in qualified Alaska individuals and businesses being over-
13 looked. In other instances, where there may be no qualified Alaska indi-
14 vidual or business, the legislature further finds that the practice of
15 employing nonresidents addresses only a specific problem or need without
16 necessarily encouraging the development of needed expertise or services
17 within the state. The purpose of this Act is to assist the state in iden-
18 tifying and encouraging the development of those services and areas of
19 technical expertise that are lacking in Alaska.

20

* Sec. 2. AS 37.10 is amended by adding a new section to read:

21

ARTICLE 5. MISCELLANEOUS.

22

Sec. 37.10.110. USE OF PUBLIC FUNDS TO PAY NONRESIDENTS. (3)

23

24

25

26

27

28

29

The state and a nonprofit corporation may not spend public money to
employ or contract with a nonresident person to provide expertise or
services to the state unless a written report is filed with the Office
of the Governor, the Department of Education, the University of
Alaska, and the legislative audit division. The report shall include
a brief description of the work to be done by the nonresident person,
the reasons why the state or the nonprofit corporation spending public

1 money failed to identify an Alaskan person, the effort made to locate
2 a qualified Alaskan person, and a recommendation for the development
3 of qualified Alaskan persons to satisfy projected future needs of the
4 state. The legislative audit division shall prepare the forms neces-
5 sary to comply with this section.

6 (b) In this section "state" includes any state department, state
7 agency, state university, borough, city, village, school district or
8 other state subdivision.

Offered: 6/22/83
Referred: Finance

Original sponsors: Lindauer and
Grussendorf

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 62 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of public money for the
7 payment of nonresident individuals or businesses."

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

9 * Section 1. USE OF PUBLIC FUNDS TO PAY NONRESIDENTS. (a) The state
10 may not spend public money to employ or contract with a nonresident person
11 to provide expertise or professional services to the state unless a written
12 report is filed with the Department of Administration. The report shall
13 include a brief description of the work to be done by the nonresident
14 person, the reasons why the state failed to identify an Alaskan person and
15 the effort made to locate a qualified Alaskan person. The legislative
16 audit division shall prepare the forms necessary to comply with this
17 section.

18 (b) In this section "state" includes any state department, state
19 agency, and state university.

20 * Sec. 2. Contracts that are exempt from the provisions of AS 36.98 as
21 provided in AS 36.98.010(1) are exempt from the provisions of sec. 1 of
22 this Act.

23 * Sec. 3. Section 1 of this Act is repealed July 1, 1985.

Introduced: 2/28/83
Referred: State Affairs
and Finance

1 IN THE HOUSE BY LINDAUER AND GRUSSENDORF
2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 62
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of public money for the
7 payment of nonresident individuals or businesses."

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

9 * Section 1. FINDINGS AND PURPOSE. The legislature finds that the
10 state often employs nonresident consultants, advisors, and businesses to
11 provide expertise and services to the state. In some instances this prac-
12 tice results in qualified Alaska individuals and businesses being over-
13 looked. In other instances, where there may be no qualified Alaska indi-
14 vidual or business, the legislature further finds that the practice of
15 employing nonresidents addresses only a specific problem or need without
16 necessarily encouraging the development of needed expertise or services
17 within the state. The purpose of this Act is to assist the state in iden-
18 tifying and encouraging the development of those services and areas of
19 technical expertise that are lacking in Alaska.

20 * Sec. 2. AS 37.10 is amended by adding a new section to read:

21 ARTICLE 5. MISCELLANEOUS.

22 Sec. 37.10.110. USE OF PUBLIC FUNDS TO PAY NONRESIDENTS. (a)
23 The state and a nonprofit corporation may not spend public money to
24 employ or contract with a nonresident person to provide expertise or
25 services to the state unless a written report is filed with the Office
26 of the Governor, the Department of Education, the University of
27 Alaska, and the legislative audit division. The report shall include
28 a brief description of the work to be done by the nonresident person,
29 the reasons why the state or the nonprofit corporation spending public

1 money failed to identify an Alaskan person, the effort made to locate
2 a qualified Alaskan person, and a recommendation for the development
3 of qualified Alaskan persons to satisfy projected future needs of the
4 state. The legislative audit division shall prepare the forms neces-
5 sary to comply with this section.

6 (b) In this section "state" includes any state department, state
7 agency, state university, borough, city, village, school district or
8 other state subdivision.

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

5/13/83

Date: 6-21-83

Mr. President:

The Committee on LABOR & COMMERCE has had SS HB 62

Use of public money for the payment of nonresident individuals or businesses.

under consideration and ~~a majority of the committee~~ (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with BCS for CS 55 HB 62 (H+C) same title new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

2 [Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

3 [Signature] no rec.
3 [Signature]

1 [Signature] D.N.P.

1 [Signature]
CHAIRMAN
do not pass

Offered: 2/8/83
Referred: State Affairs
and Finance

Original sponsor: Lindauer

1 IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE
2 CS FOR HOUSE BILL NO. 66 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to fiscal notes on bills that affect
7 state retirement systems; and providing for an effective
8 date."

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

10 * Section 1. AS 24.30.036 is amended to read:

11 Sec. 24.30.036. FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT
12 SYSTEMS. Before a bill which would have an effect on the retirement
13 systems of the state is reported from the committee of first referral
14 [TO THE RULES COMMITTEE], there shall be attached to the bill an
15 analysis of the long-term and short-term costs to all contributing
16 employers [THE STATE] if the bill or a version of the bill is adopted,
17 as well as the impact of the bill on the actuarial soundness of the
18 fund. The analysis shall be prepared by the division of retirement
19 and benefits in the Department of Administration [LEGISLATIVE BOARD OF
20 RETIREMENT BENEFITS] and is in addition to the fiscal note
21 requirements of AS 24.30.035.

22 * Sec. 2. This Act takes effect July 1, 1983.

→ *cl*

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSHB 66 Date on Bill: 2-8-83
Title: An Act Relating to Fiscal Notes on Bill that Affect State Retirement Systems
Sponsor: Labor and Commerce Committee
Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

It is assumed that the requirement to provide long and short term costs to all contributing employers means that two figures will be required: 1) costs to the state; and 2) total costs to employers and an estimate of the increase in the employer contribution rate. If the Division of Retirement and Benefits were required to provide dollar cost figures for each employer then substantial administrative costs and delays would result.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: *J.K. Humphreys* Phone: 465-4460
Division: Retirement & Benefits Date: 3-10-83

Approved by Commissioner: *David Rudol* Date: 3/11/83
Department: Administration

5. Distribution:
- Original to Legislative Finance
 - Copy to OMB
 - Copy to Sponsor
 - Copy to Requestor

2/8/83

The following individual is expected to testify on CS HB 66
(L&C):

Representative John Lindauer, prime sponsor

Position Paper

CSHB 66

The department has no objections to this bill as we understand it. The division of retirement and benefits has always provided in its fiscal notes a projection of long and short term costs to the state and, where applicable, an estimate of the percentage increase in the employer contribution rate and the total costs to political subdivisions and school districts of the state. It is assumed that the requirement to provide information regarding costs to all contributing employers means that such estimates of the increase in the percentage rate and the total cost to all employers is adequate. However, if the division were required to provide dollar cost figures for each employer then substantial administrative costs and delays would result.

J. K. Humphreys
J. K. Humphreys, Director, Division of Retirement & Benefits

3/22/83
Date

Lisa Rudd
Lisa Rudd, Commissioner of Administration

3/22/83
Date

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508



While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

March 17, 1983

TO: House Finance Committee

FROM: Representative John Lindauer *J.L.*

RE: House Bill 66: "An Act relating to fiscal notes on bills that affect state retirement systems; and providing for an effective date."

The intent of this bill is to close a loophole within the current statute. While fiscal notes are currently required on bills affecting the state retirement systems, the entity who is to prepare these fiscal notes is no longer in existence.

The bill amends AS 24.30.036 by replacing the Legislative Board of Retirement Benefits, which no longer exists, with the Division of Retirement Benefits in the Department of Administration.

In addition, this section has been changed to conform with AS 24.30.035 requiring the fiscal note to be prepared before the bill is reported from the committee of first reference.

Introduced: 1/18/83
Referred: Labor & Commerce,
State Affairs and Finance

1 IN THE HOUSE

BY LINDAUER

2

HOUSE BILL NO. 66

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to fiscal notes on bills that affect
7 state retirement systems; and providing for an effective
8 date."

9

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

10

* Section 1. AS 24.30.036 is amended to read:

11

Sec. 24.30.036. FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT
12 SYSTEMS. Before a bill which would have an effect on the retirement
13 systems of the state is reported from the committee of first referral
14 [TO THE RULES COMMITTEE], there shall be attached to the bill an
15 analysis of the long-term and short-term costs to the state if the
16 bill is adopted, as well as the impact of the bill on the actuarial
17 soundness of the fund. The analysis shall be prepared by the division
18 of retirement and benefits in the Department of Administration [LEGIS-
19 LATIVE BOARD OF RETIREMENT BENEFITS] and is in addition to the fiscal
20 note requirements of AS 24.30.035.

21

* Sec. 2. This Act takes effect July 1, 1983.

Offered: 2/8/83
Referred: State Affairs
and Finance

Original sponsor: Lindauer

1 IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE
2 CS FOR HOUSE BILL NO. 66 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fiscal notes on bills that affect
7 state retirement systems; and providing for an effective
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11 Sec. 24.30.036. FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT
12 SYSTEMS. Before a bill which would have an effect on the retirement
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14 [TO THE RULES COMMITTEE], there shall be attached to the bill an
15 analysis of the long-term and short-term costs to all contributing
16 employers [THE STATE] if the bill or a version of the bill is adopted,
17 as well as the impact of the bill on the actuarial soundness of the
18 fund. The analysis shall be prepared by the division of retirement
19 and benefits in the Department of Administration [LEGISLATIVE BOARD OF
20 RETIREMENT BENEFITS] and is in addition to the fiscal note
21 requirements of AS 24.30.35.

22 * Sec. 2. This Act takes effect July 1, 1983.

COMMITTEE REPORT

HOUSE

FURTHER:

(11)

Date: 4-8-83

Mr. Speaker:

The Committee on FINANCE has had HB 69

An Act relating to ferries and ferry terminals and establishing the Alaska Marine Highway Authority.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 68 (Fin) same title
 new title
- and recommends individual recommendations
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the ~~Finance~~ Committee

**MEMBERS SIGNING
DO PASS**

John W. ...

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

James P. ... (No Rec)
Frank ... (No Rec)
J. ... (No Rec)
George ... (No Rec)
Robert ... (No Rec)

Albert B. ...
CHAIRMAN

Original sponsors: Cato, Grussendorf
and Flood

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 68 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ferries and ferry terminals and
7 establishing the Alaska Marine Highway Authority."

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

9 * Section 1. PURPOSE. The purpose of this Act is to establish an
10 authority for the operation, management, and planning and construction of
11 facilities for the marine highway system that is independent of the state
12 government. The authority shall be the exclusive state agency directly
13 associated with the operation, management, planning and construction of
14 facilities for the marine highway system.

15 * Sec. 2. AS 19 is amended by adding a new chapter to read:

16 CHAPTER 70. ALASKA MARINE HIGHWAY AUTHORITY.

17 ARTICLE 1. CREATION AND ORGANIZATION.

18 Sec. 19.70.010. ALASKA MARINE HIGHWAY AUTHORITY. The Alaska
19 Marine Highway Authority is established. The authority is a public
20 corporation of the state. The corporation is an instrumentality of
21 the state in the Department of Transportation and Public Facilities
22 but has a legal existence independent of and separate from the state
23 and has continuing succession until its existence is terminated by
24 law.

25 Sec. 19.70.020. DIRECTORS. (a) The authority consists of seven
26 directors appointed by the governor as follows: a representative of
27 commercial carriers, a representative of the maritime industry, a
28 representative of the tourism industry, and four members of the public
29 representing regions served by the marine highway as follows: (1) one

1 member from region one (extending from Dixon Entrance to Skagway); (2)
2 one member from region two (Kodiak Island); (3) one member from region
3 three (Prince William Sound); and (4) one member from region four
4 (Interior Alaska). The appointment of each director is subject to
5 confirmation by the legislature.

6 (b) The directors serve at the pleasure of the governor for
7 four-year terms. Each director shall hold office for the term of the
8 director's appointment and until a successor is appointed and qual-
9 ified. A director is qualified for reappointment. A vacancy in a
10 directorship occurring other than by expiration of term shall be
11 filled in the same manner as the original appointment but only for the
12 unexpired term.

13 (c) The directors must be residents of the state and qualified
14 voters at the time of appointment and shall comply with the require-
15 ments of AS 39.50 (conflict of interest). Each director before enter-
16 ing upon the director's duties shall take and subscribe to an oath to
17 perform the duties of office faithfully, impartially, and justly to
18 the best of the director's ability. A record of the oath shall be
19 filed with the Office of the Governor.

20 (d) The directors of the authority serve without compensation,
21 but are entitled to travel and per diem expenses as provided in AS 39.-
22 20.180.

23 Sec. 19.70.030. OFFICERS AND QUORUM. The directors shall elect
24 one of their number as chairman. The directors shall elect a secre-
25 tary and a treasurer who need not be directors, and the same person
26 may be elected to serve both as secretary and treasurer. The powers
27 of the authority are vested in the directors, and four voting direc-
28 tors of the authority constitute a quorum. Action may be taken and
29 motions and resolutions adopted by the authority at any meeting by the

1 affirmative vote of at least four directors. A vacancy in the direc-
2 torship of the authority does not impair the right of a quorum to
3 exercise all the powers and perform all the duties of the authority.

4 Sec. 19.70.040. STAFF. The authority shall employ an executive
5 director who serves at the pleasure of the authority as its chief
6 administrative officer. The executive director may with the approval
7 of the authority select and employ additional staff as necessary.
8 Employees of the authority other than legal counsel and the executive
9 director are in the classified service under AS 39.25. In addition to
10 its staff of regular employees, the authority may contract for and
11 engage the services of consultants, and professional, technical and
12 financial advisors the authority considers necessary for the purpose
13 of developing information, conducting hearings, studies, investiga-
14 tions or other proceedings, or otherwise exercising its powers.

15 ARTICLE 2. POWERS AND DUTIES.

16 Sec. 19.70.050. POWERS OF AUTHORITY. In addition to other
17 powers granted in this chapter, the authority may

- 18 (1) sue and be sued;
- 19 (2) adopt and alter an official seal;
- 20 (3) make and enforce bylaws and regulations for the conduct
21 of its business and for the use of its services and facilities;
- 22 (4) maintain offices at any place in the state and at
23 places out of the state that are served by the marine highway system;
- 24 (5) subject to appropriation by the legislature, acquire,
25 hold, use and dispose of its income, revenues, funds and money;
- 26 (6) acquire, hold, use, lease, rent, construct and dispose
27 of real and personal property for its purposes;
- 28 (7) operate, maintain, improve, and extend a system of
29 ferries connecting with the public roads and highways of the state and

1 including the boats, vessels, wharves, docks, approaches, landings and
2 appurtenances the authority determines to be necessary or desirable
3 for safe and efficient operation of the ferry system so as to best
4 serve the public;

5 (8) do all acts and things necessary, convenient, or desir-
6 able to carry out the powers expressly granted or necessarily implied
7 in this chapter;

8 (9) establish rates and tariffs, after public hearings;

9 (10) modify routes, after public hearings.

10 Sec. 19.70.055. DUTIES OF AUTHORITY. The authority shall

11 (1) assist the residents, businesses, and communities of
12 the state in obtaining the best and most frequent possible marine
13 passenger and freight service;

14 (2) schedule vessel sailings to maximize the frequency of
15 service to all ports;

16 (3) encourage and integrate with other public and private
17 carriers to the greatest extent possible to provide ferry service
18 within the state and between Alaskan ports and ports outside the state
19 in order to provide maximum service within the state;

20 (4) require pre-payment for reservations;

21 (5) provide reservation access and marketing information
22 throughout the state;

23 (6) encourage vessel construction, maintenance, and service
24 in the state to the greatest extent possible;

25 (7) employ residents of the state to the greatest extent
26 legally possible;

27 (8) recognize Alaska-based unions and employee associations
28 to the greatest extent legally possible.

29 Sec. 19.70.060. "ALASKA MARINE HIGHWAY SYSTEM": NAME AUTHO-

1 RIZED. The authority is authorized to operate its ferry system under
2 the name "Alaska marine highway system".

3 Sec. 19.70.070. COMPREHENSIVE LONG-RANGE PLAN. The authority,
4 with the cooperation of the Department of Transportation and Public
5 Facilities, shall prepare a comprehensive long-range plan for the
6 development and improvement of the marine highway system and revise
7 and update the plan, subject to legislative approval, at least every
8 five years.

9 ARTICLE 3. ACQUISITION OF PROPERTY.

10 Sec. 19.70.080. ACQUISITION OF LAND AND EASEMENTS. The authori-
11 ty, as part of the cost of constructing, maintaining, or improving a
12 ferry system, may acquire by purchase, gift, or exchange land in fee
13 simple or easements that it considers necessary for present public
14 use, either temporary or permanent, or that it considers necessary and
15 reasonable for the public use. By the same means, the authority may
16 obtain material, including clay, gravel, sand, or rock, or the land
17 necessary to obtain the material, including access to it. The author-
18 ity may so acquire the land or materials notwithstanding the fact that
19 title to it is vested in the state or a department, agency, commis-
20 sion, or institution of the state.

21 Sec. 19.70.090. AUTHORITY TO PURCHASE PROPERTY FOR THE PURPOSE
22 OF EXCHANGE. When a majority of the directors of the authority de-
23 clares that it is in the best public interest of the state to do so,
24 the authority may acquire by purchase, gift, or exchange privately or
25 publicly owned land or an interest in it for the purpose of exchanging
26 it for privately or publicly owned land that the authority is author-
27 ized by law to acquire.

28 Sec. 19.70.100. VACATING OF LAND OR RIGHTS IN LAND. The author-
29 ity may vacate land, or part of it, or rights in land acquired for use

1 in the marine highway system by executing and filing a deed in the
2 appropriate recording district. Upon vacating, title reverts to the
3 persons, heirs, successors, or assigns in whom it was vested at the
4 time of the taking. The authority may transfer land no longer con-
5 sidered necessary for use in the marine highway system to the Depart-
6 ment of Natural Resources for disposal. The proceeds of disposal by
7 the Department of Natural Resources shall be credited to the funds
8 from which the purchase was originally made.

9 ARTICLE 4. FERRY TERMINAL FACILITIES.

10 Sec. 19.70.110. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL
11 FACILITIES. The authority may construct, purchase, or lease ferry
12 terminal facilities at locations it selects for the loading and un-
13 loading of passengers and vehicles under their own power, on and off
14 ferries. The authority shall repair and maintain these facilities.

15 Sec. 19.70.120. CONNECTION OF FACILITIES TO HIGHWAYS. The
16 authority may connect ferry terminal facilities with local highway
17 systems.

18 Sec. 19.70.130. REGULATIONS. The authority may adopt rules and
19 regulations governing the use of ferry terminal facilities by the
20 public that it considers necessary and proper in the public interest.

21 Sec. 19.70.140. EXISTING FACILITIES NOT AFFECTED. A ferry
22 terminal facility in existence and serving the public on January 1,
23 1959, is not affected by AS 19.70.110 - 19.70.170.

24 ARTICLE 5. GENERAL PROVISIONS.

25 Sec. 19.70.150. ANNUAL REPORT. By January 15 of each year, the
26 authority shall submit to the governor and the legislature a compre-
27 hensive report describing the operations, income, and expenditures for
28 the preceding fiscal year.

29 Sec. 19.70.160. ANNUAL AUDIT. The authority shall have its

1 financial records audited annually by a certified public accountant.
2 The legislative auditor may prescribe the form and content of the
3 financial records of the authority and shall have access to those
4 records at any time.

5 Sec. 19.70.170. BUDGET AND APPROPRIATIONS. The authority shall
6 submit its annual budget to the legislature through the governor as
7 provided for state agencies by the Executive Budget Act (AS 37.07).
8 It may expend money directly appropriated by the legislature only as
9 authorized by the legislature.

10 Sec. 19.70.180. NAMING OF VESSEL OR FACILITY. (a) A vessel or
11 facility of the Alaska marine highway system constructed or acquired
12 by the authority under this chapter or AS 19.60 may be given a name
13 only by law.

14 (b) A maritime vessel shall bear the name of an Alaska glacier.

15 (c) A vessel used principally on the inland waterways of the
16 state shall bear the name of an historical vessel that used the rivers
17 of the state.

18 Sec. 19.70.199. DEFINITIONS. In this chapter, unless the con-
19 text requires otherwise,

20 (1) "authority" means the Alaska Marine Highway Authority
21 established by this chapter;

22 (2) "capital improvement" means a project for the construc-
23 tion, rehabilitation, rebuilding, enlarging, or improving of all or
24 any part of the marine highway system, including, without limitation,
25 boats, vessels, wharves, docks, approaches, landings, offices, and
26 appurtenances as determined by the authority to be necessary or desir-
27 able for efficient operation of the marine highway system and to best
28 serve the public;

29 (3) "ferry" means a vessel used in the common carriage of

1 passengers and self-propelled vehicles in commerce.

2 Sec. 19.70.200. SHORT TITLE. This chapter may be cited as the
3 Alaska Marine Highway Authority Act.

4 * Sec. 3. AS 35.27 is amended by adding a new section to read:

5 Sec. 35.27.025. APPLICATION TO ALASKA MARINE HIGHWAY AUTHORITY.
6 The requirements of this chapter apply to the Alaska Marine Highway
7 Authority. Compliance with this chapter is the sole responsibility of
8 the authority with respect to the public buildings and facilities of
9 the authority.

10 * Sec. 4. AS 35.27.030(2) is amended to read:

11 (2) "building" or "facility" means a permanent improvement
12 constructed by the department or authority; the term

13 (A) includes, but is not limited to,

14 (i) schools, office buildings, and court build-
15 ings;

16 (ii) other buildings which the commissioner deter-
17 mines are designed for substantial public use;

18 (iii) boats and vessels of the marine highway
19 system;

20 (iv) transportation facilities which accommodate
21 traveling passengers;

22 (B) excludes other transportation facilities; [.]

23 * Sec. 5. AS 35.27.030 is amended by adding a new paragraph to read:

24 (5) "authority" means the Alaska Marine Highway Authority.

25 * Sec. 6. AS 39.50.200(b) is amended by adding a new paragraph to read:

26 (46) Alaska Marine Highway Authority (AS 19.70.010).

27 * Sec. 7. AS 44.42.020(a)(1) is amended to read:

28 (1) plan, design, construct and maintain all state modes of
29 transportation and transportation facilities and all docks, floats,

1 breakwaters, buildings and similar facilities, except that the depart-
2 ment is not responsible for planning, design, construction, or mainte-
3 nance of transportation modes or facilities under the jurisdiction of
4 the Alaska Marine Highway Authority;

5 * Sec. 8. AS 44.42.020(a)(7) is amended to read:

6 (7) manage, operate, and maintain state transportation
7 facilities and all docks, floats, breakwaters and buildings, including
8 all state highways, vessels, railroads, pipelines, airports, and
9 aviation facilities, except that the department is not responsible for
10 management, operation, or maintenance of transportation facilities,
11 vessels, or equipment under the jurisdiction of the Alaska Marine
12 Highway Authority;

13 * Sec. 9. AS 19.60.010 - 19.60.070, and AS 19.65 are repealed.

14 * Sec. 10. APPOINTMENT OF FIRST DIRECTORS OF ALASKA MARINE HIGHWAY
15 AUTHORITY. The governor shall designate the terms of the directors of the
16 Alaska Marine Highway Authority first appointed under AS 19.70.020. Of the
17 seven directors first appointed

- 18 (1) two shall serve a term of two years;
19 (2) two shall serve a term of three years;
20 (3) three shall serve a term of four years.

HOUSE JOURNAL

LETTER OF INTENT
FOR
CS HB 68 (FINANCE)

It is the policy of the state to:

- 1) provide necessary and desirable freight and passenger transportation services to residents, businesses, and visitors in the state;
- 2) develop and implement plans consistent with the goal of developing a transportation network that effect the policies set out in this legislation; and
- 3) provide safe, economical, and efficient transportation to residents, businesses and visitors in the state.

The Legislature further declares that:

- 1) in the interest of the people of the state it is necessary to exercise the powers of the state to accomplish the policy as stated above by authorizing the creation of public authority with the powers, duties, and functions as provided in this Act to operate the Alaska Marine Highway System and to manage its facilities;
- 2) it is in the best interests of the state for the public authority to operate and manage, in a prudent manner, the Alaska Marine Highway System created in this Act;
- 3) it is in the best interests of the state to provide the best possible combination of types and levels of safe, efficient, and economical transportation that is necessary to meet the overall needs of the state, supported by state investments, when necessary;
- 4) it is in the best interests of the state to minimize state subsidy and for the authority to function as an enterprise entity in an attempt to become self-sustaining, to carry out the Authority's responsibilities; according to sound business management practices to provide the level of service that best satisfies the needs of the people of the state in a fiscally sound manner.

Respectfully Submitted,

Al Adams, Chairman
House Finance Committee

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 68 (FINANCE)

Title Establishing an Alaska Marine Highway Authority

Requested by _____ Date 4/7/83

II. FISCAL DETAIL

Agency Affected Department of Transportation and Public Facilities

Program Category Affected _____

BRU, Program, Or Subprogram(s) Affected Marine Highway System

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		\$402.4	\$959.7	\$1017.3	\$1078.3	\$1142.9
200 TRAVEL		73.4	97.8	103.6	109.8	116.4
300 CONTRACTUAL		507.0	297.1	209.8	222.4	235.7
400 COMMODITIES		30.0	61.2	64.9	68.8	72.9
500 EQUIPMENT		60.8	20.2	26.3	27.8	29.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL Operating		\$1073.6	\$1436.0	\$1421.9	\$1507.1	\$1597.4
Capital			577.0			

FUNDING (Thousands of Dollars)

GENERAL FUND		\$1173.6	\$2013.0	\$1421.9	\$1507.1	\$1597.4
FEDERAL FUNDS						
OTHER (Specify Source)		(\$100.0)				

POSITIONS

FULL TIME		18	24	24	24	24
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

(SEE ATTACHED)

IV. DATE 4/7/83 PREPARED BY Jerry Schilz
 AGENCY Rep. Grussendorf's Office
 Original: Legislative Finance PHONE _____
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)