

ALASKA LEGISLATURE

2311

HOUSE and SENATE FINANCE COMMITTEE FILES,

2001 - 2002

Either party may terminate this agreement, without fault, and without incurring liability to the other, upon the occurrence of any of the following, with 60 days notice to the other party:

- A. The legislature adjourns for the 2002 session without enacting legislation in a form sufficient to undertake the Project in Cornell's reasonable judgment; and either party thereafter elects to terminate.
- B. The City and the State DOC fail to enter into an IGA with terms sufficient in Cornell's reasonable judgment to undertake the successful design, construction and operation of the Facility, allowing a reasonable return to Cornell, and the satisfaction of the terms of this Agreement; and either party thereafter elects to terminate.
- C. The parties are unable to identify a site for the Facility, free of environmental contamination or other site conditions, the presence of which makes the Project uneconomic to pursue.
- D. The City is unable, despite its reasonable efforts, to secure the consent of the Alaska Railroad under the Ground Lease for the Project.
- E. Cornell is unable, despite its reasonable efforts, to negotiate a Design Build Contract with the Contractor for a lump sum, which with applicable financing and interest rates as available at the time of financing, will allow the operation of the Facility within the budget constraints of the IGA.

In the event a notice of no fault termination is issued by one party, the responding party may, by providing reasonable written assurances of further reasonable efforts by the responding party, request that the Agreement not be terminated. In such event, the Agreement shall remain in effect for the period of time set forth in the notice provided it is reasonably necessary to undertake the reasonable efforts set forth in the notice. At the end of such period, either party may again give notice of no fault termination. In the event of a no fault termination, this Agreement shall be of no further force and effect, except only the provisions of section 7.

17. PARTIAL INVALIDITY.

In the event any clause, term or condition of this Agreement shall be determined to be illegal or unenforceable under any applicable governmental laws, orders, rules or regulations, this Agreement shall remain in full force and effect as to all other terms, conditions and provisions. The enforceability of this Agreement is conditioned upon no protest or complaint being filed by another bidder to the Request for Qualifications challenging this Agreement within 10 days after Council passes an enabling action to authorize the City to enter into this Agreement.

18. COUNTERPARTS.

This Agreement may be executed by Cornell and City in one or more counterparts.

19. **GOVERNING LAW.**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Alaska, without regard to conflict of law principles.

20. **HEADINGS, MEANING OF WORDS, ENTIRE AGREEMENT.**

The headings used in this Agreement are inserted for convenience and are not to be considered in the construction of the provisions of this Agreement. This Agreement constitutes the entire agreement of the parties and may be amended or modified only in writing signed by both parties, and all prior agreements or understandings between the parties, either oral or written, are superseded by this Agreement.

21. **INTEGRATION.**

This Agreement is fully integrated and contains all of the agreements of the parties; it supercedes all prior writings and oral agreements exchanged by and between the parties. It may not be amended or modified except by a written agreement signed by both parties in accordance with applicable law.

SIGNED as of the day and year first written above.

CORNELL CORRECTIONS OF ALASKA, INC.

By: _____

(Printed Name)

(Title)

CITY OF WHITTIER

By: _____

(Printed Name)

(Title)

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, an officer of **CORNELL CORRECTIONS OF ALASKA, INC.**, an Alaska corporation, on behalf of the corporation.

NOTARY PUBLIC in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, an officer of **CITY OF WHITTIER, INC.**, an Alaska municipal corporation, on behalf of the corporation.

NOTARY PUBLIC in and for Alaska
My commission expires: _____

MEMO TO FILE

DATE: May 6, 2002

TO: Finance Committee

BILL/RES. NO.: **HB 498 CORRECTIONAL FACILITIES**

ATTENTION: Heidi, Vicki
Senate Secretary's Office

This bill/resolution has not yet received a do pass recommendation.

Please leave this note in the file.

Thank you.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

GOVERNMENTAL AFFAIRS SECTION
P.O. BOX 110300
DIAMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2520

May 7, 2002

The Honorable Pete Kelly, Co-Chair
Senate Finance Committee
Alaska Senate
State Capitol, Room 518
Juneau, Alaska 99811-1182

Re: Constitutional concerns regarding
CSHB 498(FIN) am -- local and special legislation and separation of
powers issues concerning private prison

Dear Senator Kelly:

Our office was requested to review CSHB 498(FIN) am, a bill that passed the Alaska House of Representatives on April 29, 2002. The Senate Finance Committee is the next committee of referral on this bill. We have been requested to bring to your attention several constitutional concerns that are present in this bill. In particular, we believe that certain provisions found in section 2(b) of the bill may run afoul of article II, section 19 of the Alaska Constitution, which prohibits local and special acts, as well as violating the doctrine of separation of powers. Our reasons follow.

I. Prohibition Against Local and Special Legislation

Article II, section 19 of the Alaska Constitution reads in relevant part:

Section 19. Local or Special Acts. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

This provision in the constitution has been analyzed by the Alaska Supreme Court on numerous occasions. The most often cited cases are *Abrams v. State*, 534 P.2d 91 (Alaska 1975) (special treatment must be reasonably related to a matter of common interest to the whole state) and *State v. Lewis*, 559 P.2d 630 (Alaska 1977), *cert. denied*, 432 U.S. 901 (1977). In *Abrams*, the statute was found to violate article II, section 19, because it created a borough in a manner different from that for incorporating other

boroughs, and no evidence was presented indicating any valid reason for special incorporation procedures applicable only to the one proposed borough. 534 P.2d 91, 94 citing *Boucher v. Engstrom*, 528 P.2d 456, 463 (Alaska 1974). In *Lewis*, the court found the statute authorizing a trade of land among the federal government, the state, and a Native regional corporation did not violate article II, section 9 of the Alaska Constitution. The court found that land trade was unique, was of statewide concern, and that the legislation was "as broad as the conditions to which it respond[ed]" could allow. *Lewis*, 559 P.2d at 644.

In section 2(b) of this bill, beginning on line 26, the legislation provides as follows:

In the agreement with the City of Whittier, the commissioner of corrections shall require that the city procure one or more private third-party operators through a competitive process. The procurement requirements of this subsection are satisfied if the City of Whittier in exercising its powers under AS 29.35.010(15), for procurement of land, design, construction and operation of a facility, follows its municipal ordinances and resolutions and procurement procedures.

It is our understanding that the City of Whittier has already selected a private entity to perform the contract that this legislation contemplates. The language of section 2(b) essentially declares that past actions by a local government will satisfy the procurement requirements of the section. We do not believe this language is as broad as the conditions to which it addresses could allow as required under the *Lewis* test. We believe such a showing must be made before special treatment can be afforded in this legislation as to the selection of the prison site and the approval of a procurement process to select a private third-party operator that predates the legislation.

The court in *Lewis* propounded a test to be used in determining whether a statute violates the local and special prohibition and it is substantially the same as the test used to determine the validity of a nonsuspect classification challenges as violative of equal protection. The legislature must show a rational basis, a good reason, to justify the special treatment.¹ We believe the factors of the *Lewis* test may not have been satisfied here, particularly as to the limitation to the City of Whittier as a site for the prison and the

¹ In 1978, the Court articulated a unified equal protection analysis that utilizes a sliding scale to weigh the interests involved in any classification that avoids distinguishing between suspect and nonsuspect classifications. *State v. Erickson*, 574 P.2d 1 (Alaska 1978). We note that there has not been a case involving the local and special legislation prohibition since the unified equal protection test was adopted in *Erickson*.

basis for approving a procurement process that predates the imposition of contract conditions imposed by this legislation.

Notwithstanding our concerns with this bill, it is the province of the court to determine if a statute violates the prohibition against special and local legislation under article II, section 19, of the Alaska Constitution.

II. Separation of Powers

We also have concerns that the legislation violates the separation of powers doctrine under the Alaska Constitution.² Under that doctrine and the structure envisioned by Alaska's fundamental charter, the legislative power is vested in the legislature, the executive power in the governor, and the judicial power in a supreme court, superior court and other courts as established by the legislature. *Bradner v. Hammond*, 553 P.2d 1, 5 (Alaska 1976). Principal among the governor's express constitutional powers is his or her responsibility for executing and enforcing the laws. Alaska Const. art. III, sec. 16. The Constitutional Convention considered the discretion of the executive branch to enforce the law to be an essential element of the strong executive intended under Alaska's constitution. See 1991 Op. Att'y Gen., C. Cole (April 2; Eliason/Gruenberg). Further, the Alaska Supreme Court has embraced a strict view of the autonomy of the state's governmental branches, which precludes each branch from improperly interfering with the autonomy and discretion of the others with respect to their core constitutional powers. "The separation of powers doctrine also requires that the blending of governmental powers [between the branches] will not be inferred in the absence of an express constitutional provision." *Bradner*, 553 P.2d at 6-8.

In CSHB 498 (FIN) am, section 2(b), line 26, it states that the commissioner of corrections shall require that the city procure one or more private third-party operators through a competitive process and that the procurement requirements of this subsection are satisfied if the City of Whittier in exercising its powers under AS 29.35.010(15), for procurement of land, design, construction and operation of a facility, follows its municipal ordinances and resolutions and procurement procedures. This is a mandate upon the commissioner to do an act and to exercise discretion in determining if the procurement had a competitive process. However, this discretion is disregarded as an unnecessary function because the commissioner has been effectively told in the same subsection of the bill that the municipality's procurement process, no matter what that

² The Alaska Supreme Court has long and consistently recognized that although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, that the principle is clearly implied from the Constitution's separate articles creating the executive, legislative, and judicial branches of the Alaska government. *Rust v. State*, 582 P.2d 134, 138 n.11 (Alaska 1978).

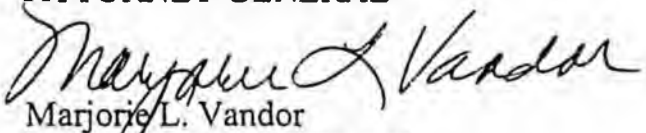
process entails, is deemed to satisfy the legislative requirement. Thus, the legislature bypasses any exercise of the discretion it makes mandatory on the commissioner. Instead, the legislature declares that a municipal procurement method (already performed by the City of Whittier) satisfies the discretionary decision that is to be made by the commissioner of corrections.³ Under *Bradner*, this may be interference or attempt to blend governmental powers between the branches of government not expressly authorized by the constitution. Furthermore, the legislature has created a legislative nullity by mandating the exercise of discretion in section 2(b) and rendering it completely unnecessary in the same provision. A basic principle of statutory construction is that all language in a statute should be construed to give the statute some effect; the legislature is not deemed to have intended to enact meaningless provisions. See *Isakson v. Rickey*, 550 P.2d 359, 364 (Alaska 1976); 2A C. Sands, *Sutherland Statutory Construction* § 46.06 (4th ed. 1973).

In sum, by providing for legislative approval of a matter before discretion can be exercised, as set out in section 2(b) of this bill, the legislation may be improperly crossing-over into executive functions, thus constituting a possible violation of the separation of powers doctrine. Plus, the language of this act renders the executive branch's exercise of that discretion meaningless, as it constitutes a legal nullity.

Please call us if additional information is necessary.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Marjorie L. Vandor
Assistant Attorney General

MLV:jad

cc: Hon. Margaret Pugh, Commissioner, Department of Corrections
Shari Kochman, Office of the Governor
Chrystal Smith, Legislative Liaison, Department of Law
Deborah Behr, Legislation Attorney, Department of Law

³ See also e.g. *State ex rel. Stephan v. Kansas House of Representatives*, 687 P.2d 622 (Kan. 1984) (doctrine of separation of powers avoids dangerous concentration of power through checks and balances each branch of government has against other by assigning each branch powers and functions appropriate to it).

SENATE COMMITTEE REPORT

DATE: 5/1/02

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/3/02

Judiciary Committee considered

CS FOR HOUSE BILL NO. 498(FIN) am

HB 498 CORRECTIONAL FACILITIES

"An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space in the City of Whittier; giving notice of and approving the entry into and the issuance of certificates of participation for the upgrade, expansion, and replacement of a certain correctional facility in the City of Bethel; giving notice of and approving the entry into lease-financing agreements for that project; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOC	4/19/02	✓		3
DOR	4/17/02	✓		4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>		 		
<i>[Signature]</i>				
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>				

SENATE FINANCE COMMITTEE
HB 498-CORRECTIONAL FACILITIES
SIGN-IN

NAME: Margaret Knuth Subject/Bill No: HB 498
Co./Dept./Title: Dept of Corrections Phone: 465-4338
Address: Jumlae Zip: 99801
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
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Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
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Do you wish to testify? Yes No Respond To Questions

HEB

503

HFIN

FILE

Sponsor Statement for HB503

Wastewater Discharge Program

An Act relating to evaluating state assumption of the wastewater discharge program under the federal Clean Water Act; and providing for an effective date.

Contact: Representative Beverly Masek State Capitol Rm 124 (907) 465-2679

Passage of House Bill 503 will direct the Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of assuming primacy for the National Pollutant Discharge Elimination System (NPDES) program and develop an implementation plan.

In 1972 the federal government enacted the Clean Water Act (CWA) to protect and restore the quality of the nations water. The CWA provided that states can be authorized to operate their own NPDES program as long as it complies with federal requirements. Currently 44 states and the U.S. Virgin Islands administer their own NPDES program and Idaho is currently considering assuming NPDES primacy. The main reason that states have adopted primacy is to allow them to tailor the water discharge program to regional concerns and environmental features rather than follow federal guidelines designed to cover all states.

House Bill 503 would direct the DEC to study and describe:

- EPA's existing program in Alaska,
- Required and recommended primacy program components,
- Advantages, disadvantages, and experiences from similarly situated states along with their program costs,
- Draft rules and regulations needed for primacy,
- Guidance and implementation recommendations for executing the permit review, issuing permits and performing field compliance assistance,
- Necessary resources including number of staff, use of contractors and specific technical expertise of staff for an Alaskan program,
- legal issues and propose solutions necessary to acquire primacy, and
- A proposed action plan to secure federal funding as an ongoing contributor to offset operational costs of an Alaska NPDES permit Program.

This proposal is supported by the Waste Water Permit Work Group which was formed by the Department of Environmental Conservation. This group is comprised of external stakeholders who were asked to make recommendations to guide the rebuilding of the wastewater discharge program. I envision this group being involved throughout this proposed process helping to evaluate the pros and cons of state assumption of the NPDES program. This review would involve public comment and a final report to be submitted to the First Regular Session of the Twenty-Fourth Alaska State Legislature. The Legislature could then take action if it believed assumption would be in the state's best interest.

DRAFT
Division Air and Water Quality
NPDES PRIMACY: Is this Appropriate for Alaska?

Synopsis: Permitting decisions for wastewater discharges from Alaska businesses, industries and municipalities are currently made by the Environmental Protection Agency (EPA) in Seattle. It is in the best interest of Alaskans to make these resource decisions locally. Alaska stakeholders have expressed a desire for local decision making. Yet, stakeholders are guarded about endorsing Alaska primacy unless the details of the program are fully described so they can decide if a state program will have more benefits than the one executed by EPA.

\$ 315.0 is required (218.2 in FY 03 and 96.8 in FY 04) to develop an implementation plan for state assumption of the federal wastewater permitting that affects seafood processing, mining, municipal sewage treatment, oil and gas waste water discharges and other operations across Alaska. The main products of this work will be draft statutes, draft regulations, program guidelines and an implementation schedule.

The products will be based upon meeting legal requirements and will apply the knowledge gained from programs executed in other states to create an environmentally protective program for Alaska that is cost-efficient and friendly to users and the public. The implementation study will provide full program disclosure to the Legislature, affected stakeholders and interested members of the general public to seek a policy decision by the Legislature about whether the Department should move forward to seek delegation from EPA.

Stakeholder interest on this issue is expected to be strong. Resource development leaders will likely play a key role in Legislative discussion of this proposal.

Background: In 1999, the Department formed a Waste Water Permit Work Group of external stakeholders to aid in guiding the rebuild of the wastewater discharge program. The state's current "certification" program is a review and certification of federal permits that protects Alaska water quality and affords unique site specific permit features that benefit Alaska operators.

Of the work group's 10 recommendations aimed at making the program more efficient and sustainable, one is the pursuit of state decision making – state primacy for federal National Pollutant Discharge Elimination System (NPDES) permits – a permit required for discharge to surface waters. This recommendation, however, came with the caveat of "not at any cost" since the work group and the Department understood that other aspects of the wastewater discharge program needed attention and resources first before launching a full effort to pursue primacy.

During FY 02 and much of FY 03, the Department will be accomplishing the rebuild of the certification/existing state permit program in response to the 10 recommendations. The stakeholder group is still active in guiding this work and is keenly interested in any efforts to more fully examine NPDES primacy for Alaska. Funding an NPDES implementation study in FY03 is a logical next step especially while the stakeholder work group is still well intact and able to provide guidance.

Alaska is one of only six states in the nation that does NOT make NPDES permit decisions at the state level. EPA issues approximately 80 NPDES permits in Alaska each year - permits that are valid for 5 years. Several hundred more Alaska operations are approved to operate under the terms of various general permits issued by EPA. In the last couple of years, two other states have sought and attained state primacy and Idaho is currently assessing whether to seek delegation. Alaska could acquire many lessons learned from these states in crafting a program best suited to our needs.

The implementation study is to be viewed as a Phase III effort - an initial scoping study was performed by Easton Environmental in 1998 (Phase I), followed by the Department's more detailed scoping discussions with the Waste Water Permit Work Group in 1999 and 2000 (Phase II).

Work Products

Department staff (1.0 PFT, 1.0 PPT) with assistance by private contractors and the Department of Law will prepare a complete analysis that describes the NPDES program opportunity for Alaska. The implementation study will draw upon Idaho's work, previous studies conducted by the Department, nationwide studies of NPDES programs, and stakeholder recommendations and concerns. The study will describe

- EPA's existing program in Alaska,
- required and recommended primacy program components,
- advantages, pitfalls, and experiences from similarly-situated states, including their program costs and staff/contractual resources,
- draft rules and regulations needed for primacy,
- guidance and implementation recommendations for executing the permit review, issuing permits and performing field compliance assistance,
- necessary resources including number of staff, use of contractors and specific technical expertise of staff for an Alaskan program,
- identification of legal issues with proposed resolutions and proposed statutory language necessary to acquire primacy, and
- a proposed action plan to secure federal funding as an ongoing contributor to offset operational costs of an Alaska NPDES permit program.

The study will provide a full background of all information necessary for the Alaska Legislature in consultation with Alaska stakeholders and the Department to decide whether to pursue NPDES primacy.

OPERATING EXPENDITURES	FY 2003	FY 2004
Personal Services	95.7	47.8
Travel	12	6
Contractual	101.6	41
Supplies	2	1
Equipment	6.9	1
TOTAL OPERATING	218.2	96.8



Council of Alaska Producers

P.O. Box 22653 Juneau, Alaska 99802

January 31, 2002

Honorable Senator Therriault:

The Council of Alaska Producers has a strong interest in the State of Alaska assuming the NPDES permit program. We believe there is significant potential to benefit from having the program administered by people familiar with the unique conditions of Alaska, as well as the potential for expediting the permitting process through more accessible permitting staff. Resource development in Alaska may become more economic and attractive to mining and other industries, and the protection of the State waters may be improved as locally knowledgeable persons make water use determinations.

However, we also have some reservations. We are concerned whether or not the State will have permitting flexibility equal to that provided through the State permit certification process. We are also concerned whether the State can best resolve water permitting conflicts with the EPA, if and when they should arise, as a program administrator or if they have greater power as a separate entity.

It is our hope that with further evaluation of the NPDES assumption, and with an implementation plan that would provide us with a preview of the State NPDES program, that it will be evident that State assumption of the program will benefit Alaska citizens and Alaskan waters.

State assumption of the NPDES program will be costly. It would be unwise to request appropriation of funds for this program without first providing an implementation plan and an evaluation of the consequences. The legislation proposed in the attached document requests the funds and authority to take this first step.

The Council of Alaska Producers respectfully requests your assistance in drafting and sponsoring this bill.

If you have any questions, please contact Charlotte MacCay at (907) 272-2117, or (907) 266-4552, or on my cell phone at (907) 529-4332. My fax number is (907) 266-4568 and my email is cmaccay@aol.com. Kent Dawson is also available to assist you and can be reached at (907) 463-2533.

With sincere appreciation,

Charlotte L. MacCay
Vice President, Council of Alaska Producers

SUPPORT



Resource Development Council for Alaska, Inc.

121 West Firwood Lane, Suite 250, Anchorage, Alaska 99503-2035
(907) 276-0700 Fax: (907) 276-3887 e-mail: Resources@alrdc.org

Founded 1975

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March 15, 2002

Representative Beverly Masek
Chair, House Resources Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

RE: HB 503 — Wastewater Discharge Program

Dear Representative Masek:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our support for HB 503 — Wastewater Discharge Program. This legislation directs the Department of Environmental Conservation (DEC) to assess the costs and benefits of assuming primacy over the National Pollutant Discharge Elimination System (NPDES) program and to develop a plan for implementation. At present Alaska is one of only six states which does not administer its own NPDES program.

As you know, RDC is a private, membership-funded, non-profit trade association. Our members include companies from the mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native corporations, organized labor and industry support firms. Our mission is to expand Alaska's economic base through the responsible development of the state's natural resources.

As a matter of philosophy, RDC's members support opportunities for state primacy over federal regulatory programs. Local control allows broad federal guidelines to be tailored to the unique circumstances and characteristics of Alaska. The regulated community would prefer to deal with government officials based in Fairbanks, Anchorage or Juneau, as opposed to Seattle or Washington, D.C.

DEC has demonstrated a willingness to engage a variety of stakeholders in developing creative solutions to complicated regulatory issues. In this case, the Wastewater Permit Work Group will play an active role in evaluating the program. The review will also be subject to public comment prior to being submitted to the Legislature for final action.

Thank you for your consideration of this matter. Please feel free to contact me with any questions, or if I may be of further assistance.

Sincerely,

Tadd Owens

Preamble

State assumption of the NPDES permit program presents the *potential* for direct responsibility over water quality in Alaska, a better informed decision - making process, a faster permitting process, and greater accessibility to the program regulators. It is less clear how assumption of the program, as opposed to the current permit certification process, will affect the State's ability to resolve conflicts in regulatory interpretation that may arise between the State and US Environmental Protection Agency. Assumption of the NPDES program is costly. A thoughtful and informed decision regarding the overall welfare of Alaskans and their waters requires a thorough review of the benefits and consequences, and an implementation plan that would provide a preview of the proposed State NPDES program.

HB

504

HAFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 4, 2002

FURTHER REFERRALS:

Date of Committee Action: 4/11/02

The FINANCE Committee considered:

HB 504

HOUSE BILL NO. 504

MINIMUM WAGE FOR WORKERS IN FISHERIES

"An Act relating to the wages of people working in the fisheries business."

Recommends it be replaced with CS HB 504 (FIN) [] Same Title [] New Title
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

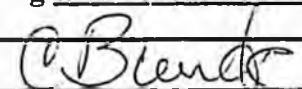


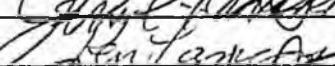



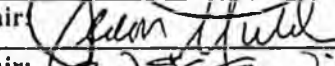
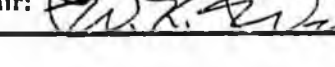
- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of Abbrev. for Depts.:

- ADM
- CEC
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LAA
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

NEW FISCAL NOTES				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
HFC/DOL				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Bunde	✓			
	Whitaker		✓		
	CROFT		✓		
	STARRS		✓		
	Lancaster			✓	
	Hudson	✓			
	FOSTER	X			
Chair: 	Mulder	✓			
Chair: 	Williams	✓			

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 504 (FIN)
(H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Labor & Workforce Dev.
Title: Minimum Wage for Workers in Fisheries BRU: Labor Standards & Safety
Sponsor: House Rules Component: Wage & Hour
Requester: _____ Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

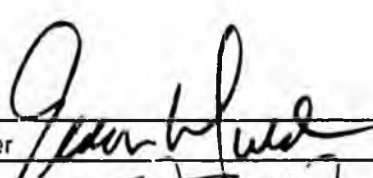

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Representative Eldon Mulder  Phone 465-2647/465-3424
Co-Chair
Representative Bill Williams  Date _____
Co-Chair

CS FOR HOUSE BILL NO. 504(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the wages of people working in the fisheries business."**

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

3 *** Section 1.** AS 23.10 is amended by adding a new section to read:

4 **Sec. 23.10.072. Wages for fisheries businesses.** An employer who engages
5 in a fisheries business, as that term is defined in AS 43.75.290, may deduct an amount
6 that is reasonable and without profit to the employer each paid day worked from the
7 applicable minimum wage paid to an employee working in the fisheries business for
8 the combined cost of board and lodging the employer furnishes to the employee. A
9 deduction up to \$15 each day for combined room and board shall be presumed to be a
10 reasonable amount without profit to the employer. The department shall allow a
11 deduction higher than \$15 each day for combined room and board if the employer
12 demonstrates to the department that the cost to the employee is reasonable and without
13 profit to the employer. A deduction made under this section may be made only if it is
14 based on a negotiated union agreement or a written agreement with the employee
15 entered into at the time of hire that specifies the daily rate of deductions for room and

1

board.

22-LS15951S
Craver
4/10/02

Adopted 4/10/02

CS FOR HOUSE BILL NO. 504()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the wages of people working in the fisheries business; and providing
2 for an effective date."

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

4 * Section 1. AS 23.10 is amended by adding a new section to read:

5 Sec. 23.10.072. Wages for fisheries businesses. An employer who engages
6 in a fisheries business, as that term is defined in AS 43.75.290, may deduct an amount
7 that is reasonable and without profit to the employer each ~~day~~ ^{PAID DAY WORKED} from the applicable
8 minimum wage paid to an employee working in the fisheries business for the
9 combined cost of board and lodging the employer furnishes to the employee. A
10 deduction up to \$15 each day for combined room and board shall be presumed to be a
11 reasonable amount without profit to the employer. The department shall allow a
12 deduction higher than \$15 each day for combined room and board if the employer
13 demonstrates to the department that the cost to the employee is reasonable and without
14 profit to the employer. A deduction made under this section may be made only if it is

1 based on a negotiated union agreement or a written agreement with the employee
2 entered into at the time of hire that specifies the daily rate of deductions for room and
3 board.

4 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

withdrawn

AMENDMENT #1a

OFFERED IN THE HOUSE
TO: CSHB 504(L&C)

BY REPRESENTATIVE DAVIES

- 1 Page 1, line 6, following "deduct":
- 2 Insert "up to \$10 each day"
- 3
- 4 Page 1, lines 7 - 8:
- 5 Delete "the reasonable cost or fair value"
- 6 Insert "for the combined cost"

passed 5-4

22-LS1595(O.3
Craver
4/9/02

AMENDMENT #2

OFFERED IN THE HOUSE
TO: CSHB 504(L&C)

BY REPRESENTATIVE DAVIES

- 1 Page 1, lines 1 - 2:
- 2 Delete "; and providing for an effective date"
- 3
- 4 P 2, line 3:
- 5 Delete all material.

Withdrawn

22-LS1595 O.4
Craver
4/9/02

AMENDMENT #3

OFFERED IN THE HOUSE
TO: CSHB 504(L&C)

BY REPRESENTATIVE DAVIES

1 Page 1, line 12:

2 Delete the second occurrence of "and"

3

4 Page 2, line 2, following "employees":

5 Insert " ; and

6 (3) the employee is offered not less than four hours of paid work on
7 each day for which the deduction is made"

AMENDMENT #4 *find*

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSHB 504(L&C)

1 Page 1, line 12:

2 Delete the second occurrence of "and"

3

4 Page 2, line 2, following "employees":

5 Insert "; and

6 (3) alternative public board and lodging facilities are accessible to the
7 work site and the employee has declined to use those facilities"

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.300

Set policy to promote rehabilitation of state's fisheries, development of predominantly resident fishery, and continued maintenance of commercial fishing gear and vessels through long term low interest loans.

Changes policy to providing loans to fishermen whose financing needs are not adequately served by private lending sources.

AS 16.10.310

Defines powers of the department and who qualifies for loans.

Repealed and reacted in AS 16.10.311.

Had to have a crew member or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two years past five years, and who actively participated in the fishery during those periods.

Must be a state resident for two continuous years immediately preceding loan application to qualify for a loan or an assumption of a loan.

Must not have other occupational opportunities available because of lack of training or employment opportunities in area of residence or must be economically dependent on commercial fishing for livelihood and for whom commercial fishing has been a traditional way of life.

Retains lack of training and traditional lifestyle language.

Allows department to designate agents and delegate powers to them.

Eliminates designation of agents and powers.

Ability to adopt regulations

Leaves ability to adopt regulations.

Establishes amortization plans for repayment of loans which may include extensions for poor fishing seasons or adverse market conditions for Alaska products.

Retains amortization language.

Allows department to enter into agreements with private lending agencies, other state agencies or agencies of the federal government.

Limits the department to entering agreements with other state agencies or agencies of the federal government.

Can enter into agreements with other agencies or organizations to create an outreach program to make loans in rural areas.

Limits outreach program agreements to state agencies.

Existing Statutory Language

HB 287 Statutory Language

Sets qualification for assumption of loan on two year continuous residence immediately preceding application for assumption of loan and provides that denial of assumption can not be based on lack of training or traditional lifestyle.

Sets prequalify loan fee not to exceed \$200.

Allows department to charge and collect the fees established under subsection,

Allows for a refinancing charge of 1/2 percent of the debt obligation to be paid with the first refinancing payment.

(d) Sets \$300,000 limit on refinance debt obligations.

Provides that the department will consider the individual commercial fisherman's income from all sources in determining his ability to repay the loan.

Provides that department can loan to individual to satisfy past tax obligations only if past and current tax returns have been filed and a payment agreement has been executed with the federal government. This loan is a one time only and is limited to \$30,000.

Retains assumption of loan criteria.

Sets prequalify loan fee not to exceed \$50.

Doesn't change ability to charge and collect fees.

Retains refinancing charge at existing level.

Silent until limited to a maximum of two \$35 000 loans to each borrower.

Retains language as is.

Only change is increase in loan to \$35,000.

AS 16.10.315

Directs department to allocate 10 percent of money appropriated for loans for loans of \$35,000 or less.

Repeals provision.

Existing Statutory Language

AS 16.10.320

Sets limitation on loans:

Not to exceed 15 years except for extensions.

Sets interest not to exceed 10 1/2 percent.

Limits loan balance to \$300,000 for those commercial fisherman with lack of opportunity or traditional dependence.

Loans for commercial fisherman without special circumstances are limited to \$100,000.

Refinancing of loans cannot exceed \$300,000.

A loan for an entry permit may be made for 100% of appraised value of collateral if commercial fisherman has three years experience in fisheries to which permit applies.

Requires first priority lien and appropriate security agreement.

May not exceed 90% of appraised value of collateral.

May not be made to someone with past due child support.

Eliminates requirement for first priority lien for loans guaranteed by the Federal Ship Financing Act of 1972.

All principal and interest collected through liquidation by foreclosure or other process shall be paid into the commercial fishing revolving loan fund.

HB 287 Statutory Language

Sets limitation on loans:

The original loan cannot be written for a term of more than 15 years. Modifications are still permitted.

Sets interest not to be below 6.5% and not to exceed 10 1/2 percent.

Limits each loan to \$35,000. There is a limit of two loans per individual.

Repeals language.

Repeals language.

Repeals language.

No change

May not exceed 80% of value as determined by department.

No change.

Deletes language.

Repealed through silence on subject.

Existing Statutory Language	HB 287 Statutory Language
<p>Provides for joint loans for two or more fisherman qualified and working jointly as a corporation, partnership, joint venture or otherwise.</p>	<p>Change of reference to new qualification statute under AS 16.10.311(a).</p>
<p><u>AS 16.10.325</u> Provides for a person to act as a guarantor if borrower has insufficient collateral and provides that the loan agreement "shall" specifically describe the property to be used as collateral.</p>	<p>Provides for guarantor and amends that the loan agreement "must" specifically describe the property to be used as collateral.</p>
<p><u>AS 16.10.333</u> Permits loans for purchase of Alaska limited entry permits upon certification by the commission that the person is qualified.</p>	<p>Change of reference to new qualification statute under AS 16.10.311.</p>
<p><u>AS 16.10.335</u> Provides specific requirements for notice of default. Also provides provisions for responsibility of borrower to keep legal address on file and current, allows for a 60 day waiver with cause, and terminates debtors interest in limited entry permit when holder applies for bankruptcy or has permit terminated.</p>	<p>Requirements do not change. There was an elimination of reference to AS 16.10.310(a)(4).</p>
<p><u>AS 16.10.337</u> Provides that the board has first right of refusal if a permit is subject to a buy-back program at a price equal to the amount outstanding plus any costs incurred in administering the loan. If the commission does not exercise right to buy back in 30 days or if the permit is not subject to buy back, the department must follow certain public notice procedures for the sale of the permit. The debtor may repurchase the permit at anytime up to the sale of the permit.</p>	<p>No change.</p>

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.338

If a limited entry permit is used as collateral for a loan for repair, restoration, upgrading, construction or purchase of a boat, and the borrower defaults, the borrower must notify the commissioner and get his acceptance of the sale of the vessel, apply the proceeds to the loan and renegotiate any unpaid balance to avoid immediate loss of permit.

No change other than cite clean up for AS 16.10.311.

AS 16.10.339

Provides that department shall adopt regulations.

Section Repealed because authority for adoption of regulations was given in AS 16.10.311(a)(2) of bill under Powers of the Department.

AS 16.10.340

Created the commercial revolving loan fund, provides that the legislature may use money in the fund to make appropriations for cost of administering the loan program, and provides that excess funds can be used to carry purpose of the Fisheries Enhancement Loan Program which provides loans for hatchery planning, construction and operation.

Deletes language allowing the commissioner to use excess funds for the Fisheries Enhancement Loan Program.

Adds language that the commissioner shall administer the fund.

Establishes a special account for the foreclosure expense account, requires an annual report, and provides that the legislature appropriate excess funds for public purpose.

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.345

Not in existing Law.

Requires the department to administer all loans made prior to the effective date of the new statutes for the Commercial Fishing Loan Act according to the existing terms of the loan. For example, a loan as of September 1, 2002 has a balance of 60 months of payment, the department will collect it in a duration of not more than sixty months.

No modifications can be made to these loans. If the department sells the loan, the sale will be based on the original terms of the loan and there will be no modifications such as increased interest rate or payments.

Loans secured by limited entry permit and assets acquired by the department that are limited entry permits can only be sold to the Commercial Fishing and Agriculture Bank or successor institution authorized to make loans secured by a limited entry permit.

Provides for a reasonable agency fee to be negotiated for banks, credit unions and CFAB when appointed as an agent for the administration and collection of loans

AS 16.10.353

Allows the commissioner to release information about a borrower's loan if the borrower has signed a waiver of confidentiality.

Allows borrowers obtaining loans after June 28, 1991 to specify who may receive confidential information.

Only change is elimination of June 28, 1991 date.

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.355

Directs department to dispose of property acquired by default or foreclosure and to dispose of it in a manner that serves the states' best interests. Provides for amortization of payment of disposal through sale but prohibits the lease of property.

Clarifies this pertains to loans made under former provisions of AS 16.10.

Uncodified Law

Not is existing law.

Clarifies the borrowers right to protection from any modifications being made to the terms of the loan because of the sale of the loan to another financial institution.

Mr. Chairman Members of the committee

My Name is Barbara Huff Tuckness, I am the director of Government and Legislative affairs for Teamsters Local 959. I am here to day to speak against Hb 504. I do so on behalf of the approximate 7000 members that we represent around this state. Our mission is to organize the unorganized and represent all workers to assure fairness and dignity in the work environment. As our Secretary/Treasurer Jerry Hood has said many times over the years "What is negotiated today can be legislated away tomorrow with a stroke of a pen.

There are times when legislation is introduced that impacts workers and their rights and those unorganized are never heard. We believe this to be one of those times. We believe this bill to be one of the most blatant instruments of oppression to come before this legislature in a while.

As many of you are aware the fishing industry is a multi billion dollar industry. Many of the workers are from out of state or out of country for that matter. Simply because they do not live here should not be a reason to treat them with any less dignity and respect than say our slope workers who live in Company accommodations as well.

It has been said that this bill corrects an inequity in current regulation. Under current regulation if an employee is working in an area in the state, for example Ketichikan, which would have available housing an employer could charge for their room and board. In this situation the employee could choose to go else where. If there are not alternative living quarters than the employer cannot charge the employee. The employee has a choice if an alternative is available, if not the employer provides. Is this inequitable?

According to one fish procesors website information, most of the work available is called sliming or cleaning fish. The environment is wet, cold & drafty. Sliming and other processing jobs require standing in one spot doing the same task for 16 or more hours a day 7 days a week in peak season. There also are periods of time when no work is available and the employee must occupy their own time. Seafood processing is a very physically demanding job.

The living quarters for example on a processing plant hold 4 to 12 people per room. Recreation is limited and there is usually no shore time.

We are aware that this bill has been scheduled for the floor session today. We ask that during your deliberation of this bill in this committee, you ponder the public message you want to send. To reject this bill is to send a message to all workers in this state including those in the processing plants on and off shore, that all workers deserve to be treated with dignity and respect and compensated fairly, no matter how menial the work they perform. To quote President G W Bush "As we think what is possible, we must also think what is right."

To support this bill only brings to this state the old company town mentality.

We respectfully request a no vote on this bill.

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To support this bill only brings to this state the old company town mentality.

We respectfully request a no vote on this bill.

ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair
Representative Brian Porter
Representative Vic Kohring
Representative Carl Morgan
Representative Leslie McGuire
Representative Ethan Berkowitz
Representative Reggie Joule



Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-3777
Fax: (907) 465-2819

House of Representatives Rules Committee

CS for HB 504 (Fin)

Sectional analysis

AS 23.10 – Alaska's Wage and Hour Act is amended by adding a new section dealing with wages paid to employees in a fisheries business.

Sec. 23.10.072. Wages for fisheries businesses.

An employer engaging in the fisheries business may deduct up to \$15 each day from the applicable minimum wage paid to an employee for the combined cost of board and lodging provided to the employee.

This deduction may be made *only if*

- It is based upon a negotiated union agreement or a written agreement between employer & employee, entered into at the time of hire that specifies the daily rate of deductions for room and board.

* as defined in AS 43.75.290, a "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants.

ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair
 Representative Brian Porter
 Representative Vic Kohring
 Representative Carl Morgan
 Representative Lesli McGuire
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House of Representatives Rules Committee

Sponsor Statement for HB 504

Since statehood when the Alaska Wage & Hour Act was adopted, it was commonly understood that some Alaskan businesses, such as fisheries, operate under unique circumstances. In response, for authorized occupations that customarily furnished board and lodging, The Act includes a mechanism for some flexibility in terms of the minimum wage.

AS 23.10.085 (c) provides that "the regulations may permit deductions by an employer from the minimum wage to employees for the reasonable cost as determined on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee."

Because of a conventionally modest minimum wage, the fishery business had no reason to assert the statutory option laid out in AS 23.10.085. As a matter of course, fisheries businesses pay their workers at, or slightly above the minimum wage for their regular 8-hour day, plus overtime paid at time and a half. In addition to their earnings, in some areas of the state, fishery workers are customarily furnished room and board for the term of their employment.

For the past 40 years, that arrangement worked quite well for both the fishery employer and employee. However, with the minimum wage poised to increase by 26.5% and annual adjustments for the cost of living, Alaska's beleaguered fisheries industry faces unprecedented financial disaster on all fronts. This industry can no longer absorb the cost of board and lodging at no cost to the employee.

The Wage and Hour Act authorizes deductions by an employer from the minimum wage payable to employees for the reasonable cost for furnishing board or lodging that is customarily provided. The enabling regulations allow for deductions below the minimum wage, based upon a written agreement at the time of hire, for the reasonable cost without profit to the employer. However, the regulations, as written, do not treat seafood processing sites equally.

In order to insure that the fisheries business can rely on the intent of the Wage and Hour Act, the regulations need to be cleaned up and compiled into a new section of the statute.

HB 504 utilizes language from 8 AAC 15.160 (d) to provide:

- the fishery employer and employee to contract the hourly wage that may be lower than the a minimum wage in consideration for accommodations that are customarily provided to their employees.

Note: This is a limited exemption and not an exclusion from the minimum wage requirement. The employee is covered by all other protections of the Wage and Hour Act, such as overtime, record keeping and collective bargaining.

ALASKA STATE LEGISLATURE

Representative Peto Kott, Chair
Representative Brian Porter
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House of Representatives
Rules Committee

HB 504

Sectional analysis

AS 23.10 – Alaska's Wage and Hour Act is amended by adding a new section dealing with wages paid to employees in a fisheries business.

Sec. 23.10.072. Wages for fisheries businesses.

An employer engaging in the fisheries business may deduct wages deduct the reasonable cost or fair value of board and lodging from their employee's wages. This deduction may be made *only if*

- It is based upon a negotiated union agreement or a written agreement between employer & employee, entered into at the time of hire that specifies the daily rate of deductions for room and board, and
- the cost to the employee for the use of the employer's board & lodging facilities is reasonable & without profit to the employer; and
- The board & lodging facilities are customarily furnished by the employer & used by the employees.

* as defined in AS 43.75.290, a "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants.

To qualify for the exemption, all the requirements set out in ch. 5 of this title relating to the

For this section will not be less than 75 hours published under AS 23.10.065.

Minimum wages for full-time students under Labor Standards Act of 1938, as implemented in 29 C.F.R. 519.1 — minimum subject to the provisions of section 68)

§ 23.10.085

FOR SEARCHING FOR PLACER

The exemption from AS 23.10.050 — 23.10.055(10) applies to those activities "mining" and does not apply once development of a known mineral source has begun.

§ 23.10.085

FOR INDIVIDUALS UNDER 18

EMPLOYEES. The exemption from section 23.10.055(11) does not apply to an individual normally within the industry employed in excess of 30 hours. (Eff.

§ 23.10.085

REGARDING THE NUMBER OF EMPLOYEES

23.10.060(d)(1). In determining the number of employees for purposes of this section, a corporation who actively engage in mining operations will be counted regardless of whether it is incorporated. (Eff. 12/9/78, Register 68; am

§ 23.10.085

REGARDING OPERATIONS. (a) For purposes of this section "mining season" means the cumulative number of days during which mining operations are carried on during a 20 week period.

(b) The minimum payment for overtime under section 23.10.060(d)(1) in small mining operations is

available to the employer for an aggregate of 14 weeks, commencing on the first day the mine begins active operations in a calendar year. Periods during which the mine is not actively engaged in mining operations for reasons including assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) Repealed 9/28/85.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060

AS 23.10.060

AS 23.10.085

ARTICLE 4. REDUCTION OF WAGES.

Section	Section
160. Deductions from an employee's wages	165. Purchase of uniform or equipment

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee. Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited. A written agreement for deductions payable to the employer or person acting in the employer's behalf or interest is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or overtime rates, or if it would require an employee to reimburse the employer for any of the following:

- (1) customer checks returned due to insufficient funds or any other reason;
- (2) non-payment for goods or services as a result of theft or credit default;
- (3) cash or cash register shortages unless the employee admits, willingly and in writing, to having personally taken the specific amount of cash that is alleged to be missing;
- (4) lost, missing, or stolen property, unless the employee admits willingly and in writing, to having personally taken the specific property alleged to be lost, missing, or stolen; or
- (5) damage or breakage costs unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement, if the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party. Neither the employer nor any person acting

47630

in the employer's behalf or interest may derive any profit or benefit from the transaction.

(c) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for transportation from the place of hire to the place of employment if the deduction does not

- (1) reduce the employee's wages below the statutory minimum; or
- (2) reduce the overtime compensation rate below one and one-half times the contractual rate of pay.

~~(d) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for the reasonable cost of repair of uniforms or equipment if the cost of repair of uniforms or equipment is determined by a representative public board and lodging facilities are determined to be reasonable and the employee's deduction does not exceed the amount of the cost of repair of uniforms or equipment. The cost of repair of uniforms or equipment, as determined by the board, is reasonable and without profit to the employer.~~

(e) Unless the employer and the employee have executed a written agreement as described in (d) of this section, at the time of hire, the employer is prohibited from seeking to retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.

~~(f) The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 25 C.F.R. 161.5 and 531.29.~~

(g) An employer may deduct an amount from the wages of an employee as a security deposit to ensure the return, in clean and in a state of good repair, of uniforms or equipment issued by the employer, if

- (1) the deduction is based on a written agreement;
- (2) the total deposit does not exceed the cost of the item; and
- (3) the deduction does not reduce the employee's wage below the statutory minimum, or reduce the employee's overtime compensation below one and one-half times the contractual rate of pay.

(h) An employer shall give each employee a statement of earnings and deductions for each pay period. The statement of earnings and deductions must contain

- (1) employee's rate of pay;
- (2) gross wages;
- (3) net wages;
- (4) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (5) repealed 9/28/85;

shall not derive any profit or benefit

prohibits deductions from earnings to reimburse an employer for transportation expenses incurred in the course of employment if the deduction

reduces wages below the statutory minimum; or the overtime compensation rate below one and one-half times the regular rate.

prohibits deductions from earnings, to reimburse an employer for the cost of board and lodging, if

board and lodging facilities are accessible to the employee and the employee has declined to use such facilities; the facilities of the employer are customarily available and used by the employees; and the facilities are available for the use of the employer's board and lodging facilities without profit to the employer.

If an employee has executed a written agreement under this section, at the time of hire, the employer may not retroactively deduct the cost of board and lodging from wages due upon termination or termination by the department.

The determination regarding the cost of board and lodging under this section. The determination will be made under AS 531.3 — 531.5 and 531.29 —

531.30. An amount from the wages of an employee shall ensure the return, in clean and in a new condition, of any uniform or equipment issued by the employer,

under a written agreement; shall not exceed the cost of the item; and shall not reduce the employee's wage below the minimum rate or the employee's overtime compensation below the contractual rate of pay. The employer shall provide each employee a statement of earnings and deductions for each pay period. The statement of earnings and

deductions shall be provided during the pay period and the statement shall be provided during the period;

- (6) repealed 9/28/85;
- (7) federal income tax deductions;
- (8) Federal Insurance Contribution Act deductions;
- (9) Alaska Employment Security Act contributions;
- (10) board and lodging costs;
- (11) advances; and
- (12) other authorized deductions. (Eff. 12/9/78, Register 68; amended 9/28/85, Register 95; amended 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.095
 AS 23.10.060 AS 23.10.085

8 AAC 15.165. PURCHASE OF UNIFORM OR EQUIPMENT. An employer may not require an employee to purchase a uniform or equipment if

- (1) the uniform or equipment is required by the federal state, or local safety or health codes, or
- (2) the nature of the employer's business requires the use of either uniform or equipment and if the uniform or equipment
 - (A) is distinctive and advertises or is associated with the products or services of the employer; and
 - (B) cannot be worn or used during normal social activities of the employee. (Eff. 9/28/85, Register 95; amended 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.055 AS 23.10.095
 AS 23.10.065

ARTICLE 5. PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.

Section 175. (Repealed)	Section 180. Investigations, conferences and persuasion
----------------------------	--

8 AAC 15.175. ASSIGNMENT OF CLAIMS. Repealed 9/28/85.

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The labor standards and safety division will investigate potential violations of AS 23.10.050 — 23.10.150 on its own motion.

(b) If, after an investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 — 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

- (1) the division will provide the employer believed to have violated AS 23.10.050 — 23.10.150 with a copy of the assignment or a description of the alleged violation and inform the employer of the results of its investigation; and

employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m)

"Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, **lodging**, or other facilities, if such board, **lodging** or other facilities are customarily furnished by such employer to his employees: Provided, That the cost of board, **lodging**, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: Provided further, That the Secretary is authorized to determine the fair value of such board, **lodging**, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to -

(1)

the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(2)

an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(n)

"Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: Provided, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours Worked. -

In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express

22-LS1595P

Craver

4/8/02

adopted 4/9/02 new CS 410

CS FOR HOUSE BILL NO. 504(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the wages of people working in the fisheries business; and providing
2 for an effective date."

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

4 * Section 1. AS 23.10 is amended by adding a new section to read:

5 Sec. 23.10.072. Wages for fisheries businesses. An employer who engages
6 in a fisheries business, as that term is defined in AS 43.75.290, may deduct up to \$15
7 each day from the applicable minimum wage paid to an employee working in the
8 fisheries business for the combined cost of board and lodging the employer furnishes
9 to the employee. A deduction made under this section may be made only if it is based
10 on a negotiated union agreement or a written agreement with the employee entered
11 into at the time of hire that specifies the daily rate of deductions for room and board.

12 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

HB

504

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

APR 30 2002

SENATE FINANCE
COMMITTEE

DATE: 4/26/02

FURTHER:

DATE TURNED
IN TO OFFICE: 30 April 2002

Finance Committee considered **CS FOR HOUSE BILL NO. 504(FIN) am**
HB 504 WAGES FOR WORKERS IN FISHERIES

"An Act relating to the wages of people working in the fisheries business."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Labor	7/16/02		✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>				
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>		✓		
COCHAIR: <i>[Signature]</i>			✓	

APR 30 2002

SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 504(FIN)
(H) Publish Date: 4/16/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Labor & Workforce Dev.
Title: Minimum Wage for Workers in Fisheries BRU: Labor Standards & Safety
Sponsor: House Rules Component: Wage & Hour
Requester: _____ Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

POSITIONS	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Representative Eldon Mulder Phone 465-2647/465-3424
Co-Chair, House Finance Committee
Representative Bill Williams Date April 16, 2002
Co-Chair, House Finance Committee

SENATE FINANCE COMMITTEE
4 Bd 2002 COMMITTEE ACTION

Bill Number	HB 504		
Amendment			
Motion	Move from Committee		
<u>Motion by</u>	Donley		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	Vote	N
Senator Olson	✓		
Senator Ward		—	
Senator Wilken		—	
Senator Austerman	✓		
Senator Green		—	
Senator Hoffman	✓		
Senator Leman	✓		
Co-Chair Donley			✓
Co-Chair Kelly	✓		
<u>Tally</u>			
Yea	5		
Nay	1		
Absent	3		
<u>MOTION</u>	PASSED		

Table 3
Private Sector Occupations with the Largest Number of Nonresidents
Alaska 2000

Occupation	Resident			Nonresident		
	Number of Workers	Number of Workers	Percent	Earnings	Earnings	Percent
Seafood Processing Workers	3,597	10,600	74.7	\$36,950,433	\$72,190,494	66.1
Retail Salespersons	12,255	2,211	15.3	171,046,430	12,793,379	7.0
Waiters and Waitresses	4,177	1,484	26.2	39,667,451	6,728,018	14.5
Fast Food Workers	5,494	1,352	19.7	30,787,318	4,682,921	13.2
Office Clerks, General	10,001	1,285	11.4	158,960,378	11,355,227	6.7
Laborers and Freight, Movers	6,769	1,278	15.9	102,231,196	9,872,211	8.8
Construction Laborers	5,951	1,142	16.1	116,992,015	13,292,829	10.2
Agricultural Workers, All Other	678	975	59.0	9,652,665	7,918,070	45.1
Maids and Housekeeping Cleaners	3,368	932	21.7	35,127,358	5,253,047	13.0
Tour Guides and Escorts	731	887	54.8	6,918,842	6,506,073	48.5
Cashiers	5,204	855	14.1	52,937,565	3,647,657	6.4
Cooks, Restaurant	1,945	818	29.6	27,664,987	5,681,642	17.0
Janitors and Cleaners	5,860	780	11.7	84,187,115	4,060,446	4.6
Production Workers, All Other	1,892	780	29.2	17,537,956	5,327,626	23.3
Carpenters	4,129	746	15.3	96,603,834	9,319,506	8.8
Registered Nurses	3,495	605	14.8	142,908,580	12,040,671	7.8
Fishers and Related Workers	365	537	59.5	3,813,057	9,763,130	71.9
Sailors and Marine Oilers	732	536	42.3	17,043,417	8,917,431	34.3
Construction Equipment Operators	2,863	474	14.2	126,978,640	17,075,764	11.9
Welders, Cutters, Solderers	675	473	41.2	28,314,686	9,738,956	25.6
Food Preparation Workers	2,139	465	17.9	29,304,709	2,995,004	9.3
Food Serving Related Workers	1,636	459	21.9	14,796,055	1,916,032	11.5
Maintenance and Repair Workers	3,246	449	12.2	90,070,118	6,478,427	6.7
Airline Pilots	918	434	32.1	54,806,953	33,781,642	38.1
Dishwashers	1,074	427	28.4	6,908,758	2,081,873	23.2
Packaging Machine Operators	226	410	64.5	2,400,506	2,119,509	46.9
Receptionists and Clerks	3,167	407	11.4	49,099,882	2,690,232	5.2
Bartenders	1,796	378	17.4	21,723,893	2,140,680	9.0
Child Care Workers	2,080	371	15.1	18,212,520	1,437,393	7.3
Electricians	1,724	364	17.4	71,373,466	10,430,559	12.8
Captains Water Vessels	497	363	42.2	18,141,953	12,484,896	40.8
Office and Administrative Support	4,313	355	7.6	105,464,316	6,641,086	5.9
Counter Attendants	1,923	351	15.4	23,155,745	1,653,788	6.7

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section.

Nonresident Occupations by Industry

Although the total number of nonresident workers in an occupation or industry provides a good understanding of where employment and training opportunities exist, training providers and industry groups often want to know where training dollars should be directed within an industry. Table 4 shows the top nonresident occupations for several major Alaska industry sectors with a large number of nonresident workers.

Dist by Rep Koth



General Teamsters Local 959 State of Alaska

ANCHORAGE, AK 99503, 520 E. 34TH AVE (907) 565-6265 FAX (907) 565-6265 GERALD L. HOOD, Secretary-Treasurer
www.gta959.org

FAIRBANKS, ALASKA 99707, P.O. BOX 70808
JUNEAU, ALASKA 99801, 308 WILLOUGHBY
KENAI, ALASKA 99811, P.O. BOX 8150

(907) 452-2852
(907) 538-3225
(907) 283-4498

FAX (907) 452-5051
FAX (907) 538-1227
FAX (907) 283-8080

April 29, 2002

Via Telefax 465-5241

Senator Pete Kelly, Co-Chair
Senate Finance Committee
AK State Legislature
State Capitol (MS 3100)
Juneau, AK 99801

Re: House Bill 504 - Minimum Wage Fisheries Bill

Dear Senator Kelly:

I represent approximately 7,000 Teamster members around this state, and on their behalf, I go on record opposed to HB 504. Our mission within our local is to organize the unorganized and represent all workers to assure fairness and dignity in the work environment. As Secretary-Treasurer, I have said many times over the years, "What is negotiated today can be legislated away tomorrow with a stroke of a pen."

There are times when legislation is introduced that impacts workers and their rights. Many times those workers are unorganized and are never heard. I believe this to be one of those times. I believe this bill to be one of the most blatant instruments of oppression to come before this legislature in a while.

As many of you are aware, the fishing industry is a multi-billion dollar industry. Many of the workers are from out of state, or even out of country. Simply because they do not live here should not be a reason to treat them with any less dignity and respect than say our slope workers who live in Company accommodations.

It has been said that this bill corrects an inequity in current legislation. Under current regulation, if an employee is working in an area in the state, for example Ketchikan, which would have available housing, an employer could charge for their room and board. In this situation, the employee could choose to go elsewhere. If there are no alternative living quarters, then the employer cannot charge the employee. The employee has a choice if an alternative is available, if not, the employer provides. Is this inequitable?

According to one fish processor's website information, most of the work is "sliming" or cleaning fish. The environment is wet, cold and drafty. Sliming and other processing jobs require standing in one spot doing the same task for 16 or more hours a day, seven days a week in peak season. There are also periods of time when no work is available and the



April 29, 2002
Page Two

employee must occupy their own time. Seafood processing is a very physically demanding job.


The living quarters for example on a processing plant hold 4 to 12 people per room. Recreation is limited and there is usually no shore time.

We ask that during your deliberation of this bill you ponder the public message you want to send. To reject this bill is to send a message to all workers in this state, including those in the processing plants on and off shore, that all workers deserve to be treated with dignity and respect and compensated fairly, no matter how menial the work they perform. To quote President G.W. Bush, "As we think what is possible, we must also think what is right." To force workers who are making minimum wage under the above conditions to now pay for room and board is unconscionable.

On behalf of all working men and women in this State, I ask you vote "no" on HB 504.

Respectfully,

TEAMSTERS LOCAL 959



Gerald L. Hood
Secretary-Treasurer

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**House Bill 504 - Room and Board Deductions
Preservation of Rights of Employers Other Than
Fisheries Businesses**

April 22, 2002

House Bill 504 aids our fishing industry. If an employer engaged in a fisheries business provides room and board to employees, that employer may deduct a minimal sum from employee wages to offset the cost of providing room and board. The deduction must be reasonable. The employer may not make any profit from the deduction. But, if those conditions are met, the employer may take the deduction even if the remaining wage is below the statutory minimum wage. The employer may take the deduction even though the fishery business is conducted in a remote location where the employer's housing is the only housing available.

This concept is not new. Previously, in AS 23.10.085(c), we permitted the Department of Labor to authorize such deductions. However, it is unclear whether the Department's regulation, 8 AAC 15.160, authorizes room and board deductions in remote locations, or deductions that impact minimum wage. In House Bill 504 we intend to be precise: employers in a fisheries business may take these deductions.

Nothing in House Bill 504 alters the status quo with respect to room and board deductions that do not impact minimum wage. Such deductions are implicitly allowed by the Alaska Wage and Hour Act, AS 23.10.085(c). This has always been our intent. It does not matter whether a business is conducted in town or in a remote location. It does not matter whether the business is fisheries, logging, mining or some other enterprise. So long as the charge is reasonable, without profit to the employer, and customary in the industry, the charge for room and board is allowed.

ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair
Representative Brian Porter
Representative Vic Kohring
Representative Carl Morgan
Representative Lesil McGuire
Representative Ethan Barkowitz
Representative Reggie Joule



Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-3777
Fax: (907) 465-2819

House of Representatives Rules Committee

Sponsor Statement for HB 504

Since statehood, when the Alaska Wage & Hour Act was adopted, it had long been established that some Alaskan businesses, such as fisheries, operate under unique circumstances. In response, for authorized occupations that customarily furnished board and lodging, The Act, provided a mechanism for some flexibility in terms of paying wages.

AS 23.10.085 (c) provides that "the regulations may permit deductions by an employer from the minimum wage to employees for the reasonable cost as determined on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee."

Because of a conventionally modest minimum wage, the fishery business has rarely asserted the statutory option laid out in AS 23.10.085. As a matter of course, fisheries businesses pay their workers at, or slightly above the minimum wage for their regular 8-hour day, plus overtime paid at time and a half. In addition to their earnings, in many locations of the state, fishery workers are customarily furnished room and board for the term of their employment.

For the past 40 years, that arrangement worked quite well for both the fishery employer and employee. However, with the minimum wage poised to increase by 26.5% and annual adjustments for the cost of living, Alaska's beleaguered fisheries industry faces unprecedented financial disaster on all fronts. This industry can no longer absorb the cost of board and lodging at no cost to the employee.

The Wage and Hour Act authorizes deductions by an employer from the minimum wage payable to employees for the reasonable cost for furnishing board or lodging that is customarily provided. The enabling regulations allow for deductions below the minimum wage, based upon a written agreement at the time of hire, for the reasonable cost without profit to the employer. However, the regulations, as written, do not treat seafood processing sites equally. Plants located in remote locations in the state are specifically excluded by the Department of Labor's regulations. In other words, a facility located in Petersburg can deduct room and board but a facility located in Akutan may not.

In order to insure that the fisheries business can rely on the clear language of the Wage and Hour Act, the regulations need to be cleaned up and compiled into a new section of the statute.

HB 504 utilizes language from 8 AAC 15.160 (d) to provide:

- the fishery employer and employee to contract the hourly wage that may be lower than the a minimum wage in consideration for accommodations that are customarily provided to their employees.
- The deduction will be presumed to be up to \$15 each day for combined room and board.
- The department shall allow a deduction higher than \$15 each day if the employer demonstrates to the department that the combined room and board is reasonable and without profit to the employer.

HB 504

An Act relating to the wages of people working in the fisheries business.

HB 504 has been introduced by request of Alaska's seafood processing industry that seeks intervention by the Alaska Legislature in overcoming regulatory impediments that preclude its benefiting from provision of Alaska statutes that originate in federal and common law. Alaska statutes permit an employer to take a credit the value of board or lodging as credit against payment of wages. In some situations, it authorizes deducting the reasonable cost of room and board from the minimum wage regardless of their urban or rural setting. Meanwhile, the Alaska Department of Labor permits this deduction only in areas where alternative public housing exists. Effectively, this precludes Alaska's remote seafood processors from using this just provision.

With the minimum wage set to increase to \$7.15, the remote processors have determined that they cannot afford to pay their employee's transportation costs, room and board expenses on top of their basic wage and overtime. For the first time, the fisheries business seeks the assistance of the Alaska Legislature to correct the Department of Labor's overreaching regulations. Unlike critics have claimed, supporting HB 504 does not set a disturbing precedence, it merely reiterates and clarifies what has been in Statute since Statehood. This is not a new exception, it is not a perk give to a special interest group. It is the law of the United States of America and it is the law of the State of Alaska as well. Unfortunately, the Department of Labor claims that their regulation is preeminent over state law. This is not right, it is not grounded in Alaska statute, in Federal law or regulation, nor is it supported by case law.

In 1948, there were 168 processors operating in Alaska. In 1988, there were 60. In the past dozen years, sites have been closed down due to fire, financing, soft markets, aggressive competition from international markets, consolidations, salmon disasters, fishing regulations. Today, Alaska's processing business faces disaster on every front and this year, with at least six sites shut down this season. Fishermen are receiving notices that there is no buyer for their fish.

We all know that this particular industry has been an integral piece of the Alaskan fabric for better or worse - since the late 1800's. Almost by definition, industries and vocations in Alaska, are situated at remote locations. The answer is simple: Alaska's industry has always been dominated by resource extraction. While some processing may become centralized, the historical and enduring fact is processing operations must take place in remote locations. Hence, the fisheries businesses tend to locate where the fish harvesting takes place rather than where the people build their communities. True, some Alaskan communities grew up around old canneries, more typical is the abandoned cannery site that harkens back to the first half of the 20th Century when Salmon was the king of Alaskan industry.

Parallel to Alaska's fishery and mining industries, was the development of the Fair Labor Standards Act, which gave rise to the minimum wage, regular time, over time and what defined a work week. In 1938, when that Act became the law of the land, all industries and businesses were forced to adapt. This included the Territory of Alaska and its mining, fishing and logging industries.

What impacts did the Fair Labor Standards Act have on territorial industries when it was adopted in 1938? Like all American industries, Alaskan businesses struggled to conform their operations to the new framework of federal minimum wage, regular pay and overtime rules. Nationwide, there was a period of adjustment marked by lawsuits and modifications to the Fair Labor Standards Act. Interestingly, one such lawsuit that resulted in a modification to the Fair Labor Standard Act was *initiated in Alaska*.

Walling v. Alaska Pacific Consol Mining Co.

In 1938, the Admiral of the Wage and Hour Division of the federal Department of Labor sued a remote gold mine that operated in the Talkeetna Mountains, 70 miles from Anchorage. The case arose following the effective date of the Act, as the Company had considerable concerns as to how they could best comply with the requirements of the FLSA. Attempting to achieve the pre-1938 status quo, the employees and employer willingly negotiated a contract to achieve the same level of wages by creatively "tweaking" regular time and overtime by using an algebraic formula. One of the holdings in Walling v. Alaska Consolidated Mining case interpreted Section 3(m) of the Fair Labor Standards Act to mean,

"It seems clear that the cost of board and lodging customarily furnished employees must also be included in the regular rate particularly as Section 3(m) of the Act itself specifically provides that "wages" include the reasonable cost of such board and lodging....We must look 'not to contract nomenclature' but to all payments, wages, piece work rates, bonuses, or things of value forming part of the normal weekly income to determine the statutory regular rate."

Note that at this remote mining operation, the employer did provide board and lodging. Some miners utilized this, others did not, yet the employer was not precluded from charging the employee's room and board, regardless of the remote location.

At statehood, Alaska adopted the Wage and Hour Act which also adopted this language from the Fair Labor Standards Act. At that time, while the Alaskan seafood processors were not exempted from the Wage and Hour Act (as were the commercial fishermen), deference was paid in the form of AS 23.10.085 (c). Taking language from the federal Fair Labor Standards Act, this statutory provision provides a mechanism for flexibility in terms of the minimum wage.

I. Alaska Statute

The statute promulgated by the Alaska Legislature in 1959 states:

"The regulations may permit deductions by an employer from the minimum wage applicable under the Wage & Hour Act to employees for the reasonable cost, as determined by the *director on an occupation basis*, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee." AS 23.10.085 (c)

No doubt about this, the Wage and Hour Act permits deductions by an employer, on an occupation basis, from the minimum wage payable to employees for furnishing board or lodging that is customarily provided. Clearly, the seafood processors fit that description. In fact, this statute is permissive, in that it applies to *all employers* that customarily furnish board or lodging to their employees.

Next, we consider how that statute is treated by its enabling regulations.

II. Enabling Regulations: 8 AAC 15.160

The enabling regulations allow for deductions, based upon a written agreement at the time of hire, for the reasonable cost without profit to the employer. The enabling regulations promulgated by the Alaska Department of Labor not only mimic the verbiage of the Fair Labor Standards Act, but 8 AAC 15.160(f) demonstrates that AS 23.10.085(c) and its enabling Regulations are utterly integrated. 8 AAC 15.160(f) stipulates that:

(d) Nothing in (a) of this section prohibits deductions from earnings, based on a written agreement, to reimburse an employer for the reasonable cost of furnishing board and lodging, if

- (1) alternative public board and lodging facilities are accessible to the worksite and the employee has declined to use such facilities;**
- (2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and**
- (3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.**

(e) Unless the employer and the employee have executed a written agreement as described in (d) of this section, at the time of hire, the employer is prohibited from seeking to retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.

(f) The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 29 C.F.R. 531.3 - 531.5 and 531.29 - 531.35.

We assert that the Department of Labor has made an error in promulgating 8 AAC 15.160(d)(1) in that no authority independent of the Department's internal policy authorizes restricting deducting the cost of board and lodging to essentially rural areas of the state.

Not only is 8 AAC 15.160(d)(1) **NOT** supported by Statute or the federal Fair Labor & Standard Act, but it has distinct colors of Equal Protection violations. The Alaska Department of Labor's regs clearly treat remote or rural industries differently than urban industries.

Regulations not only alludes to provisions [Title 29, Chapter 8, Section 203.3(m)] in the Fair Labor Standards Act that discuss how "reasonable cost" of "furnishing" "board or lodging" that is "customarily" "furnished" by the employer and used by the employee, **THEY ACTUALLY CITE FLSA'S REGULATIONS WHEN MAKING THE DETERMINATION.**

III Fair Labor Standards Act of 1938

Title 29, Chapter 8, Section 203.3(m) states:

"Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: Provided, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded there from under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: Provided further, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and ... defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to -

(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

IV. FLSA's Enabling regulations in the Code of Federal Regulations

(These definitions and interpretations are critical to the discussion as they are cited by 8AAC 15.160 - *The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 29 C.F.R. 531.3-5 and 531.29-35.* These items from the federal code interpret the Fair Labor Standards Act from which Title 29, Chapter 8, Section 203.3(m) is rooted in.

Title 29 - Labor

HB 504 Position Paper
Representative Peic Kott

page 3

Part 531 Wage Payments Under the Fair Labor Standards Act of 1938
Subpart B – Determinations of “Reasonable Cost” and “Fair Value”; Effects of Collective Bargaining Agreements:

“reasonable cost”

29 C.F.R. 531.3

- (a) The term reasonable cost as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.
- (b) Reasonable cost does not include a profit to the employer or to any affiliate person.
- (c) Except whenever any determination made under Section 531.4 is applicable, the “reasonable cost” to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5.5 percent) for interest on the depreciated amount of capital invested by the employer: Provided, that if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term “good accounting practices” does not include accounting practices which have been rejected by the IRS for tax purposes, and the term “depreciation” includes obsolescence.
- (d) (1) The cost of furnishing “facilities” found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.
(2) The following is a list of facilities found by the Administrator to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive:
 - i. tools of the trade and other materials and services incidental to carrying on the employer's business;
 - ii. the cost of any construction by and for the employer;
 - iii. the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

Making determinations of “reasonable cost”

29 C.F.R. 531.4

- (a) Procedure. Upon his own motion or upon the petition of any interested person, the Administrator may determine generally or particularly the “reasonable cost” to the employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employee. Notice of proposed determination shall be published in the Federal Register... Consideration shall be given to all relevant matter presented in the adoption of any rule.
- (b) Contents of petitions submitted by interested persons. Any petition by an employee or an authorized representative of employees, an employer or group of employers, or by other interested persons shall include the following information:
 - 1. The name and location of the employer's place or places of business;
 - 2. A detailed description of the board, lodging, or other facilities furnished by the employer or employers, and whether or not they are alleged to constitute “wages;”
 - 3. the charges or deductions made for the facility or facilities by the employer or employers;
 - 4. When the actual cost of the facility or facilities is known an itemized statement of such cost to the employer or employers of the furnished facility or facilities;
 - 5. the cash wages paid;
 - 6. the reason or reasons for which the determination is requested, including any reason or reasons why the determinations in Sec. 531.3 should not apply; and
 - 7. whether an opportunity to make an oral presentation is requested; and if it is requested, the inclusion of a summary of any expected presentation.

making determinations of “fair value.”

29 C.F.R. 531.5

- (a) Procedure. The procedures governing the making of determinations of the “fair value” of board, lodging, or other facilities for defined classes of employees and in defined areas under section 3(m) of the Act shall be the same as that prescribed in Section 531.4 with respect to determinations of “reasonable cost.”

- (b) Petitions of interested persons. Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "fair value" under section 3(m) of the Act shall contain the information required under paragraph (b) of section 531.4 and in addition, to the extent possible, the following:
- i. A proposed definition of the class or classes of employees involved;
 - ii. A proposed definition of the area to which any requested determination would apply;
 - iii. Any measure of "fair value" of the furnished facilities which may be appropriate in addition to the cost of such facilities.

Title 29 - Labor

Part 531 - Wage Payments Under the Fair Labor Standards Act of 1938

Subpart C - Interpretations:

Board lodging, or other facilities 29 C.F.R. 531.29

Section 3(m) applies to both of the following situations:

- a. where board, lodging, or other facilities are furnished in addition to a stipulated wage; and
- b. where charges for board, lodging, or other facilities are deducted from a stipulated wage.

The use of the word "furnishing" and the legislative history of this section 3(m) clearly indicate that this section was intended to apply to all facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for such facilities as additions or deductions from wages.

"Furnished" to the employee. 29 C.F.R. 531.30

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily "furnished" to the employee. Not only must the employee receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced.

Turning to the case law on how the federal court held relative to the essential quality that acceptance be voluntary and uncoerced, . See *Williams v. Atlantic Coast Line Railroad Co.* (E.D.N.C.). 1 W.H. Cases 289*.

*this case is unlocatable, but another case, on point that cites Atlantic Coast for its authority is *Davis Brothers v. Raymond Donovan, Sec'y of Labor*. This case is cited in the Federal Code as an authoritative interpretation of the issues of "furnished" and "voluntary and uncoerced. In 1983, the Secretary of the Department of Labor makes essentially the same argument that the Commissioner of the Alaska Department of Labor makes, but the federal court holding struck down the Secretary's interpretation of wage. A copy of this case is attached.

"Customarily furnished." 29 C.F.R. 531.31

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where "customarily" furnished to the employee. Where such facilities are "furnished" to the employee, it will be considered a sufficient satisfaction of the requirement if the facilities are furnished regularly by the employer to his employees or if the same or similar facilities are customarily furnished by other employees engaged in the same or similar trade, business, or occupation in the same or similar communities. Facilities furnished in violation of any Federal, State, or local law, ordinance or prohibition will not be considered facilities "customarily" furnished. *Note: from this case is the first judicial interpretation that board and lodging can be considered wage. It arose from a remote mine in the Talkeetna Mountains in 1938. The case has never been overturned and continues to be referenced in the Federal Code for its authority*

"Other facilities" 29 C.F.R. 531.32

- (a) "other facilities," as used in this section must be something like board or lodging. The following items have been deemed to be within the meaning of the term: Meals furnished at company restaurants or cafeterias, or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees, housing furnished for dwelling purposes; general merchandise furnished at company stores

In conclusion:

At best, the department of Labor's offensive regulation 8 AAC 15.160(d)(1) is misguided. The Legislature delegated to the agency the authority to formulate policy in carrying out this statute, but instead, they took this too far. While the Department allows some employers to take a credit on the cash component of their wage obligation for board and lodging regularly provided, it disallows it for others. Rather than making the determination on an occupational basis, the Department of Labor discriminates between remote and non-remote locations. The Department asserts that if the employee has no alternative board and lodging available, they cannot make a meaningful choice to accept the cash credit for the accommodations. This is not right, it is not grounded in Alaska statute, in Federal law or regulation, nor is it supported by case law.

CS FOR HOUSE BILL NO. 504(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/17/02
Offered: 4/16/02

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the wages of people working in the fisheries business."**

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

3 *** Section 1. AS 23.10 is amended by adding a new section to read:**

4 **Sec. 23.10.072. Wages for fisheries businesses.** An employer who engages
5 in a fisheries business, as that term is defined in AS 43.75.290, may deduct an amount
6 that is reasonable and without profit to the employer each eight-hour paid day worked
7 from the applicable minimum wage paid to an employee working in the fisheries
8 business for the combined cost of board and lodging the employer furnishes to the
9 employee. A deduction up to \$15 each day for combined room and board shall be
10 presumed to be a reasonable amount without profit to the employer. The department
11 shall allow a deduction higher than \$15 each day for combined room and board if the
12 employer demonstrates to the department that the cost to the employee is reasonable
13 and without profit to the employer. A deduction made under this section may be made
14 only if it is based on a negotiated union agreement or a written agreement with the
15 employee entered into at the time of hire that specifies the daily rate of deductions for

I room and board.

CS FOR HOUSE BILL NO. 504(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

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1

board.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 504 (FIN)
 (H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Labor & Workforce Dev.
 Title: Minimum Wage for Workers In Fisheries BRU: Labor Standards & Safety
 Sponsor: House Rules Component: Wage & Hour
 Requestor: _____ Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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

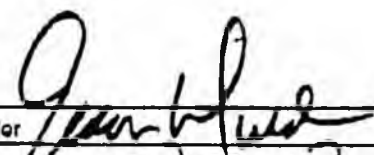

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Representative Eldon Mulder  Phone 465-2647/465-3424
 Co-Chair
Representative Bill Williams  Date _____
 Co-Chair

Statute

§ 23.10.085

LABOR AND WORKERS' COMPENSATION

EMPLOY

(3) require and subpoena from an employer a statement in writing, when the representative considers it necessary, of hours worked by and the wages paid to each person in the employ of the employer, and the commissioner may require the person to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers, and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

Sec. 23.10.085. Scope of administrative regulations. (a) The director may amend, or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 that are necessary for the administration of this chapter. (b) The regulations may, without limiting the generality of (a) of this section, define the terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define the terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 — 23.10.150 to employees for the reasonable cost of board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(2) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.096 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050 — 23.10.150. Dresser

Indus., Inc. v. Alaska Dep't of Labor, 633 P.2d 1716, 72 L. Ed. 2d 137 (1982).

Applied in Alaska Int'l Indus., Inc. v. Musarra, P.2d 1240 (Alaska 1979).

Sec. 23.10.090. Administrative procedures. Regulations adopted or hearings conducted under AS 23.10.050 — 23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with AS 44.62 (Administrative Procedure Act). (§ 6(2) ch 171 SLA 1959)

NOTES TO DECISIONS

Cited in Dayhoff v. Temaco Helicopters, Inc., 772 P.2d 1085 (Alaska 1989).

Sec. 23.10.095. Adoption of federal regulations. The commissioner may adopt regulations and interpretations that are made by the administrator of the Wage and Hour Division of the federal Department of Labor and that are not inconsistent with AS 23.10.050 — 23.10.150. (§ 6(5) ch 171 SLA 1959)

Sec. 23.10.100. Employment records. (a) An employer who has employed an employee for at least three years at the time of the hearing shall maintain records of the address, and occupation of each employee, and other payroll records for each employee, and other payroll records for each employee, and other payroll records for each employee. (b) The commissioner or the representative may require the employer to produce the employer's records at the hearing. The commissioner or the representative may also require the employer to produce the records, and the commissioner may require the employer to produce the records.

Public policy interest in the amount and extent of the employee's wages. The burden of proof in an action under the Wage and Hour Act is not shifted to the employer in a proceeding to determine whether an employee produces sufficient evidence to establish that the employee was improperly compensated. The burden of proof in an action under the Wage and Hour Act is not shifted to the employer in a proceeding to determine whether an employee produces sufficient evidence to establish that the employee was improperly compensated.

Sec. 23.10.105. Post-employment records. The commissioner shall keep records of the names of all persons who are employed by an employer. An employer shall request without charge. (ch 171 SLA 1959)

Sec. 23.10.110. Remedies. (a) An employer is liable to an employee for overtime compensation, and for an additional equal amount. (b) An action to recover overtime compensation from an employer is liable may be brought for other employees. (c) An action to recover overtime compensation from an employer is liable may be brought for other employees.

(b) An action to recover overtime compensation from an employer is liable may be brought for other employees. (c) An action to recover overtime compensation from an employer is liable may be brought for other employees.

(c) The court in an action brought under this section, reasonable notice of actions brought under this section, reasonable notice of actions brought under this section, reasonable notice of actions brought under this section.

(c) The court in an action brought under this section, reasonable notice of actions brought under this section, reasonable notice of actions brought under this section, reasonable notice of actions brought under this section.

principal. To qualify for the exemption, all the requirements set out in ch. 5 of this title relating to the

Under this section will not be less than 75 established under AS 23.10.065.

Minimum wages for full-time students Fair Labor Standards Act of 1938, as implemented in 29 C.F.R. 519.1 — Payment subject to the provisions of Register 68)

AS 23.10.085

FOR SEARCHING FOR PLACER

The exemption from AS 23.10.050 — 23.10.055(10) applies to those activities "directly related" and does not apply once development of a known mineral source has begun.

AS 23.10.085

FOR INDIVIDUALS UNDER 18

EMPLOYEES. The exemption from AS 23.10.055(11) does not apply to an individual normally within the industry employed in excess of 30 hours. (Eff.

AS 23.10.085

IN DETERMINING THE NUMBER OF EMPLOYEES

AS 23.10.060(d)(1). In determining the number of employees an employer employs for purposes of this section, only those employees of a corporation who actively engage in mining operations will be counted regardless of whether they are full-time or part-time worked. (Eff. 12/9/78, Register 68; am

AS 23.10.085

MINING OPERATIONS. (a) For purposes of this section, "mining season" means the cumulative period during which mining operations are carried on during a calendar year of 20 weeks.

(b) The payment for overtime under this section shall not be required for employees engaged in small mining operations is

Regs

available to the employer for an aggregate of 14 weeks, commencing on the first day the mine begins active operations in a calendar year. Periods during which the mine is not actively engaged in mining operations for reasons including assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) Repealed 9/28/85.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060

AS 23.10.060

AS 23.10.085

ARTICLE 4. REDUCTION OF WAGES.

Section	Section
160. Deductions from an employee's wages	165. Purchase of uniform or equipment

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S

WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee. Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited. A written agreement for deductions payable to the employer or person acting in the employer's behalf or interest is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or overtime rates, or if it would require an employee to reimburse the employer for any of the following:

- (1) customer checks returned due to insufficient funds or any other reason;
- (2) non-payment for goods or services as a result of theft or credit default;
- (3) cash or cash register shortages unless the employee admits, willingly and in writing, to having personally taken the specific amount of cash that is alleged to be missing;
- (4) lost, missing, or stolen property, unless the employee admits willingly and in writing, to having personally taken the specific property alleged to be lost, missing, or stolen; or
- (5) damage or breakage costs unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement, if the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party. Neither the employer nor any person acting

in the employer's behalf or interest may derive any profit or benefit from the transaction.

(c) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for transportation from the place of hire to the place of employment if the deduction does not

- (1) reduce the employee's wages below the statutory minimum; or
- (2) reduce the overtime compensation rate below one and one-half times the contractual rate of pay.

(d) Nothing in (a) of this section prohibits deductions from earnings, based on a written agreement, to reimburse an employer for the reasonable cost of furnishing board and lodging, if

- (1) alternative public board and lodging facilities are accessible to the worksite and the employee has declined to use such facilities;
- (2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and
- (3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.

(e) Unless the employer and the employee have executed a written agreement as described in (d) of this section, at the time of hire, the employer is prohibited from seeking to retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.

(f) The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 29 C.F.R. 531.3 — 531.5 and 531.29 — 531.35.

(g) An employer may deduct an amount from the wages of an employee as a security deposit to ensure the return, in clean and in a state of good repair, of uniforms or equipment issued by the employer, if

- (1) the deduction is based on a written agreement;
- (2) the total deposit does not exceed the cost of the item; and
- (3) the deduction does not reduce the employee's wage below the statutory minimum, or reduce the employee's overtime compensation below one and one-half times the contractual rate of pay.

(h) An employer shall give each employee a statement of earnings and deductions for each pay period. The statement of earnings and deductions must contain

- (1) employee's rate of pay;
- (2) gross wages;
- (3) net wages;
- (4) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (5) repealed 9/28/85;

... may derive any profit or benefit

... prohibits deductions from earnings to reimburse an employer for transportation expenses at the place of employment if the deduction

... wages below the statutory minimum; or compensation rate below one and one-half times the minimum wage.

... prohibits deductions from earnings, to reimburse an employer for the cost of board and lodging, if

... board and lodging facilities are accessible to the employee and he has declined to use such facilities; such facilities of the employer are customarily available and used by the employees; and the employer is not reimbursed for the use of the employer's board and lodging facilities available and without profit to the employee.

... if the employee has executed a written agreement pursuant to this section, at the time of hire, the employer may retroactively deduct the cost of board and lodging against wages due upon termination or resignation by the department.

... determination regarding the cost of board and lodging pursuant to this section. The determination will be made pursuant to sections 531.3 — 531.5 and 531.29 —

... an amount from the wages of an employee to ensure the return, in clean and in good condition, of any uniform or equipment issued by the employer,

... on a written agreement; such deduction shall not exceed the cost of the item; and the employer shall not reduce the employee's wage below the minimum wage or the employee's overtime compensation below the contractual rate of pay. The employer shall provide each employee a statement of earnings and deductions for each pay period. The statement of earnings and

... including dates of the pay period and the amount of the deduction during the period;

- (6) repealed 9/28/85;
- (7) federal income tax deductions;
- (8) Federal Insurance Contribution Act deductions;
- (9) Alaska Employment Security Act contributions;
- (10) board and lodging costs;
- (11) advances; and
- (12) other authorized deductions. (Eff. 12/31/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.095
 AS 23.10.060 AS 23.10.085

8 AAC 15.165. PURCHASE OF UNIFORM OR EQUIPMENT. An employer may not require an employee to purchase a uniform or equipment if

- (1) the uniform or equipment is required by the federal state, or local safety or health codes, or
- (2) the nature of the employer's business requires the use of either and if the uniform or equipment
 - (A) is distinctive and advertises or is associated with the products or services of the employer; and
 - (B) cannot be worn or used during normal social activities of the employee. (Eff. 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.035 AS 23.10.095
 AS 23.10.065

ARTICLE 5. PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.

Section 175. (Repealed)	Section 180. Investigations, conferences and persuasion
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8 AAC 15.175. ASSIGNMENT OF CLAIM Repealed 9/28/85.

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The labor standards and safety division will investigate potential violations of AS 23.10.050 — 23.10.150 on its own motion.

(b) If, after an investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 — 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

- (1) the division will provide the employer believed to have violated AS 23.10.050 — 23.10.150 with a copy of the assignment or a description of the alleged violation and inform the employer of the results of its investigation; and

Dayhoff v. Tomaco Helicopters, Inc., 772 P.2d 1025 (Alaska 1989).

person fails to comply or refuses to produce evidence may be lawfully interrogated by a prisoner or an authorized representative in the case of disobedience or refusal to testify before it. (§ 9(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

§ 23.10.150 — 23.10.150 do not limit the right of an authorized representative of their own choice to file a complaint or to file a complaint shorter than the applicable statute of limitations. (71 SLA 1959)

§ 23.10.150 — 23.10.150 for unpaid minimum wage under AS 23.10.050 — 23.10.150 after the cause of action accrues may be started on the date when the cause of action accrues. (7 ch 59 SLA 1982)

§ 23.10.150 — 23.10.150 on tolls statute. — Department of Labor v. Tomaco Helicopters, Inc., 772 P.2d 1025 (Alaska 1989).

§ 23.10.150 — 23.10.150 on complaint tolls statute. — When a plaintiff files an initial motion to certify a class action, the court, in its order granting the motion, may toll the statute of limitations for the class action. Fred Meyer v. Adams, 963 P.2d 1025 (Alaska 1998).

§ 23.10.050 — 23.10.150 if an authorized representative of the employee is not available for the enforcement of AS 23.10.050 — 23.10.150, an authorized representative of the employee may be appointed as required by AS 23.10.150. If the representative is not available, or if the representative is not a prisoner or an authorized representative of the employee, the representative may be appointed as required by AS 23.10.150 as required by AS 23.10.150 against an employee because the employee caused to be instituted AS 23.10.150, or has testified or is about to testify before it. (71 SLA 1959)

§ 23.10.140. Penalty. An employer who violates a provision of AS 23.10.050 — 23.10.150, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than \$100 nor more than \$2,000, or by imprisonment for not less than 10 nor more than 30 days, or both. Each day a violation constitutes a separate offense. (§ 9(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

NOTES TO DECISIONS

Applied in Gore v. Schlumberger Ltd., 703 P.2d 1025 (Alaska 1985).

§ 23.10.145. Definitions. If not defined in this title or in regulations adopted under this title, terms used in AS 23.10.050 — 23.10.150 shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it. (§ 2(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201-219.

NOTES TO DECISIONS

Applicability of federal regulatory definitions. This section directs the courts to apply federal definitions "where applicable," and such definitions are "applicable" only when the state director of the wage and hour division and the commissioner of labor have refrained from defining terms in state regulations, pursuant to their authority under AS 23.10.085 and 23.10.095. Dresser

Indus., Inc. v. Alaska Dept of Labor, 633 P.2d 1025 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S.Ct. 1716, 72 L. Ed. 2d 137 (1982).

A prisoner is not an "employee" of the state under the federal act, and therefore is not so by virtue of AS 23.10.050. McGinnis v. Stevens, 643 P.2d 1221 (Alaska 1982).

Sec. 23.10.150. Short title. AS 23.10.050 — 23.10.150 may be cited as the Alaska Wage and Hour Act. (§ 1 ch 171 SLA 1959)

Secs. 23.10.155 — 23.10.320. Equal pay for women, discrimination in employment, and age discrimination. [Repealed, § 8 ch 117 SLA 1965, § 5 ch 125 SLA 1980. For present provisions, see AS 18.80.220.]

Article 4. Employment of Children.

Section

- 355. Purpose
- 360. Exempt employment
- 362. Authorization for children under 17 to work
- 365. Employment of children under 14
- 370. Children under 16
- 375. Employment of person under 18

Section

- 355. Persons under 21
- 360. Regulations for minimum standards and work opportunities
- 365. Enforcement
- 370. Penalty

Collateral references. — 53 Am. Jur. 2d, Master and Servant, § 154.

51B C.J.S., Labor Relations, § 1021.

Sec. 23.10.325. Purpose. It is the purpose of AS 23.10.325 — 23.10.370 to establish protective standards for child labor to the end that their health, morals, education, and future welfare will be protected during the formative years and to the further end that any abuses or unjust exploitation of this labor will be effectively prohibited. (§ 1 ch 73 SLA 1949)