

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2  
1801C SLC SB 700 - SB 729

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# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149  
JUNEAU, ALASKA 99811

Phone: 465-2700

January 15, 1982

The Honorable Bob Mulcahy  
Chairman, Senate Labor & Commerce Committee  
Pouch V  
Juneau, AK 99811

Dear Senator Mulcahy:

Thank you for spending time to discuss the Department of Labor and legislation for the 1982 session. I mentioned to you that we were looking for a sponsor for several bills. One of these is "An Act relating to elevator safety standards".

This bill amends AS 18.60.800 to adopt the current American National Standards Institute Safety Code for Elevators and Escalators as the minimum elevator safety code for the state, and adopts the current National Safety Practice's inspector's manual as the guide for Department of Labor elevator inspectors.

The bill adds AS 18.60.830, to provide that municipalities may adopt their own standards as long as those standards are at least as stringent as those required under AS 18.60.800.

AS 18.60.810 is repealed in Section <sup>5</sup> of the bill. The current safety code adopted in section 1 of the bill requires an emergency power source for elevators, making AS 18.60.810 unnecessary.

Your consideration to sponsorship of this bill by the Senate Labor and Commerce Committee would be appreciated. A draft of the bill is enclosed with a fiscal note that is zero.

Thank you.

Sincerely,

*Judy Knight*

Judy Knight  
Special Assistant

Enclosures

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149  
JUNEAU, ALASKA 99811

Phone: 465-4870

February 17, 1982

The Honorable Bob Mulcahy, Chairman  
Senate Labor & Commerce Committee  
Pouch V, State Capitol  
Juneau, AK 99811

Dear Senator Mulcahy:

This is in response to the questions from your committee concerning Senate Bill #700, "An Act relating to Elevator Safety Standards." The question originally posed was how many elevators in the state do not meet the code concerning the installation of telephones for emergency use.

In reviewing this question with our elevator inspector in Anchorage I find that we do not have a definitive answer. When the Legislature first passed the Elevator Safety Code in 1978 the same standard was included in that code. In order to avoid a substantial capital investment by the owners of such elevators, we promulgated regulations (specifically 8.AAC 77.085, copy enclosed) which allowed the Department of Labor to issue a variance for any elevator not meeting the safety standard. Under an initial inspection of all elevators, if all other safety requirements were met a variance was issued for existing elevators which did not have the telephone installed at that time. The initial study by our elevator inspector showed that the cost of telephone installation in existing elevators to comply with this code would cost between \$5,000 and \$15,000 depending on the number of elevators in the building. The department did not feel that owners of buildings should have to incur these costs; therefore variances were issued for existing installations. New installations are now required to meet the safety codes.

Also attached for your information and review is a copy of our summary of those sections of the 1981 Safety Code which have been amended or changed from the 1978 Elevator Safety Code. Generally speaking, the new code brings into consolidation (1) the Basic Building Code; (2) the National Building Code; (3) the Standard Building Code; and (4) the Uniform Building Code with respect to fire resistance, ratings, earthquake protective devices, alteration, repairs and/or replacements. Therefore, all codes are uniform in addressing the safety codes for installation of elevators, escalators, etc.

The Honorable Bob Mulcahy  
February 17, 1982  
Page 2

The other important features which have been incorporated in the code are those regarding venting, as well as the operations of elevators under fire or other emergency conditions. These highlighted rules are enclosed for your review.

The department will be happy to provide additional information or further testimony. Please accept my apologies for the department's inability to thoroughly respond to the committee's questions and concerns.

Sincerely,

*Judy Knight*  
Judy Knight  
Special Assistant

JK/mjs  
D-59

Enclosures

(b) A person whose certificate of operation has been suspended, revoked, or denied may appeal the decision to the commissioner in the manner set out in sec. 130 of this chapter. (Eff. 10/21/79, Reg. 72)

Authority: AS 18.60.800  
AS 23.05.060(5)

**ARTICLE 3.  
INSPECTION FEES**

**Section**

**65. Inspection fees**

**8 AAC 77.065. INSPECTION FEES.** An owner of an elevator inspected by the department, shall pay the inspector upon completion of the inspection, the following fees:

- (1) elevator or workmen's hoist
  - (A) 1-3 floor stops ..... \$ 45.00
  - (B) 4-9 floor stops ..... 55.00
  - (C) 10-14 floor stops ..... 65.00
  - (D) 15-19 floor stops ..... 75.00
  - (E) 20-24 floor stops ..... 85.00
  - (F) 25-29 floor stops ..... 100.00
  - (G) Each additional 5 floor stops 25.00
- (2) escalator..... 45.00
- (3) moving walk..... 45.00
- (4) stage and orchestra lift ..... 45.00
- (5) dumbwaiter/manlift ..... 35.00
- (6) special inspections; travel, per diem expense and applicable time charge
  - (A) one-half day, four hours or less..... 75.00
  - (B) full day, four to eight hours. 150.00

(Eff. 10/21/79, Reg. 72)

Authority: AS 18.60.800

**ARTICLE 4.  
VARIANCES**

**Section**

**85. Variances**

**8 AAC 77.085. VARIANCES.** (a) The owner of an elevator desiring a variance from a safety standard adopted in or under AS 18.60.800 may file a written request for variance with the Director of the Wage and Hour/Mechanical Inspection Division, P.O. Box 630, Juneau, Alaska, 99811.

(b) A request filed under (a) of this section must include

- (1) the name and address of the applicant;
- (2) the name and address of the place where the apparatus is located;
- (3) specification of the standard or portion of it from which the applicant seeks a variance;
- (4) a statement of facts showing that the applicant is unable to comply with the standard and the alternate steps (with specific dates) which the applicant proposes to take in order to substantially comply with the standard;

(5) a statement addressing the effect a grant of a variance will have on the physical safety of persons in or around the elevator; and

(6) a statement of present steps the applicant has taken to safeguard persons against the hazards covered by the standard.

(c) After review of the request and the inspector's final recommendations, the director may approve or deny an application for a variance from a safety standard.

(d) The department denial of a variance from a safety standard may be appealed to the commissioner in the manner set out in sec. 130 of this chapter. (Eff. 10/21/79, Reg. 72)

Authority: AS 18.60.800  
AS 23.05.060(5)

**ARTICLE 5.  
VIOLATIONS**

**Section**

**105. Violations**

**110. Remedy of violations**

**8 AAC 77.105. VIOLATIONS.** (a) During the course of his inspection, the inspector will make a written note of any violations of the applicable safety standards that he has observed.

(b) At the close of an inspection, the inspector will review his findings with the owner of the elevator and provide him with copies of the inspection report. If the owner of the elevator is not present, the inspector will deliver to or

# MEMORANDUM

State of Alaska

*Al Gordon*  
TO: Al Gordon, Deputy Director  
Division of Labor Standards & Safety

DATE: February 17, 1982

FILE NO:

TELEPHONE NO: 264-2447

*Don Cather*  
FROM: Don Cather, Chief  
Mechanical Inspection  
Division of Labor Standards & Safety

SUBJECT: Elevator Code

The 1981 edition of the elevator code has several changes which make it compatible with other uniform codes. Past editions of the elevator code had many of its own standards, which created problems for design engineers, because of differences between similar codes. Normally, the similar code is the Uniform Building Code.

The 1981 edition of the Elevator Code will reference the Uniform Building Code, thus allowing the mechanical engineer to use this standard uniform reference.

Some sections addressed in using the Uniform Building Code are:

Both Rule 100.1b, covering the fire rating of hoistways and Rule 100.4a covering venting of hoistways are covered by the Uniform Building Code.

Other major new changes for new elevators are:

Rule 204.4m Manual Opening of Car Door.

Passenger elevator car doors shall be so arranged that when a car is stopped within the landing zone and power to the door operator is cut off, the door may be moved by hand.

Rule 509.1 Emergency Signals.

A telephone connected to a central telephone exchange shall be installed in the car and an emergency signalling device operable from inside the car and audible outside the hoistway shall be provided.

Rule 211.3

When elevators are operated under fire or other emergency conditions and have a travel of more than 25 feet, the elevator shall have a emergency recall operations switch. This keyed switch opens the elevator car door at levels designated by the firemen.

Rule 1101.1

Outlines the recommended tests and frequency of elevator safety devices. These include testing the governor, stop buttons, hoistway safeties.

Al Gordon, Deputy Director  
February 17, 1982  
Page 2

Rule 1201.2b

Rule applies where major alterations are made to valves, piping, installation of electrical or mechanical interlocks which relate to the safety of the elevator.

Finally, one of the other major changes is in appendix F and covers seismic requirements. This appendix serves as a guide for design, construction, installation, and operation of elevators when installed in major seismic zones.

Should an owner have problems with the safety requirement regulation, 8 AAC 77.085 allows for a variance if a written request is received.

In most instances, a less-costly agreement has been reached with the elevator owner in buildings where there is not a telephone operator. An example is in schools where the elevator is used only for handicapped and may be operated only with a key. The school administrator closes the elevator at the end of each day taking it out of public usage.

DC:gs  
B:47



FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No.  
 Title "An Act Relating to Elevator Safety Standards"  
 Requested by Senate Labor & Commerce Date 1/15/82

II. FISCAL DETAIL

Agency Affected Labor  
 Program Category Affected Public Protection  
 BRU, Program, Or Subprogram(s) Affected Labor Standards & Safety  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

IV. DATE 1/15/82 PREPARED BY Judy Knight, Special Assistant  
 AGENCY Labor  
 Original: Legislative Finance PHONE 465-2700  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

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701



# Alaska State Legislature

## Senate

Official Business

### Labor & Commerce Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### SB 701:

A generation and transmission cooperative (G&T) is a cooperative which is owned by and supplies wholesale power to other cooperatives which in turn distribute electricity to retail consumers. A G&T could be formed under AS 10.25 as it is except that it would have to be organized by at least 5 member cooperatives as incorporators. The effect of SB 701 is to permit a G&T cooperative to be organized by any number of distribution cooperatives. Even one distribution coop would be able to form a G&T which would then own the generation and transmission facilities to serve that one coop.

Background: In the lower 48, electric cooperatives joined together in groups many years ago to organize G&T's. The G&Ts either buy or generate electricity which is then sold to the distribution coops at wholesale. This has not happened in Alaska because most of the coops here are physically separated from each other, and each isolated utility has to generate its own electricity.

Regulations by the Federal Rural Electrification Administration (REA) make it desirable in many cases for generation and transmission facilities to be owned by a G&T even if the G&T only serves one distribution coop. REA requires a distribution coop to maintain a Times Interest Earnings Ratio (TIER) of 1.5. This means that the net earning operating margin has to be at least half as much as the coop pays for interest on its long term debt. A G&T is only required to have a TIER of 1.0, or in other words is only required to break even.

The effect of these REA regulations is to permit lower electric rates to consumers if the distribution coop buys its wholesale power from a G&T instead of generating its own electricity. This really becomes important when the G&T facilities are capital intensive-- as in a coal fired or hydroelectric generating plant or a long transmission line.

Conclusion: SB 701 is needed by the electric coops to help keep their electric rates as low as possible.

February 10, 1982

ALASKA PUBLIC UTILITIES COMMISSION

Comments on Senate Bill No. 701 and House Bill No. 678.

The Commission has been informed by ARECA that the purpose of this legislation is to allow fewer than five members to form a generation and transmission cooperative. The Commission is supportive of this intent.

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the names and the addresses of the incorporators;
- (4) the names and addresses of its directors.

(b) The articles may contain any provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of its business. The articles shall be signed by each incorporator and acknowledged by at least two of the incorporators, or on their behalf, if they are cooperatives. It is not necessary to recite in the articles the purpose for which the cooperative is organized or any of its corporate powers. (§ 7 ch 93 SLA 1959)

**Sec. 10.25.070. Bylaws.** The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the members or district delegates shall adopt, amend or repeal the bylaws by the affirmative vote of a majority of those members or district delegates voting on the adoption, amendment or repeal at a meeting of the members or district delegates. The bylaws shall set forth the rights and duties of members, district delegates and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation. (§ 8 ch 93 SLA 1959; am § 1 ch 136 SLA 1968)

**Effect of amendment.**—The 1968 amendment inserted references to district delegates throughout this section.

**Legislative committee report.**—For legislative committee report on ch. 136, SLA 1968 (HB 559), see House Journal (1968), p. 573.

**Sec. 10.25.080. Members.** Each incorporator of a cooperative shall be a member of the cooperative. No other person may become a member unless he agrees to use electric energy, or telephone service, or other services furnished by the cooperative when they are made available through its facilities. Membership in a cooperative is not transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations on membership. (§ 9 ch 93 SLA 1959)

**Sec. 10.25.090. Meetings of members.** (a) An annual meeting of the members of a cooperative shall be held at the time and place provided in the bylaws. An annual meeting of the members of a cooperative which has been divided into districts as provided for in § 190 of this chapter may consist of separate annual meetings of the members of each district.

(b) Special meetings of the members or district delegates may be called by a majority of the board of directors or by not less than 10 per cent of all members or 10 per cent of all district dele-

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 5, 1982

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which clarifies the applicability of overtime compensation statutes to work performed on public contracts and imposes sanctions for a contractor's failure to comply with those statutes.

The bill would limit the prevailing wage requirement in public works projects to those projects whose costs exceed \$25,000 (rather than the present \$2,000). This will avoid subjecting employers on small projects (usually one-, two-, and three-person operations) to the extensive reporting requirements of AS 36.05 -- which in themselves increase the cost of doing business.

The bill would also require payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or 40 hours a week, thus eliminating any question that laborers on public construction contracts have the same overtime protections afforded all employees under AS 23.10.060.

The bill establishes or clarifies five provisions relating to the enforcement of the provisions of AS 36.05. First, it allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees whether or not a wage assignment has been filed. The department often uncovers violations of AS 36.05, but is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. This amendment avoids that problem.

Second, it provides that even if a public works contract does not set out the conditions which AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public works contract.

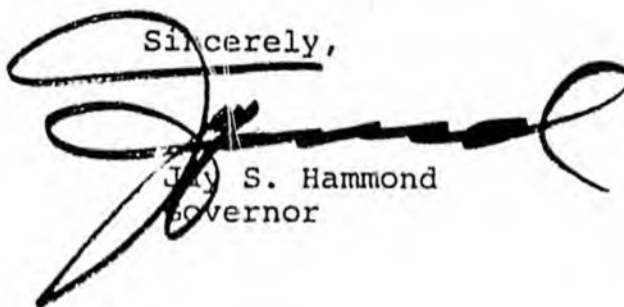
Third, it authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing wage requirements of the chapter from being awarded public works contracts for up to three years. These persons would be entitled to the full protection of the adjudication portion of the Administrative Procedure Act (AS 44.62) and to court review.

Fourth, it authorizes the attorney general to seek injunctive relief and civil penalties in the superior court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor. This enforcement mechanism has not been effective because of the nature of the penalty and the criminal standard of proof.

Fifth, the bill clarifies the definition of "public construction" or "public works", to exclude regular maintenance for the preservation of existing properties or facilities.

The bill includes a Jan. 1, 1983 effective date, to give adequate notice of the changes to contractors.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jay S. Hammond". The signature is written over the printed name and title.

Jay S. Hammond  
Governor



Official Business

# Alaska State Legislature

## Senate

### Labor & Commerce Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

SB 724

Section 1) Contractor performing work on a public construction project in the State, the cost of which exceeds \$25,000, shall pay the current wage rate for work performed in the region (for work of a similar nature), based upon the latest prevailing wages rate as published by the Department of Labor, before the end of the pay period.

Section 2) Adds new section to AS 36.05 requiring the payment of overtime to workers on public construction projects, if the worker works more than 8 hours a day or more than 40 hours a week.

Section 3) Outlines the authority of the Dept. of Labor to take an assignment of a wage claim for the full amount an employee is entitled to, and to allow the Department to seek recovery of wages for all persons on a public construction project for whom wages are due, regardless of whether a wage claim has been filed.

Section 4) Stiffens penalties for violation of AS 36.05; if a court finds that a person has violated a provision of AS 36.05, the A.G., upon petition to the court, may recover on behalf of the state, a civil penalty of up to \$5,000 for each violation. A separate penalty could be imposed for each day the violation exists. A person who violates the terms of an injunction or a restraining order issued under the chapter, would be subject to a civil penalty of up to \$25,000 for each violation. Currently, a violation of this chapter is a misdemeanor punishable by a fine of \$100- \$1,000 per day or from 10 to 90 days in jail or by both.

Section 5) Amends AS 36.05.070(a) requiring the payment of minimum prevailing wages on public construction contracts exceeding \$25,000. Wage rates shall be adjusted to the wage rate for each pay period applicable under AS 36.05.010. See section 1 of the sectional.

Section 6) In the event that the Department of Labor has received notification that wages have not been paid as required under AS 36.05.010-015, the state or political subdivision shall withhold a portion of the payment due the contractor as is necessary to pay the laborers, mechanics, or field surveyors employed by the contractor.

Section 7) For all public works contracts, the State shall pay the amount withheld to the Department of Labor for disbursement directly to the laborers who have not been paid the rates of wages required by the contract.

Section 8) Adds a new section which states: A registered apprentice in a craft is entitled to be paid at least at the rate for a apprentice in that craft set by the US Department of Labor.

Section 9) Rewrites AS 36.05.090 which relates to the payment of wages from withheld payments and a listing of contractors who violate contracts. Allows Dept of Labor to bar contractors who violate law from being awarded contracts for up to three years. Person who has been barred may appeal the Departments decision to the Superior Court within 30 days of receiving the Departments decision.

Section 10) Adds a new section; When requested by the Department of Labor, the A.G. may :

- 1) enjoin in an act or practice which violates a provision or regulation of this chapter
- 2) Order payment of wages from the employer or surety
- 3) enjoin a person found in violation of this chapter from continuing to work on an existing public construction contract
- 4) impose a civil penalty under AS 36.05.060.

Further provides that in cases where the court has enjoined a person from work (further) on a project, the State or political subdivision could complete the work.

Section 11) Amends definition of "public construction" and "public works" by adding: "the terms do not include regular maintenance for the preservation of existing property or facilities.

Section 12) repeals AS 36.10.020 (see statutes)

Section 13) This act takes effect January 1, 1983

**Sec. 36.05.030. Authority.** (a) The Department of Labor has the authority to determine the prevailing wage, and whether or not §§ 10—110 of this chapter are being violated. The department may when necessary for the enforcement of §§ 10—110

- (1) conduct investigations and hold hearings concerning wages;
- (2) compel the attendance of witnesses and the production of books, papers and documents;
- (3) promulgate regulations.

(b) If a person violates §§ 10—110 of this chapter the attorney general shall, when requested by the Department of Labor, enforce these provisions. (§ 14-2-3 ACLA 1949; am § 2 ch 142 SLA 1972)

**Effect of amendment.** — The 1972 amendment rewrote this section.

**Sec. 36.05.035. Notification of contract awards.** Upon awarding a public construction contract, the state or a political subdivision of the state shall

(1) immediately notify the commissioner of labor of the amount of the contract, the effective date of the contract, the identity of the contractor and all subcontractors, the site or sites of construction and provide a project description; and

(2) verify that the bonding requirements of ch. 25 of this title have been met and that the requirements of AS 08.18 have been met. (§ 3 ch 142 SLA 1972)

**Sec. 36.05.040. Filing schedule of employees, wages paid and other information.** All contractors or subcontractors who perform work on a public construction contract for the state or for a political subdivision of the state shall, before the Friday of each week, file with the Department of Labor a sworn affidavit for the previous week, setting out in detail the number of men employed, wages paid, job classification of each employee, hours worked each day and week, and other information which the Department of Labor requires. (§ 14-2-4 ACLA 1949; am § 4 ch 142 SLA 1972)

**Effect of amendment.** — The 1972 amendment rewrote this section.

**Sec. 36.05.050. Hours to constitute day's work.**

Repealed by § 1 ch 3 SLA 1973.

**Editor's note.** — The repealed section derived from § 14-2-5 ACLA 1949; § 5, ch. 142, SLA 1972.

**Sec. 36.05.060. Penalty for violation of this chapter.** A contractor who violates this chapter, is guilty of a misdemeanor, and

upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not less than 10 days nor more than 90 days, or by both. Each day a violation exists constitutes a separate offense. (§ 14-2-6 ACLA 1949; am § 6 ch 142 SLA 1972)

Effect of amendment. — The 1972 amendment, in the first sentence, deleted "subcontractor, or agent of a contractor or subcontractor, foreman or employer" following "contractor,"

deleted "§ 50 of" following "violates," substituted "\$100" for "\$50," and substituted "\$1,000" for "\$500." The amendment also added the last sentence.

**Sec. 36.05.070. Wage rates for laborers and mechanics on public contracts.** (a) The advertised specifications for a public construction contract exceeding \$2,000 to which the state or a political subdivision of the state is a party which requires or involves the employment of mechanics, laborers, or field surveyors shall contain a provision stating the minimum wages to be paid various classes of laborers, mechanics, or field surveyors.

(b) Repealed by § 17 ch 142 SLA 1972.

(c) A contract for public works in the state or a political subdivision shall contain provisions that

(1) the contractor or his subcontractors shall pay all employees unconditionally and not less than once a week;

(2) wages may not be less than those stated in the advertised specifications, regardless of the contractual relationship between the contractor or subcontractors and laborers, mechanics, or field surveyors;

(3) the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work;

(4) the state or a political subdivision shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the contractor or subcontractors the difference between

(A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and

(B) the rates of wages in fact received by laborers, mechanics or field surveyors. (§ 1 ch 52 SLA 1959; am §§ 7, 8, 17 ch 142 SLA 1972)

Cross reference.—As to wage rates on public construction, see AS 36.05.-010.

Effect of amendment. — The 1972 amendment, in subsection (a), inserted "public construction" and deleted "for the construction, altera-

tion, or repair including painting and decorating of public buildings or public works of the state or a political subdivision" formerly appearing between "state is a party" and "which requires." The amendment also repealed subsection (b) and, in

subsection (c), substituted "shall withhold" for "may withhold" near the beginning of paragraph (4).

Similarity to Davis-Bacon Act. — This section, AS 36.05.080—36.05.110, and former AS 36.05.120 were copied almost word for word from the federal act on the same subject, the Davis-Bacon Act (40 USC 276a et seq.), 1961 Op. Att'y Gen., No. 17.

"Construction" has no reference to a contract for professional architec-

tural or engineering services. 1961 Op. Att'y Gen., No. 17.

Contracts between the state or any of its political subdivisions for professional architectural services or preliminary engineering services for work preliminary to the actual construction of public works projects do not come within the scope of this section, AS 36.05.080—36.05.110, and former AS 36.05.120. 1961 Op. Att'y Gen., No. 17.

**Sec. 36.05.080. Failure to pay agreed wages.** Every contract within the scope of § 70 of this chapter shall contain a provision that if it is found that a laborer, mechanic, or field surveyor employed by the contractor or subcontractor has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the state or its political subdivision may, by written notice to the contractor, terminate his right to proceed with the work or the part of the work for which there is a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties are liable to the state or its political subdivision for excess costs for completing the work. (§ 2 ch 52 SLA 1959)

*REPEALED  
REENACTED*

**Sec. 36.05.090. Payment of wages from withheld payments and listing contractors who violate contracts.** (a) The state disbursing officer in the case of a state contract and the local fiscal officer in the case of a political subdivision contract shall pay directly to laborers, mechanics or field surveyors from accrued payments withheld under the terms of the contract the wages due laborers, mechanics or field surveyors under § 70 of this chapter.

(b) The state disbursing officer or the local fiscal officer shall distribute to all departments of the state government and to all political subdivisions of the state a list giving the names of persons who have disregarded their obligations to employees. No person appearing on this list and no firm, corporation, partnership or association in which the person has an interest may work as a contractor or subcontractor on a public construction contract for the state or a political subdivision of the state until three years after the date of publication of the list. If the accrued payments withheld under the contract are insufficient to reimburse all the laborers, mechanics, or field surveyors with respect to whom there has been a failure to pay the wages required under § 70 of this chapter, the laborers, mechanics or field surveyors have the right of action or intervention or both against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in

construction, repair, preliminary surveys, engineering studies, consulting, maintenance work or any other retention of services necessary to complete any given project, 95 per cent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 per cent residents shall be employed where they are available and qualified. In all cases of public works projects, preference shall be given to residents. (§ 1a ch 177 SLA 1960; am § 11 ch 142 SLA 1972; am § 1 ch 208 SLA 1972)

Effect of amendments. — The first 1972 amendment substituted "or a political subdivision of the state" for "boroughs, cities and school districts" in the first sentence.

first sentence, substituted "consulting" for "or" and inserted "or any other retention of services necessary to complete any given project."

The second 1972 amendment, in the Am. Jur. reference.—43 Am. Jur., Public Works and Contracts, § 123.

Sec. 36.10.020. Apprentices. Apprentices must be properly registered apprentices in their particular craft. (§ 1c ch 177 SLA 1960)

Sec. 36.10.030. Reduction of work force. When a work force is reduced, resident workers, except supervisory personnel, shall be terminated last. (§ 1d ch 177 SLA 1960)

Sec. 36.10.040. Application to contracts involving federal funds. In a contract involving expenditure of federal aid funds, this chapter may not be enforced in a manner that conflicts with federal statutes giving preference to veterans or prohibiting other preferences or discriminations among United States citizens. (§ 2 ch 177 SLA 1960)

Am. Jur. reference.—43 Am. Jur., Public Works and Contracts, § 4.

Sec. 36.10.050. Employment of aliens.

Repealed by § 17 ch 142 SLA 1972.

Editor's note.—The repealed section derived from § 3, ch. 177, SLA 1960. Am. Jur. reference.—43 Am. Jur., Public Works and Contracts, §§ 17, 51, 52, 123.

Sec. 36.10.060. Employment of prisoners. No prisoner currently serving sentence in a penal or correctional institution may be employed on a public works project subject to the provisions of this chapter. (§ 4 ch 177 SLA 1960)

Sec. 36.10.070. Unavailability of resident workers. (a) When resident labor is unavailable, the contractor shall inform the commissioner of labor of the number of additional workers needed. The commissioner of labor shall investigate the facts and designate the

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in outdoor tasks related to the operation of finding and delineating contour, dimensions, position, topography, as of any part of the earth's surface, by preparation of measured plan or description of any area or other portion of country or of road or line through any area or other portion of country ;

(3) "public construction" or "public works" means the on-site erection, rehabilitation, alteration, extension or repair, including painting or redecorating buildings, highways or other improvements to real property under contract for the state or a political subdivision of the state;

(4) "qualified" means one who, except for apprentices, is a journeyman mechanic in his particular trade;

(5) "resident" means a person who maintains his domicile in the state: domicile is the true and permanent home of a person from which he has no present intention of removing and to which he intends to return whenever he is away ;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision ;

(7) "wages" includes fringe benefits. (§ 16 ch 142 SLA 1972)

# Alaska Statutes

## Title 36. Public Contracts.

### Chapter

25. Contractors' Bonds (§§ 36.25.010 — 36.25.025)

### Chapter 05. Wages and Hours of Labor.

#### Section

- 10. Wage rates on public construction
- 70. Wage rates for laborers and mechanics on public contracts

#### NOTES TO DECISIONS

AS 36.05.010 — 36.05.110 was modelled after the federal Davis-Bacon Act. 40 U.S.C. § 276a et seq. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

**Sec. 36.05.010. Wage rates on public construction.** A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages for each pay period is that contained in the latest determination of prevailing rate of wages issued by the Department of Labor before the end of the pay period. (§ 14-2-1 ACLA 1949; am § 1 ch 142 SLA 1972; am § 1 ch 89 SLA 1976)

**Cross references.** — As to city's duty to publish applicable minimum wage schedules as part of its bid specifications, see note to AS 36.05.070.

**Effect of amendments.** — The 1976 amendment inserted "current" in the first sentence and added the present second sentence.

**Sec. 36.05.030. Authority.**

#### NOTES TO DECISIONS

Applied in Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

Sec. 36.05.035. Notification of contract awards.

NOTES TO DECISIONS

Since 1972 state has burden of verifying public construction contract bonds. — For cases arising after 1972, there is no doubt about who has the duty to check the validity of public construction contract bonds, since in 1972 this section was enacted, placing the burden of verifying such bonds on the state or its political subdivision. Arctic Contractors v.

State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

For case involving a dispute arising out of a 1962 construction contract holding that the state had the burden of verifying payment and performance bonds, see Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Sec. 36.05.070. Wage rates for laborers and mechanics on public contracts. (a) The advertised specifications for a public construction contract exceeding \$2,000 to which the state or a political subdivision of the state is a party which requires or involves the employment of mechanics, laborers, or field surveyors shall contain a provision stating the minimum wages to be paid various classes of laborers, mechanics, or field surveyors and that the rate of wages shall be adjusted to the wage rate for each pay period applicable under AS 36.05.010.

(am § 2 ch 89 SLA 1976)

Effect of amendments. — The 1976 amendment added the language beginning "and that the rate of wages shall be adjusted" to the end of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

NOTES TO DECISIONS

Similarity to Davis-Bacon Act.

The wording of this section is based upon the federal Davis-Bacon Act, 40 U.S.C. § 276(a). Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

Construction of section involves balancing of hardships. — At least part of the intent of this section is to inform bidders of the minimum wage rates. On the other hand, the proper construction of this section, as it relates to the duties of the government entity, involves a balancing of hardships. There does not seem to be any special expertise needed or difficulty involved in requiring the contractor to determine the applicable minimum wage schedules. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

The city has a statutory duty to publish as part of its bid specifications

the applicable minimum wage schedules. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

The language of subsection (a) that "the advertised specifications . . . shall contain a provision" stating the minimum wages to be paid is mandatory, not directory. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

When such duty is met. — A city as the contracting government entity meets the requirement of subsection (a) by appending to its invitation to bid the most recent schedule of prevailing wages as published by the Department of Labor. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

Where neither the city or the contractor had knowledge of a change in the wage

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(1) the contractor is, and for two years immediately preceding the award of the contract has been, a licensed contractor having his or its principal office in the state;

(2) the contractor certifies that he has not defaulted on a contract awarded to him during the period of three years preceding the award of a contract for which a bid is submitted;

(3) the contractor submits a financial statement, prepared within a period of nine months preceding the submission of a bid for the contract and certified by a public accountant or a certified public accountant licensed under AS 08.04.010 — 08.04.690, demonstrating that the contractor has a net worth of not less than 20 per cent of the amount of the contract for which a bid is submitted; and

(4) the total amount of all contracts which the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under (3) of this subsection by more than seven times. (§ 1 ch 81 SLA 1978)

**Cross references.** — As to limitation of home rule power regarding municipal exemption on contractor bond requirements, see AS 29.13.100(38). As to require-

ment that a municipality use ordinances to exempt contractors from compliance with general requirements relating to certain bonds, see AS 29.48.130(a)(12).

## Chapter 95. General Provisions.

### Section

#### 10. Definitions

**Sec. 36.95.010. Definitions.** In AS 36.05.010 — 36.25.025 unless the context requires otherwise

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161;

(am § 3 ch 89 SLA 1976; am § 16 ch 147 SLA 1978)

**Revisor's notes.** — AS 36.95.010(3) has been corrected by the reinsertion of the word "of" before and after the word "buildings" to return to the original wording of sec. 16, ch. 142, SLA 1972.

**Effect of amendments.** — The 1976 amendment substituted "subcontractors performing work necessary to facilitate public construction" for "the

subcontractor" in paragraph (1) and inserted "field surveying" in paragraph (3).

The 1978 amendment, in paragraph (3) deleted "or" following "for the state" and added "or a regional school board with respect to an educational facility under AS 14.08.161" to the end.

§ 23.10.055 LABOR AND WORKERS' COMPENSATION § 23.10.060

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of the Equal Pay for Women Act. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos.

2564, 2565), 575 P.2d 760 (1978), modified on rehearing on other grounds, 692 P.2d 1250 (1979).

**Sec. 23.10.055. Exemptions.** Sections 23.10.050 — 23.10.150 do not apply to

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities; (am § 2 ch 124 SLA 1978)

**Editor's notes.** — As the rest of the section was not affected by the amendment, it is not set out.

**Cross references.** — As to gratuity for institutional work by prisoners, see § 33.30.225.

**Effect of amendments.** — The 1978 amendment added "including prisoners not on furlough detained or confined in

prison facilities" to the end of paragraph (5).

**Editor's notes.** — Section 3, ch. 124, SLA 1978, provides: "No position in the classified service existing on the effective date of this Act may be abolished in favor of employing a prisoner to carry out the responsibilities of the position."

NOTES TO DECISIONS

**Employees covered by and exempt from Fair Labor Standards Act.** — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No.

2245 (File Nos. 3979, 4139), 621 P.2d 850 (1980).

**Prisoners excluded from operation of chapter.** — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

**Applied in Alaska Int'l Indus., Inc. v. Musarra**, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

**Sec. 23.10.060. Payment for overtime.** No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment. This section does not apply with respect to

(2) Repealed by § 33 ch 127 SLA 1974.

(17) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(18) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the Department of Labor; and

(B) the Department of Labor has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime.  
(am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980)

**Effect of amendments.** — The 1980 amendment added paragraphs (17) and (18).

**Legislative history reports.** — For report on ch. 127, SLA 1974 (SCSHB 817 am 3), see 1974 House Journal, p. 657.

As the rest of the section was not affected by the amendments, it is not set out.

NOTES TO DECISIONS

**Article not void.** — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Or preempted.** — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently,

comes within the express saving clause so as not to be preempted by the federal law. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Definition of "supervisory"** in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's work week, is reasonable and not arbitrary. *Alaska Int'l Indus., Inc. v. Musarra* Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

**Sec. 23.10.065. Minimum wages.** An employer shall pay to each of his employees wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. No employer may apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974)

**Effect of amendments.** — The 1974 amendment added the language beginning "or \$2.60 an hour" to the end of the first

sentence and added the second and third sentences.

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FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No.  
 Title "An Act relating to payment of prevailing wages . . ."  
 Requested by Rules Committee Date 1/6/82

II. FISCAL DETAIL

Agency Affected Labor  
 Program Category Affected Public Protection  
 BRU, Program, Or Subprogram(s) Affected Labor Standards & Safety  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

IV. DATE January 6, 1982 PREPARED BY Judy Knight, Special Assistant  
 AGENCY Labor  
 Original: Legislative Finance PHONE 465-2700  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

*Judy Knight*

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# Alaska State Legislature

*Senate*

*Committee on Finance*

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

## MEMORANDUM

TO: Senator Ed Dankworth

FROM: Pete Jeans 

RE: Home Improvement & Energy Conservation  
Loan Program (SB 729)

DATE: February 9, 1982

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As per your request, attached is supporting information for this program.

PJ;lal