ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

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content of the Model Act. When these developments in the law were viewed along with the very significant changes within the population and economy of Alaska since 1957, the Code Revision Commission was of the view that the existing ABCA was deserving of thorough study.

The Goals of the Commission and Some Basic Value Judgments:

The goal of the Commission was to design a statute which would assist individuals in appreciating the obligations associated with business in the corporate form as well as the choices which should be confronted at the outset of corporate organization. In this respect the Model Act and current Alaska law were found quite deficient. Closely related topics are scattered throughout the statute with the consequence that individuals may never appreciate the "big picture." The rights of shareholders, the duties of officers and directors, the circumstances under which corporate assets may be distributed to shareholders, and the obligations to report to the state on aspects of corporate activity are set forth without consistency or order.

An initial value judgment concerns the degree to which the statute ought to be biased toward a strong board of directors or in the direction of maximum accountability to the shareholders. Delaware provides an example of a management oriented statute while California stands at the opposite extreme. Ultimately,

the Commission decided to draft a statute which had no internal bias. Hence, it was decided that the new Alaska act should impose the fewest possible restrictions while clearly articulating the choices Alaskans could make with respect to their individual desires. Thus, under the proposed act it is possible to have a corporation designed with a strong board of directors who are relatively insulated from accountability to shareholders. However, it is equally possible to organize a corporation under the proposed Alaska Corporations Code (ACC) which would produce the opposite result.

To facilitate making these choices, the format of the new statute divides the code into thirteen articles. The scheme takes a corporation from organization through dissolution. With minor adjustments, this framework is borrowed from the New York Business Corporations Law which has been widely praised by members of the business community, accountants, lawyers, and government officials.

Some of the More Important Substantive Changes:

As will be elaborated in the article-by-article analysis which follows, the Commission draft works some important changes in Alaska law. Many of these changes are adapted from provisions of the 1977 California General Corporation Law, the New York Business Corporations Law, and the Delaware code. Others have been originated by the Commission in collaboration

with its consultant, Daniel Wm. Fessler, Professor of Law, University of California, Davis.

The most striking major revision has been the elimination of the concepts of "earned surplus" and other concepts of "legal accounting" and their replacement with a far simpler test for determining when a corporation may make a distribution of cash or other property to its shareholders. The earned surplus test has proven an insufficient protection to business creditors and the holders of common stock. It has further proven unworkable when viewed by accountants, for it relied upon principles which either were never meaningful to that profession or which were long ago abandoned in favor of more useful tools. In this attempt to reform the language of the law and lawyers so that they can understand and be understood by the business community and accounting profession, the proposed Alaska law has been heavily influenced by the recent California act.

For the first time since statehood, Alaska will have a comprehensive statutory regulation of the shareholder's derivative suit. Under the law as it now stands, a rule of the Supreme Court, modeled upon the federal rule, is the only attempt to distinguish the meritorious shareholder action designed to remedy wrongs done to the corporation by its officers or directors from the "strike suit" brought with the hope that by vexing incumbent management the plaintiff will be "bought off" with an out of court settlement.

The use of the corporate form to victimize small unsecured creditors (including employees) will be far more difficult if the legislature enacts the Commissions's draft.

A uniform procedure for reporting to the state will be adopted, eliminating a source of significant past confusion. The articles dealing with formation are designed to be used much like a cookbook, with step by step stages focusing the attention of incorporators on the basic decisions which they will need to make.

The sum of all of these forms is a Commission draft which combines the best of corporate law as it has evolved in numerous jurisdictions. Notwithstanding these influences, the Commission has insisted that the physical and economic conditions of Alaska be kept in sharp focus, and that government intervention be kept at the minimum level necessary to protect citizens from those who would abuse the corporate form. With the law formulated to say what it means and mean what it says, it is the conviction of the Commission that the occasions for litigation have been significantly reduced.

GENERAL PROVISIONS.

A foundation for the ACC is created by the provisions of Articles 12 and 13. The ACC is made applicable to all business corporations formed under Alaska law since

statehood, and to foreign corporations authorized to do or doing business in Alaska. Rules of construction, definitions, and ground rules for voting shares and preparing and processing documents are set forth; these are basic materials upon which the remainder of the ACC relies. Further provisions of Article 13 allow for waiver of notice requirements, reserve power to the Legislature to amend the ACC at will (Section 10.06.965), declare severability (Section 10.06.963), and make special provisions for Native Corporations.

The applications section (10.06.955) cautiously follows a trend of increased regulation of foreign corporations. The general contours of the regulation imposed by prior law have been continued in Article 10. Additionally, Section 10.06.015 (the defense of ultra vires), Section 10.06.020 (limitations on authority of corporate agents), Section 10.06.155 (non-residents with controlling interests), Section 10.06.233 (regarding shareholder inspection of bylaws), Section 10.06.433 (annual reports to shareholders), Section 10.06.435 (derivative suits), Section 10.06.450(d) (director's absolute right of inspection), and Section 10.06.488 (secondary liability of officers and directors) are applicable to foreign corporations in Alaska. The Commission draft does not follow New York and California, in attempting plenary regulation of foreign entities which are

deemed to be "pseudo-foreign" corporations.

Extensive definitions are adopted to preclude ambiguity and to give precise meanings to terms used throughout the ACC.

ARTICLE 1: CORPORATE PURPOSE AND POWERS.

Existing law on the purposes and powers of corporations is continued with minor modifications in wording and coverage. Section 10.06.015 on the defense of ultra vires also represents a continuation of current law. The Commission's goal was to recast basic concepts in more precise language. Section 10.06.020 is a new provision which covers the power of corporate agents to bind the corporation and the capacity of the articles, bylaws, board resolutions or shareholder agreements to limit the authority of corporate agents in dealings with third parties.

ARTICLE 2: DOMESTIC CORPORATIONS.

The ACC provisions on corporate name, registered agent, registered office, and service of process are largely a continuation of existing law. A corporate name may be reserved prior to incorporation and must be registered annually by corporations desiring exclusive rights to the use of a name. A corporation must maintain a registered office and a registered agent in Alaska. Nonresidents with

controlling interests in either domestic or foreign corporations also must designate an agent within Alaska for service of process. Change of registered office or agent and the resignation of a registered agent are governed by Sections 10.06.165 and .170.

Section 10.06.160 imposes a duty on the Commissioner of Commerce and Economic Development to make available a list of all domestic corporations and authorized foreign corporations, including their names and addresses. A requirement of weekly updates guarantees that this list will provide current and reliable information to interested citizens. Section 10.06.175 details the procedure for service of process. Changes in this section include placing the burden of substitute service on the serving party rather than the commissioner, and requiring the serving party to make reasonable inquiry to locate a corporate defendant.

ARTICLE 3: FORMATION OF CORPORATIONS.

Several important changes are proposed in rules guiding the formation of corporations. Only natural persons 19 or older may act as incorporators.

Section 10.06.218 fixes the issuance of the certificate of incorporation as the bright line event commencing corporate existence and extending limited liability to those doing business in the corporate form. This section will

preclude vexing litigation respecting the status of enterprisers who have not obtained a certificate of incorporation but who have nonetheless attempted business in a corporate guise. Unless released by the terms of a written agreement, such enterprisers are personally liable to all third parties (Section 10.06.220). The common law doctrines of de jure compliance, de facto corporations, and corporations by estoppel are expressly abolished by Section 10.06.218.

Two provisions govern the contents of the articles of incorporation. Section 10.06.208 lists those matters which must be included in the original articles. Section 10.06.210 sets forth matters which may optionally be included. This section is vital in molding a corporation's legal character, for if the Section 10.06.210 issues are not decided by the articles they may not be implemented by the bylaws, board resolution, shareholder agreement, or otherwise. In combination, these sections compel those contemplating formation of a corporation to make basic decisions respecting its structure and the rights of shareholders. A further advantage is that a potential investor need look only to the articles to determine the basic structure of a corporate entity.

Naming directors in the original articles is no longer required. In recognition of the possibility that incorpor-

ators will be in control of the entity until the organization meeting, Section 10.06.225 specifies the powers of incorporators. These powers include adopting bylaws and electing directors but do not include transacting business or electing officers. An organizational meeting is required after the issuance of the certificate of incorporation, at which directors are to be elected (if none have been named in the articles), officers are to be appointed, and other business may be transacted.

Section 10.06.228 empowers both the board and the shareholders to adopt, amend, or repeal bylaws. The articles may remove this power from the board, but shareholders' power of amendment is mandatory under the ACC. Section 10.06.230 requires that the bylaws establish the number of directors if this has not been accomplished by the articles. A suggested list of matters which may be covered in the bylaws is also included in Section 10.06.230. Section 10.06.233 requires that bylaws be kept for shareholder inspection at the corporation's principal office.

ARTICLE 4: CORPORATE FINANCE.

The new provisions on corporate finance represent a significant departure from existing law. It is proposed that the former system limiting a corporation's right to pay

dividends and repurchase or redeem shares be replaced by a "ratio of assets to surplus" test long recommended by accountants as simpler and more protective of creditor and preferred shareholder rights. The provisions governing financing of a corporate venture through sale of securities (Sections 10.06.305 - .355) are largely continued from current law.

Under the Model Act and the current ABCA, elaborate provisions limit the circumstances under which a corporation may distribute its assets to shareholders. The weakness of this system is that it employs concepts unfamiliar to accountants and the business community. It has also become so riddled with exceptions as to impose little pragmatic check on individuals determined to abuse corporate creditors or holders of senior shares. This "earned surplus" test, and its allied concepts of stated capital and par value, have been swept aside in the Comission's draft of the ACC. While the new code continues to prohibit a distribution or the payment of a dividend that would render the corporation unable to meet its obligations as they mature (a condition of equitable insolvency), the balance of Article 4 is built around a simple concept relating corporate assets to liabilities.

Under Section 10.06.358, a distribution of assets to shareholders is permissible if either of two tests are met.

If the distribution can be made out of "retained earnings" (previously undistributed profits), the code has no objection and the decision is left to the business judgment of directors. If retained earnings are insufficient to fund the distribution, it still may be made provided that in the wake of the payment, the assets of the corporation are at least equal to 1.25 times liabilities and its current assets are at least equal to current liabilities. Sections 10.06.363 and .368 give basic protection to liquidation and dividend preferences with tests similar in nature to those of Section 10.06.358. Sections 10.06.368 (for redemption of shares of a deceased shareholder) and .370 (for regulated investment companies) are limited exceptions to these restraints.

Section 10.06.373 forbids shares of one class to be distributed as dividends to the shareholders of another class without the consent of the holders of the distributed class. Section 10.06.375 permits further prohibitions on the distribution of assets to be placed in the articles, bylaws, indentures or other agreements. Section 10.06.380 requires identification of dividends other than those chargeable to retained earnings in order to set the stage for shareholder's liability for illicit distributions. Section 10.06.383 makes the limitations of Article 4 inapplicable in a winding up and dissolution proceeding.

Section 10.06.385 specifies the procedure for redemption of shares; Section 10.06.388 provides for cancellation of redeemed or repurchased shares. Section 10.06.390 continues the policy of former law in permitting the board to capitalize all or part of the corporation's retained earnings.

ARTICLE 5: SHAREHOLDERS.

While numerous changes in the rights of shareholders are contained in the Commission's draft, the overall statutory framework continues prior law. Section 10.06.405 permits any shareholder to obtain a summary judicial order calling an annual meeting if the directors fail to convene such a meeting within thirteen months. Recognizing the communications problems frequently encountered in Alaska, the minimum period for notice of shareholder meetings has been increased to twenty days. The twenty day period also applies to the requirement of Section 10.06.413 that the shareholder list be made available for inspection. Once a quorum of shareholders has been obtained, Section 10.06.415(b) precludes a disgruntled minority from frustrating the other shareholders by staging a "walk out."

Protection of voting rights is firmly established under the Commission's draft. Proxies are presumptively limited to eleven months and their creation and revocation is

regulated by Section 10.06.418. Cumulative voting of shares in the election of directors is the norm unless eliminated by the articles. Under Section 10.06.423 shareholders are permitted to act informally without a meeting. Voting trusts can no longer be secret. Other shareholder agreements affecting voting rights are regulated by Section 10.06.425 and the common law. Preemptive rights are continued and regulated under Section 10.06.428.

Sections 10.06.430 and .433 greatly expand the circumstances under which shareholders can obtain information concerning the operation of the company by the directors and officers. To facilitate access to books and records, durational and numerical standing requirements have been eliminated so that any shareholder may inspect. To prevent this right from being used to harass management, a proper purpose for inspection is now required. Section 10.06.433 mandates that management provide shareholders an annual report. This important feature is supplemented by Section 10.06.433(c) which permits a sharholder to obtain recent financial reports upon demand.

Section 10.06.435 is the most comprehensive derivative suit statute in the United States. The present code contains no provision on this subject. In addition to protecting defendants from nuisance suits, Section 10.06.435 makes it impossible for a backdoor settlement to deprive the

corporation of the fruits of a recovery. Recent holdings in some jurisdictions that independent directors should be permitted to obtain the dismissal of a shareholder's derivative suit (on the theory that its prosecution is not, in the director's business judgment, in the best interests of the entity) are rejected by Section 10.06.435.

SECTION 6: DIRECTORS AND OFFICERS.

The basic framework of a potentially strong board acting through officers and agents is maintained, but the duties, liabilities and privileges of management have been altered in numerous particulars.

Section 10.06.450 gathers into one place basic provisions on the structure of corporate management. Four major issues are settled: (1) the exercise and delegation of board functions; (2) the standard for the duty of care which must be observed by directors, and the right of directors to rely upon certain information, opinions, reports or statements from officers, experts, or committees of the board on which they do not serve; (3) the absolute right of inspection of every director as to all corporate books, records and documents of every kind;and, (4) the consequences of a director's failure to dissent as to any action taken at a meeting at which such director was present.

Section 10.06.453 continues to require a minimum of three directors except in corporations with only one or two shareholders. The number of positions on the board of directors of a corporation must be fixed in the articles or in a shareholder adopted bylaw. Special representation may be given to a class of shareholders by making that class competent to elect one or more representatives to the board. Directors serve one year terms unless the total number of the board is nine or more in which case the board may be "classified" with directors serving staggered three year terms.

Under the ACC the majority of shares may remove incumbent directors at any time for any reason. This provision reflects the Commission's belief that the directors should at all times be satisfactory to the majority share interest. Minority interests may bring judicial proceedings to remove any director upon proof that the defendant is abusing the standards established under Section 10.06.463. Unless they result from removal, vacacies on the board may be filled by either the shareholders or the directors remaining in office.

The desire to achieve managerial efficiency is balanced against the goal of insuring effective minority representation in the ACC's provisions on delegation of board authority and function. An important safeguard is the provision

that delegation of functions does not relieve directo[illegible] their duty of care.

Section 10.06.475 recognizes that both distance and adverse travel conditions may sometimes hamper the ability of directors to meet formally. The ACC permits both the board and board committees to conduct meetings via communications equipment allowing simultaneous contact of all participants. If all of the members sign written consents, board action may be taken without any formal meeting.

Conflicts of interest are defined in two distinct and classical instances: where the contract or other transaction is between the corporation and one or more of its directors; and, where the contract or transaction is between two corporations sharing a common director or directors.

Section 10.06.483 regulates the number, kind, and tenure of corporate officers. This section clarifies the status of corporate officers and provides machinery whereby persons dealing with such officers may insure that they gain the undisputed liability of the corporate entity. For the first time a duty of care is articulated for corporate officers, to assist both shareholders and courts in evaluating their performance.

Section 10.06.488 is a notable feature of the proposed code. For the first time, a carefully defined class of

traditionally abused creditors may proceed against corporate directors and officers if the corporation defaults on its obligations. This secondary liability is designed to make management responsible to creditors. It is important to note that this liability may be eliminated by written contract.

Section 10.06.490 continues with minor variation the existing law on the indemnification of directors, officers and employees on account of their role in the corporation.

ARTICLE 7: AMENDMENTS AND CHANGES.

Present law on amending the articles of incorporation is continued with few alterations. The process has been given flexibility by allowing either the board of the shareholders to initiate amendment. Unless a greater majority is required by the articles, an absolute majority of the shares may authorize an amendment instead of the 2/3 majority required by existing law. In addition to establishing "supermajority" requirements, the articles may provide that shares vote by "classes" in amending the articles.

Sections 10.06.522 and .526 adopt a recent Model Act innovation which permits amendment of the articles by judicial order in bankruptcy proceedings. This procedure eliminates potential federal tax liability.

ARTICLE 8: ORGANIC CHANGE.

Sections 10.06.530 and .542 define and set up uniform procedures for proposal, approval and implementation of three classical organic changes. In the event of either a merger or a consolidation, one or both of the participating conrporations formally ceases to exist. In the course of a share exchange, there is no formal supression of a constituent corporation but one of the entities becomes a wholly owned subsidiary of the other. In each instance, the scheme of the ACC is to place responsibility for framing a proposal with the boards of the participating corporations. Approval of the shareholders is then required and obtained under Sections 10.06.544 and .546.

Due to the inherently different interests involved, the merger of a subsidiary corporation into the parent is governed by a separate section.

The use of mergers, consolidations or share exchanges to "freeze out" minority share interests will violate a statutory presumption created by Section 10.06.542.

The sale, other than in the regular course of business, of all or subsantially all of the corporate assets is treated as another type of organic change by the ACC.

The organization and substance of the provisions on the rights of shareholders who dissent from an organic change and who wish to have the corporation buy out their interest

have been adopted from the latest version of the Model Act.

ARTICLE 9: DISSOLUTION.

Dissolution is to a corporate entity what death is to a natural person. As with the provisions respecting articles bylaws, amendments, and organic change, the protection of shareholders and corporate creditors is addressed in the ACC sections governing dissolution.

Article 9 distinguishes between two types of dissolution. is the key, the dissolution is said to be "voluntary." If the life of the corporation is to be taken as a consequence of gross abuse of a minority or because of persistent and serious flaunting of the state's regulation, then corporate termination is "involuntary."

Voluntary dissolution has been removed from the ambit of the board; it now rests entirely with the shareholders. A two-thirds majority is still required to make an election to dissolve. A revocation of the election is permitted if made prior to the commencement of winding up proceedings. Section 10.06.618 continues the policy of current law which allows the corporation to petition for judicial supervision of the winding up; this option has been expanded by permitting shareholders and creditors to petition for such supervision as well.

In addition to being the ultimate sanction against the

gross oppression or abuse of minority interests and as a release in the event of deadlock at the shareholder or director level, involuntary dissolution may be sought by the commissioner as a means of enforcing compliance with a variety of reporting and fee payment requirements, or to protect the state against gross abuse of corporate powers.

An innovation in the law regarding shareholders' suits for involuntary dissolution is Section 10.06.638's provision for a judicially supervised purchase of the plaintiffs' shares by shareholders desiring to preserve the corporation. Concern for the fate of a corporation which may be an otherwise viable employer and competitor in the marketplace is reflected in Section 10.06.640's machinery for appointment of a provisional director to resolve deadlock at the board level.

In the wake of any disslution the winding up process follows the presumption that a more advantageous disposition of the corporate assets can be accomplished by the existing management (officers and directors) than by the "liquidating receiver" assigned this task under current law. This presumption is subject to judicial alteration in appropriate cases. Receivers may be appointed even prior to winding up under Section 10.06.643 if the corporate assets are in danger of being wasted.

The powers of the court in a dissolution and the

authority and duties of the board during winding up are specified in detail. A system for settling corporate obligations in one court proceeding provides for judicial economy. Further provisions govern recovery of improper distributions to shareholders and the continued existence of the dissolved corporation for purposes of proceedings and actions not terminated prior to issuance of the certificate of dissolution.

ARTICLE 10: FOREIGN CORPORATIONS.

The most important alteration in the treatment of corporations organized under the laws of another state which seek to do business in Alaska is the imposition of many of the same standards of fairness and disclosure which apply to domestic corporations. A foreign corporation doing business in Alaska must register with the commissioner; notify him of changes in its name, purposes, or articles; and formally withdraw upon terminating business in the state. Each foreign corporation must maintain in Alaska a registered agent for service of process and a registered office. Abuse of these requirements will result in revocation of the "certificate of authority" to transact business in Alaska.

ARTICLE 11: REPORTS, FEES, AND PENALTIES.

The provisions on reporting, fees, and relations with

the commissioner in Article 11 reflect the legislature's comprehensive amendment of the ABCA in 1980.

TRANSITION PROVISIONS.

The adoption of major substantive changes in corporate law requires provisions to insure a non-disruptive transition. This is accomplished by establishing an effective date which draws the line between the applicability of prior law and that of the ACC. See, *Sec. 3.

Effect of amendments. — The first, second, fourth, sixth and seventh 1980 amendments all substituted "Except as otherwise provided in this title" for "All" at the beginning of subsection (a).

The third and fifth 1980 amendments both substituted "Except as otherwise provided by statute" for "All" at the beginning of subsection (a).

The third and fifth 1980 amendments were superseded by the sixth and seventh 1980 amendments, and therefore, subsection (a) is set out as it appears in the later amendments.

Chapter 02. Miscellaneous Provisions.

Sec. 08.02.020. Limitation of liability for members of licensing boards.

Cross references. — As to constitutionality of ch. 102, SLA 1976, see notes to AS 09.55.536 and Alas. Const., art. II, § 14.

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards.

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Repealed by § 3 ch 36 SLA 1980.
(2) Repealed by § 3 ch 40 SLA 1980.
(3) Repealed by § 3 ch 87 SLA 1980.
(4) Repealed by § 3 ch 74 SLA 1979.
(5) Repealed by § 3 ch 38 SLA 1980.
(6) Repealed by § 3 ch 37 SLA 1980.
(7) Repealed by § 3 ch 38 SLA 1980.
(8) Repealed by § 3 ch 41 SLA 1980.
(9) Repealed by § 3 ch 67 SLA 1980.
(10) Repealed by § 2 ch 43 SLA 1980.
(11) Repealed by § 3 ch 42 SLA 1980.

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Repealed by § 15 ch 82 SLA 1980.
(2) Repealed by § 5 ch 159 SLA 1980.
(3) Collection Agency Board (AS 08.24.011);
(4) Repealed by § 5 ch 159 SLA 1980.
(5) Repealed by § 11 ch 71 SLA 1980.
(6) Repealed by § 7 ch 72 SLA 1980.
(7) Repealed by § 2 ch 53 SLA 1981.
(8) Repealed by § 8 ch 143 SLA 1980.

(9) Repealed by § 42 ch 167 SLA 1980.

(10) Repealed by § 2 ch 153 SLA 1980.

(11) Repealed by § 13 ch 52 SLA 1981.

(c) The following boards have the termination date provided by this subsection:

(1) Board of Nursing (AS 08.68.010) — June 30, 1983.

(2) Board of Chiropractic Examiners (AS 08.20.010) — June 30, 1984.

(3) Board of Examiners in Optometry (AS 08.72.010) — June 30, 1984.

(4) Board of Pharmacy (AS 08.80.010) — June 30, 1984.

(5) Board of Dispensing Opticians (AS 08.71.010) — June 30, 1985.

(6) Board of Dental Examiners (AS 08.36.010) — June 30, 1982.

(7) Board of Veterinary Examiners (AS 08.98.010) — June 30, 1985.

(8) State Physical Therapy Board (AS 08.84.010) — June 30, 1986.

(9) Board of Nursing Home Administrators (AS 08.70.010) — June 30, 1986.

(10) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010) — June 30, 1982.

(11) State Medical Board (AS 08.64.010) — June 30, 1983.

(12) Board of Marine Pilots (AS 08.62.010) — June 30, 1983.

(13) Board of Welding Examiners (AS 08.99.010) — June 30, 1981.

(14) Board of Electrical Examiners (AS 08.40.010) — June 30, 1982.

(15) State Board of Registration for Architects, Engineers, and Land Surveyors (AS 08.48.011) — June 30, 1984.

(16) Board of Barbers and Hairdressers (AS 08.13.010) — June 30, 1984.

(17) Board of Public Accountancy (AS 08.04.010) — June 30, 1984.

(18) Real Estate Commission (AS 08.88.011) — June 30, 1982.

(19) Board of Governors of the Alaska Bar Association (AS 08.08.040) — June 30, 1985.

(20) Guide Licensing and Control Board (AS 08.54.010) — June 30, 1982.

(d) Repealed by § 3 ch 74 SLA 1979.

(e) Repealed by § 3 ch 74 SLA 1979. (§ 2 ch 149 SLA 1977; am §§ 1, 3 ch 74 SLA 1979; am §§ 1, 5 ch 36 SLA 1980; am §§ 1, 3 ch 37 SLA 1980; am §§ 1, 3 ch 38 SLA 1980; and §§ 1, 3 ch 39 SLA 1980; am §§ 1, 3 ch 40 SLA 1980; am §§ 1, 3 ch 41 SLA 1980; am §§ 1, 3 ch 42 SLA 1980; am §§ 1, 2 ch 43 SLA 1980; am §§ 1, 3 ch 67 SLA 1980; am §§ 10, 11 ch 71 SLA 1980; am §§ 6, 7 ch 72 SLA 1980; am §§ 2, 15 ch 82 SLA 1980; am §§ 1, 3 ch 38 SLA 1980; am §§ 1, 3 ch 39 SLA 1980; am §§ 1, 2 ch 153 SLA 1980; am §§ 2, 5 ch 159 SLA 1980; am §§ 41, 42 ch 167 SLA 1980; am §§ 1, 13 ch 52 SLA 1981; am §§ 1, 2 ch 53 SLA 1981)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 874 "An Act continuing the existence
Title of the Board of Electrical Examiners; and providing for an effective date."
Requested by Senate Labor & Commerce Committee Date 3-25-82

II. FISCAL DETAIL
Agency Affected Department of Commerce & Economic Development
Program Category Affected Public Protection
BRU, Program, Or Subprogram(s) Affected Regulation & Licensing of Professions
(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				

FUNDING (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		0				
PART TIME						
TEMPORARY						

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

The Board of Electrical Examiners has been funded in the budget request for FY'83.

IV. DATE April 2, 1982 PREPARED BY Marjorie Odland
AGENCY Division of Occupational Licensing
PHONE 465-2535

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

SB

883

ALASKA CONSUMER ADVOCACY PROGRAM

P.O. Box 1093 Anchorage, Alaska 99510 272-6355

May 2, 1982

Senator Bob Mulcahy
Chairman - Senate Labor and Commerce Committee
And Members of the Senate Labor and Commerce Committee

Enclosed you will find a packet of consumer letters and copies of two motions filed by ACAP with the Alaska Public Utilities Commission, related to an existing APUC policy which requires intervenors petitioning to intervene in APUC proceedings to commit to assuming a share of hearing costs, before intervention is granted. The APUC is proposing to adopt a rule on this issue.

ACAP will be forwarding a letter of explanation of this issue Monday, May 3, 1982 to you and members of your committee, but in responding to a request by the sponsor of SB 883, which is currently assigned to your committee, wanted you to receive background information as soon as possible.

Sandy Richards
Director

A Project of the Alaska Public Interest Research Group

To: Senator Patrick Rodey

From: Sandy Richards
A.C.A.P.

April 22, 1982

To the Alaska Public Utilities Commissioners:

We are writing to you about the allocation of APUC hearing costs to ACAP (U-81-32 order #5, U-81-48 order #11). As you know, ACAP intervened in the recent GVEA rate case on the behalf of the Fairbanks Consumer Advisory Committee (FCAC). We chose to become involved in the rate hearing because we felt that the GVEA management's proposals were poorly or improperly constructed and did not reflect current changes in costs or the best interests of the GVEA membership. The information that we were able to present, including GVEA management practice, a GVEA membership use and interest profile, allocation of fuel costs, and an alternative rate design, we believe had a positive and important impact on the outcome of the hearing. We were fortunate to have the assistance and to be able to draw upon the resource of ACAP in addition to the many volunteer hours worked by our own membership.

We believe that any consumer or consumer group who can bring pertinant questions and factual data that may add significantly to the overall quality and information in a APUC hearing should be able to do so as an intervenor. As a community based organization we have been able to tap many volun-- teer resources within our community. Our work in the most recent GVEA case would have been severely handicapped without the volunteer effort and support of many people. As such we believe that it is possible for the FCAC to be capable of intervening in APUC hearing when appropriate even without the assistance of ACAP or a similar agency.

Furthermore, we believe that the APUC has the resposibility to maximize consumer and consumer group input. Commission staff because of their close utility connections and responsibilities to the Commissioners are an inadequate vehicle for sonsumer representation.

We feel that the assessment of hearing costs to ACAP in the GVEA and MEA cases sets a most dangerous precedent, which would in effect eliminate or severely restrict consumer group input in future APUC hearings. While we as a volunteer group could generate the support to present material to the Commission, it would be nearly impossible to raise funds to cover hearing costs. The probability that with each issue raised the over all costs and

"our share" of the hearing costs would increase could restrict our ability to raise important issues.

We urge you to avoid setting this precedent and to not assess any hearing costs on ACAP.

Yours truly,

Karen E. Eddy

Karen E. Eddy
FCAC Chairman

April 22, 198?

To the Alaska Public Utilities Commissioners:

We are writing to you concerning the rule changes proposed in docket number U-79-81. As you know, the proposed rule change would require that any party who petitioned to become an intervenor in an APUC hearing would be required to indicate a willingness to assume a portion of the hearing costs.

As a community based consumer group, we believe that we have and can continue to give valuable input as an intervenor in APUC hearings. Much of our ability to do so is based on volunteer work and support from our membership. Should the Commission adopt this rule we believe that it would virtually eliminate consumer group input as intervenors in any APUC hearing. While we can draw upon volunteer resources to develop our material and collect information, it would be most difficult to raise funds to pay for Commission hearing costs. The probability that each issue we raise in a hearing could increase our "share" of the costs would be most constraining.

The utilities involved in hearings obviously cannot represent an independent consumer view in addition to their own proposal. Commission staff, with their resposibilities to the Commissioners and close working relationships with utility staff, is also incapable of adequate consumer representation. For the Commission to have all pertinant information on which to base a decision balancing everyone's interests, it is important that consumers and consumer groups be able to participate fully in hearings. The effect of this rule would be to eliminate that possibility, except as casual public witnesses.

We oppose this rule change and urge that the Commission hold a public hearing on the proposed change so that all interested parties may give testimony on the proposed change.

Yours truly,

Karen E. Eddy

Karen E. Eddy
Fairbanks Consumer
Advisory Committee

April 22, 1982

Carolyn S. Guess, Chairman
Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, AK 99501

Dear Chairman Guess:

We are very concerned about the direction the APUC is headed in relation to public interest. Recently we received copies of an order assessing costs of the MEA and GVEA rate hearings to the Alaska Consumer Advocacy Program (ACAP). We have also received a copy of the proposed regulation which would require that an intervenor must agree to pay a portion of rate hearing costs.

The Public Utilities Regulatory Policies Act (PURPA) gives the public the right to intervene in a rate hearing. Assessing the public for participation as an intervenor defeats the purpose of PURPA, which namely is to give the public a greater opportunity to participate. Public participation can be extremely beneficial for all parties concerned.

Ultimately the public bears the costs of APUC hearings, whether through taxation or utility rates. However, if an intervenor is assessed the general public may not bear the cost but rather a small group of consumers could ultimately assume the burden whereas the entire general public may benefit from the intervention.

Our committee, the Mat-Su Valley Consumer Advisory Committee, could serve as an example of our point. Our committee is strictly a volunteer organization. We do not receive governmental funds, nor do we assess dues or membership fees. Any expenses incurred are absorbed by a small group of individuals. If ACAP had not existed during MEA's last rate case we could not have participated to the extent we desired. If the APUC were to adopt the proposed regulation our committee alone could not participate as an intervenor in any future rate hearings.

To adopt a blanket regulation requiring all intervenors to agree to cost assessment would definitely limit public participation. Such a regulation would discriminate against a large segment of the public since only those who have the financial resources to absorb the cost, the amount of which cannot be predetermined, would be able to apply the rights granted the public through adoption of PURPA. If the APUC chooses to allocate hearing costs to public intervenors possibly judicial proceedings will be the only avenue left open to the potential pubic intervenor.

We strongly urge the Commission to reconsider its position regarding assessing hearing costs to public intervenors.

Sincerely,

Wm. Harvey Bowers

Sandra L. Bowers

Wm. Harvey Bowers

Sandra L. Bowers

cc: Commissioners Weatherly, Knowles, Hall and Snowden
Representative Pat Carney

APRIL 22, 1982
BOX 2069
KODIAK, AK. 99615

APUC
1100 MACKAY BLDG.
338 DENALI STREET
ANCHORAGE, AK. 99501

APR 26 REC'D

DEAR COMMISSIONERS:

I AM THE CHAIRMAN OF THE CONSUMER ADVOCACY COMMITTEE HERE IN KODIAK AND AM WRITING FOR ALL OUR MEMBERS OF THE COMMITTEE.

WE ARE AGAINST ANY AND ALL COSTS BEING ASSESSED ACAP FOR BEING AN INTERVENOR ON BEHALF OF WE THE CONSUMERS WHEN APUC IS ASKED TO HOLD A PUBLIC HEARING ANYWHERE IN THE STATE OF ALASKA WHEN SOME UTILITY IS TRYING TO RIP US OFF AND NOT GIVE ADEQUATE SERVICE. WE ARE ALSO AGAINST ANY OTHER CONSUMER INTEREST INTERVENORS BEING ASSESSED COSTS OUR STATE PAYS YOU PEOPLE HIGH SALARIES TO DO THIS AND YOU COULD CUT DOWN ON SOME OFFICE HELP IN YOUR BUDGET AND ALLOW THOSE MONIES TO GO FOR PREPARATION OF TRANSCRIPTS AS WELL AS TRAVEL FOR COMMISSIONERS AND STAFF. WE KNOW WHAT HIGH SALARIES THE ATTORNEYS ON THE APUC GET SO YOU COULD PAY SOME COSTS YOURSELVES OR TAKE A CUT IN PAY AND PUT THE OTHER MONIES IN A TRAVEL FUND AND PUBLIC HEARING FUND. WE KNOW THE STATE GIVES YOU A GOOD SIZED BUDGET SO A CUT IN PAY WOULD BE IN ORDER.

WE WANT SENATE BILL 883: SECTION 1. AS 42.05.651 TO BE PASSED AS WE FEEL THIS IS YOUR RESPONSIBILITY AND NO ONE ELSES.

OUR CAC GROUP IN KODIAK WERE VERY THANKFUL FOR THE ACAP PEOPLE FOR THEIR HELP WITH US IN THE GLACIER STATE TELEPHONE COMPANY'S RATE INCREASES AND WE PLAN TO USE THEM AGAIN AS WE HEARD KODIAK ELECTRIC ASSOCIATION IS GOING TO ASK FOR A RATE INCREASE PRETTY SOON. THE ACAP PEOPLE DO A THOROUGH JOB ON INVESTIGATING THINGS WHERE THE APUC KIND OF SLOUGHS US OFF.

AGAIN WE ARE AGAINST ANY MONIES BEING ASSESSED THE ACAP BOARD AND ARE LETTING OUR SENATOR KNOW TOO.

THANK YOU FOR YOUR CONSIDERATION IN THIS MATTER.

SINCERELY,

Lorna Lee Arndt

CHAIRMAN KODIAK
CAC

Ms. Kay Paddon
Box 41143
Anchorage, Alaska 99509

April 23, 1982

Mr. John Farleigh
Executive Director
Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Re: Proposed Rule to Require Consumers Agree to Accept Hearing Costs Before Hearings

Dear Mr. Farleigh:

I am Kay Paddon, Chairman of the Anchorage Consumer Advisory Committee, which operates unfunded in the public interest. I am writing on behalf of this group to express my concern reguarding this proposed rule. If such a ruling is to be ratified it would work a hardship on the ACAP and all consumer members of the public who appear to testify at Utility Hearings in defense of their rights. I cannot but see this as a move by the Commission to exclude the public and individual testimony from all hearings.

Certainly any information brought by testimony from the public to a Hearing is useful to the Commission in their deliberation on cases now or in the future. Since consumers are the reason for the existence of a State funded Commission before their voices can be heard. On the basis of one sided testimony--that of the utility company--it is hard to see how any impartial judgement can be made or the ends of justice served.

If the APUC is thus predisposed in favor of the Utility Companies it would be interesting to know what the word "Public" in its title might signify. "Public", according to my dictionary, is "of, belonging to or concerning the people as a whole". If my understanding of this proposed rule is incorrect, I would welcome clarification from you and some further basic information.

As chairman of the Alaska Consumer Advisory Committee, I request a full Public Hearing on this proposed rule, before adoption.

Sincerely,

Kay Paddon

Kay Paddon

STATE OF ALASKA

THE ALASKA PUBLIC UTILITY COMMISSION

Before Commissioners: Carolyn S. Guess, Chairman
Marvin R. Weatherly
Susan M. Knowles
Stuart C. Hall
Diana E. Snowden

In the Matter of Corrective Technical and Miscellaneous Changes.) U-79-81

STATEMENT OF VIEWS AND REQUEST FOR HEARING

On March 31, 1982, the Alaska Public Utilities Commission (Commission) noticed additional proposed changes to its regulations in the above docket opened last fall to process a number of proposed changes to their regulations.

Among those additional proposed changes, is listed an addition to the Intervention section, 3 AAC 48.110(b)(8), which would require that a petition to intervene in Commission proceedings must state in the petition:

> The willingness of the petitioner to accept an equitable portion of the costs allocable under AS 42.05.651 or AS 42.06.710 and 3 AAC 48.157.

The Commission's notice accompanying this proposed rule change states that:

> ...the Commission has no present plans to hold an additional* public hearing on this subject prior to consideration of the adoption of these proposed regulations unless sufficient public interest warrants.
>
> The Alaska Public Utilities Commission, upon its own motion or at the instance of any interested person, may adopt the proposals as permanent regulations substantially as described above without further notice or may decide to take no action on them.

*ACAP recognizes that public hearings have been held in this docket on other proposed rule changes, but not on this particular proposed change.

The Alaska Consumer Advocacy Program (ACAP) objects to the proposed change to the Intervention section of the regulations, believing that a consumer or consumer group wishing to intervene in a utility case pending

before the Commission, upon reading the proposed rule, would most likely forego intervention, in the face of an undefined amount of costs that could conceivably range from a few hundred to several thousand dollars.

ACAP believes, after a preliminary survey of Consumer Advisory Committee members around the State and in Anchorage, that the adoption of this proposed rule would have a devastating effect on future consumer decisions to intervene in utility cases--and thus on consumer access to the utility case decision-making process.

After only a cursory investigation of case law and Public Utilities Commission practice in the rest of the United States, ACAP has learned that the practice of charging consumer intervenors hearing costs is being replaced by the practice of awarding consumer intervenors costs to reimburse them for their expenses of participation in utility cases as parties.

ACAP believes this proposed rule is of such significant moment to utility consumers, that a public hearing on this proposed change is definitely warranted, and hereby requests a public hearing be held prior to adoption of the proposed rule. ACAP also believes that this issue rises to the level of a serious public policy question and urges the Commission to separately notice this issue to the community and appropriate officials.

ACAP recognizes the Commission's statutory authority to allocate hearings costs under AS 42.05.651. We further recognize that phrases in that statute such as "just under the circumstances", "ability to pay", and "mitigating circumstances" all give the Commission discretion in finally allocating a small or no portion of hearing costs, to consumer intervenors once a proceeding is over. However, that is precisely ACAP's objection to this new proposed change. Up front, at the beginning of a case, in the initial petition to intervene, a consumer or consumer group has to commit blindly to a share of undetermined costs and rely on any future-constituted Commission's discretion "after completion of a hearing or investigation" (AS 42.05.651), so long as this rule might be in effect.

ACAP, last of all, believes that the broad discretion granted under the Commission's statutory authority to allocate costs could operate to allow adoption of a regulation amendment clearly stating that individual consumers, or consumer groups, shall not be allocated hearing costs.

ACAP therefore in summary:

1. Registers its objection to this proposed addition to Commission's regulations at 3 AAC 48.110(b)(8); and,

2. Requests separate notice of and hearing upon this proposed rule change.

DATED this 22nd day of April, 1982

Respectively submitted:

By: Sandra L. Richards

Sandra L. Richards
Director
ALASKA CONSUMER ADVOCACY PROGRAM

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Carolyn S. Guess, Chairman
Marvin R. Weatherly
Susan M. Knowles
Stuart C. Hall
Diana E. Snowden

In the Matter of filing of a Tariff Revision, Designated as TA28-13, by GOLDEN VALLEY ELECTRIC ASSOCIATION, INC., for and Rate Redesign	)	U-81-48
In the Matter of the Filing of a Tariff Revision, Designated as TA22-18, by MATANUSKA ELECTRIC ASSOCIATION, INC., for an Interim and Permanent Rate Increase and Rate Redesing	)	U-81-32

MOTION TO ENLARGE TIME

On March 12, 1982 the Alaska Consumer Advocacy Program (ACAP) filed a Petition for Reconsideration of Order No. 5 in Docket U-81-32 and Order No. 11 in Docket U-81-48, in which the Commission allocated hearing costs to ACAP of $818.15 and $5,134.81, respectively. In its petition, ACAP requested a hearing pursuant to AS 4.05.651, in addition to requesting reconsideration of allocated costs.

On March 24, 1982, the Alaska Public Utilities Commission (the Commission) granted a hearing:

> "In view of the public policy questions raised in ACAP's petition...
>
> and, "...the Commission believes that it would be in the public interest for a public hearing to consider the allocation of costs in these proceedings." (Page 2, U-81-32 (6); U-81-48(12).

The Commission also stayed payment of hearing costs by ACAP, pending completion of its reconsideration of the issues in this proceeding. In its "Order Establishing Date For Public Hearing on Petition for Reconsideration of Orders Allocating Costs to Intervenor Alaska Consumer Advocacy Program", the Commission further established a briefing schedule calling for a supplemental brief by ACAP due not later than 4:00 pm, April 9, 1982. The Commission further established April 20 and 30, 1982 as due dates for supplemental argument by MEA, GVEA or staff and a final reply brief by ACAP, respectively. The Commission further ordered May 6, 1982, as the date for public hearing on the issue of allocated costs.

ALASKA CONSUMER ADVOCACY PROGRAM
P.O. Box 1093
Anchorage, AK 99510

On April 2, 1982, the Commission, in its Order No. 11, U-81-52, established May 5 and 6, 1982 as the date for public hearings for the Chugach Electric Association (Chugach) request for an Interim and Permanent Rate Increase, as well as establishing a May 10, 1982, beginning date for presentation of direct cases regarding the Chugach permanent rate increase request. (It is ACAP's understanding that 8 days have been calendared by the Commission for the Chugach rate case, taking us to May 18, 1982.) ACAP as an intervenor in U-81-52 bears the responsibility of thorough preparation for those hearings scheduled in that docket.

However, ACAP also believes the Hearing Cost Allocation issue is a serious public policy question with potentially devasting effects on future consumer decisions to intervene in Commission utility decision-making proceedings. As a foundation issue to consumer participation, it requires full and precise review and briefing by all parties.

A coincident hearing schedule for both the Hearing Cost Allocation issue and the Chugach rate case inflicts a burdensome and conflicting work load and schedule on our consumer office. (It is now ACAP's understanding that the Commission also has a schedule conflict with the May 6 hearing date, pursuant to telephone conversation with Virginia Rusch, Esq., APUC staff counsel.)

In addition ACAP notes with serious concern and objection that, since filing our "Request for Hearing and Petition for Reconsideration of Orders Allocating Costs to Intervenor Alaska Consumer Advocacy Program (ACAP) on March 12, 1982, the Commission has on March 31, 1982, noticed in its "Additional Proposed Changes in the Regulations of the Alaska Public Utilities Commission" an addition to 3 AAC 48.110, entitled Intervention, which would require that a petitioner for intervention must state:

> " (b) (8) the willingness of the petitioner to accept an equitable portion of the costs allocable under AS 42.05.651 or AS 42.06.710 and 3 ACC 48.157.".

The Supreme Courts of some states have begun ruling in favor of awarding costs of intervention to consumer or public interest intervenors in a trend opposite this proposed regulation. (Consumer Lobby Against Monopolies v. PUC, 25 Cal 3d 891 (1980).) The notice accompanying this proposed change does not announce or contemplate a public hearing; invites comment through May 1, 1982; and , further announces that:

> "The Alaska Public Utilities Commission, upon its own motion or at the instance of any interested person, may adopt the proposals as permanent regulations substantially as described above without further notice or may decide to take no action on them."

While ACAP has a specific interest in seeing hearing costs for U-81-48 and U-81-32 either reduced or eliminated from the final orders in those proceedings, ACAP also has a deep concern that the rules and regulations of the Commission do not operate to in anyway foreclose consumer input to its decisions.

Accordingly, ACAP respectfully moves the Commission to re-set the hearing date for the Hearing Cost Allocation issue to some date convenient to the Commission, beginning with the week of May 24, 1982, and;
ACAP further moves the Commission to adopt an ammended briefing schedule appropriate to that later hearing date, and;
ACAP further moves the Commission to consider delaying adoption of the proposed change in its regulations to 3 AAC 48.110 (b) and consolidating the issues of costs specifically allocated to ACAP in U-81-48 and U-81-32 with consideration of the adoption of proposed paragraph (8) to be added to 3 AAC 48.110 (b), or, in the alternative, that the Commission delay adoption of the proposed change in Intervenor regulation, pending the results of the hearing on costs allocated to ACAP in U-81-48 and U-81-32.

DATED this 9th day of April, 1982.

ALASKA CONSUMER ADVOCACY PROGRAM

By: Sandra L. Richards

Sandra L. Richards
Director

ALASKA CONSUMER ADVOCACY PROGRAM
P. O. Box 1093
Anchorage, AK 99510

Am Jur. references. — 18 Am. Jur., Electricity, § 34; 43 Am. Jur., Public Utilities and Services, §§ 194, 195, 205.

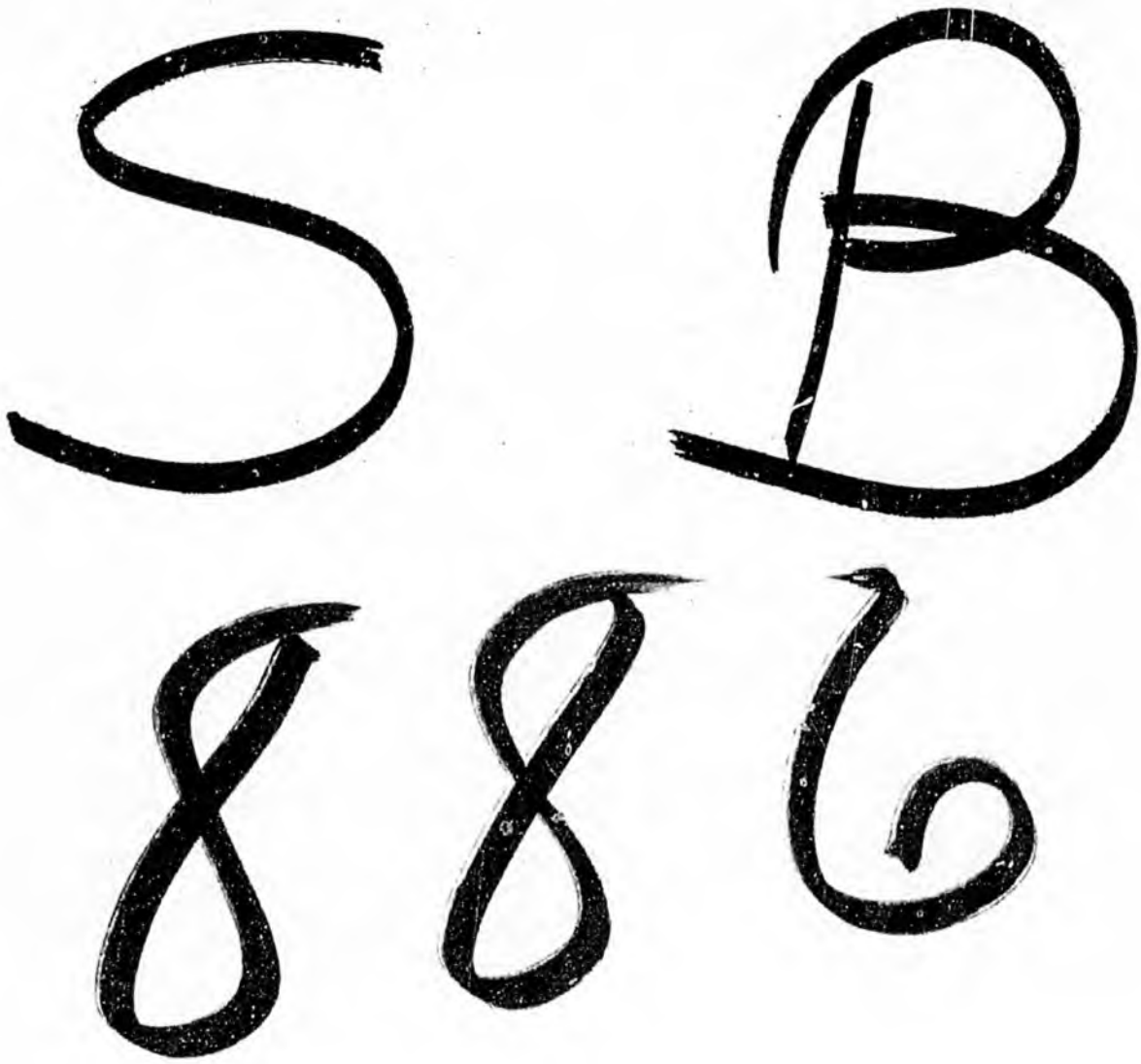
Sec. 42.05.651. Expenses of investigation or hearing. After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. (§ 6 ch 113 SLA 1970)

Sec. 42.05.661. Application fees. With each application relating to a certificate the applicant shall pay the commission a fee of $50 which shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970)

Sec. 42.05.671. Public disclosure of information. Facts and information in the possession of the commission are public, and reports, files, books, accounts and papers of every nature in its possession except records which by regulation are designated to be of a nonpublic or privileged nature are open to public inspection at reasonable times. However, a person may make written objections to the public disclosure of information contained in an application, report or document filed under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission shall order the information withheld from public disclosure if the information would adversely affect the interest of that person and is not required in the interest of the public. (§ 6 ch 113 SLA 1970)

Sec. 42.05.681. Validity of certain certificates. No certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may be considered as terminated, or voided, for the sole reason that the utility did not or would not produce an annual gross income in excess of $25,000. (§ 6 ch 113 SLA 1970)

Sec. 42.05.691. Utility classes. The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements. (§ 6 ch 113 SLA 1970)


SB
886

EXAMPLE FOR FIGURING FWW SALARY:

Week 1 - 115 hours worked and $750 bonus.

Week 2 - 120 hours worked and $875 bonus.

Weekly guarantee - $290/week (hourly minimum - $5.80)

WEEK 1

$290 (guarantee) plus $750 (bonus) = $1040 divided by 115 hours = $9.04 hourly rate.

115 hours worked minus 40 (regular hours in a workweek) = 75 (overtime hours)

75 divided by 2 = 37.5 (extra hours paid) + 115 hours worked = 152.5 payable hours.

152.5 (payable hours) X $9.04 = $1378.60 TOTAL FOR FIRST WEEK.

WEEK 2

$290 (guarantee) plus $875 (bonus) = $1165 divided by 120 hours = $9.71 hourly rate.

120 hours worked minus 40 (regular hours in a workweek) = 80 (overtime hours)

80 divided by 2 = 40 (extra hours paid) + 120 hours worked = 160 payable hours.

160 (payable hours) X $9.71 = $1553.60 TOTAL FOR SECOND WEEK

TOTAL PAYCHECK FOR TWO WEEKS WORKED ON THE NORTH SLOPE WOULD BE $2932.20 — all income below

NOTE: HOURLY RATE CAN BE HIGHER THAN BUT NEVER LOWER THAN HIS $5.80 MINIMUM. IN OTHER WORDS, IF HIS HOURS WORKED EQUALED LESS THAN 40, HIS HOURLY RATE WOULD FALL NO LOWER THAN $5.80.

ADDITIONAL INCOME

$500 per month isolated location (approx)
900 per month Alaskan Allowance
$1400 TOTAL divided by 2 = $700

TWO-WEEK PAYCHECK FOR NORTH SLOPE	- $2932.20
TWO-WEEK ADDITIONAL INCOME	- 700.00
	$3632.20

5. Not allowing the FWW plan to be used increases the cost of services to many industries including the oil industry in this State. This cost will be passed directly onto the customer and will not result in increased pay for the worker. For example, if an oil company wishes to have service performed at a rig in the Beaufort Sea and the employees are called out to do a certain job no one knows exactly how long it is going to take. If the oil service company has to charge the customer more to pay standby time to the employee, then the oil company will have to pass that increase onto the customer at the gas pump. Under the FWW plan, service companies routinely allow up to 96 hours free standby time if their employees have to wait out at the job site. Without the FWW plan, such free time would be cut to only 12 or 24 hours. The employees who go out to an oil rig and find themselves with an unexpected delay under the FWW plan are paid up to 22 hours a day even though they may be sleeping or off duty. Without the FWW plan they would simply be paid their straight 8 hours a day and not paid for sleeping or off duty time.

6. 29 U.S.C. § 203 (Fair Labor Standards Act) in Federal law allows the flexible work week and below payment plans. Under n. 63 of 29 U.S.C. § 207 numerous cases and examples are given.

ARGUMENTS

Section (d)(1) of 8 AAC 15.100 should be annulled in order to allow the use of a flexitime work schedule in Alaska for the following reasons:

1. This will bring Alaska law into conformance with the Federal Law. 29 C.F.R. 778.114 allows the fluctuating work week payment method to be used as long as it does not result in paying less than the minimum wage to any employee.

2. By allowing employees to have a certain guaranteed amount of pay each month, it will make it easier for the employees to budget their income on a regular basis and to make applications for house loans, car loans and loans for other items which require a basic nonfluctuating income.

3. The fluctuating work week (FWW) avoids having an employee face the possibility of varying income and the difficulties in budgeting his own income and expenses.

4. For those employees who work a one week on one week off or similar schedule, the FWW plan assures him that he will be paid a certain amount of dollars in the event he is sick for a week and not covered by workmen's compensation. Otherwise the employee might be on R&R one week, get sick during his normal work week, be on R&R the next week and be faced with a three week period zero income if he is not on the FWW plan.

Flex-time law assures 3-day weekends

by Susan Andrews
Times Writer

The state's new flexible work week law promises dreamy three-day weekends for employees but nightmares for personnel managers who have to juggle the schedules.

The law, signed by Gov. Jay Hammond last week, allows employees to work up 10 hours a day, four days a week without overtime pay. Any hours worked over 10 hours a day or 40 hours a week would require overtime.

The voluntary agreements between employees and employers must be filed with the state Department of Labor, which must then issue a certificate.

At least two additional state employees will be needed to handle the paperwork, according to Department of Labor estimates.

Until the new law was passed, the state required overtime pay for any time over eight hours in a single day. Federal law requires overtime pay for any time over 40 hours in a week but doesn't limit the number of hours that can be worked in one day, according to Dale Cheek of the state Department of Labor.

The new law takes effect Aug. 10. In the meantime, the Department of Labor must draft regulations, a process that requires public hearings, and that could take six months, Cheek said.

That means it will be at least November before anyone can make application to the state for a flexible work plan certificate.

The new law, co-sponsored by Reps. Sam Cotten, D-Eagle River, and Joe Hayes, R-Anchorage, was introduced at the request of the airline industry. The seafood industry and banks also had requested it, according to Cotten's office.

The law is aimed at the private sector, either through voluntary agreements or collective bargaining agreements.

The Alaska Railroad tried the four-day, 10-hours-a-day work week for five months but has decided to drop the plan. There were complaints that service was faltering on Mondays and Fridays when crews were at half strength. The plan affected 200 shop and railroad yard employees in Anchorage.

Murray, Bradley and Lockey, an advertising firm here, experimented with a four-day work week eight or nine years ago but it lasted only six months.

Partner Ron Bradley said the firm at that time had a small staff and simply closed the office on Mondays. The plan might work now, he said, with a staff that's large enough to have two shifts, with some people off on Fridays and others on Mondays.

Guy Russo of Western Airlines said the company's union contract provides for flexible work plans and those have been in effect in California. Alaska law up to now has prohibited such plans here and the airline employees asked for the change in the law. It may mean Western will have to hire extra people to provide seven-day-a-week coverage, he said.

Retail clerks would like a flexible work arrangement, said Larry Buchholz, business agent for the clerks union.

But for most retail clerks, the shortened work week wouldn't mean three days off in a row. "We're still trying to get two consecutive days off," Buchholz said.

Construction workers probably wouldn't want that arrangement, however, he said, because of their short work season. They want all the overtime they can get.

Bett. Stevens, personnel manager for Nordstrom, and Becky Boyer, personnel manager for Welch's and Snooty Fox, both said four 10-hour days would offer advantages for businesses because they would have a continuous staff into the evening hours. But it could work a hardship on some employees.

"That's a long time to be on your feet," Miss Stevens said.

It would present some new problems to work out, too, she pointed out, such as how many breaks and how long the lunch hours would be.

The plan hasn't been proposed at the Anchorage store.

The U.S. Environmental Protection Agency in Anchorage has been working under a variation of flexible time for about six months.

Jim Sweeney, director of the Anchorage operations office, said the plan is great for most employees but hard for supervisors, who have no one to replace them on their day off.

The EPA staff works mostly nine-hour days, with a three-day weekend every other week. They choose either Friday or Monday as their extra day off.

Ray Morris, who's in charge of oil spill cleanup operations for the EPA, finds less traffic and it's easier to find a parking place when you come in earlier in the morning.

Earl Kari, the EPA's authorized officer at federal gas line inspector's office in the Fifth Avenue Building, is the only one in his office working the flexible schedule.

8 AAC 15.050. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed. (12/9/78, Reg. 68)

8 AAC 15.060. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed. (12/9/78, Reg. 68)

8 AAC 15.070. DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 – 23.10.150. Repealed. (12/9/78, Reg. 68)

ARTICLE 2.
MINIMUM WAGES AND OVERTIME

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100. PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a workweek.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207(f) as implemented in 29 C.F.R. 778.402 – 778.414);

(2) compensatory time off in place of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a workweek. (Eff. 12/9/78, Reg. 68)

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. 12/9/78, Reg. 68)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 3.
EXEMPTIONS

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 who are part-time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 15.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an

Introduced: 4/14/82
Referred: Labor & Commerce
and State Affairs

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE BY REQUEST

SENATE BILL NO. 886

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act retroactively authorizing certain methods for the payment of overtime; and providing for an effective date."

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

* Section 1. AS 23.10.060 is amended by adding a new subsection to read:

(b) Nothing in this section prevents the use of the following methods for the payment of overtime:

(1) a guaranteed weekly pay for variable hours plan established in accordance with 29 U.S.C. 207(f) and 29 C.F.R. 778.402 - 778.414 (Fair Labor Standards Act of 1938, as amended (52 Stat. 1060);

(2) a fluctuating workweek plan established in accordance with 29 U.S.C. 207(a) and 29 C.F.R. 778.114 (Fair Labor Standards Act of 1938, as amended (52 Stat. 1060).

* Sec. 2. AS 23.10.060(b) added by sec. 1 of this Act is retroactive to December 9, 1978, and extinguishes any penalty, forfeiture, or liability incurred or right accruing or accrued under 8 AAC 15.100(d)(1) and (3), adopted under AS 23.10.065 and 23.10.085 to prohibit the use of the overtime payment methods authorized by AS 23.10.060(b) added by sec. 1 of this Act.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week. (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972); am § 2 ch 124 SLA 1978)

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).

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 890 (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).

Cited in Dresser Indus., Inc. v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), P.2d (1981).

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

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) Repealed by § 38 ch 127 SLA 1974.

(3) Repealed by § 1 ch 243 SLA 1970.

(4) an employee employed in handling, packing storing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(5) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(6) Repealed by § 1 ch 45 SLA 1972.

(7) an employee engaged in agriculture;

(8) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(9) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;

(10) an employee of an employer engaged in the business of operating taxicabs;

(11) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed $500 a month;

(12) an employee employed as a seaman;

(13) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(14) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(15) casual employees as may be liberally defined by regulations of the commissioner;

(16) an employee of a nonprofit hospital;

(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; and

(B) the department 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. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980)

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded from the mandatory overtime directive of this section. April 15, 1980, Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substan-

(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 S), 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.

(c) The director may delegate his powers, functions and duties under AS 23.10.050 — 23.10.150 to a duly authorized representative. (§ 6(1) ch 171 SLA 1959)

Sec. 23.10.080. Powers and duties of division. The director, or his authorized representative, shall

(1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;

(2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records which relate to the question of wages paid or hours worked;

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

(4) question an employee in his 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 issue, amend or rescind such administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 which are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and the restriction or prohibition of industrial homework or of the other acts or practices which 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 his 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. (§ 6(3) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.095 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

SCR
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 12, 1982

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a resolution which proposes a constitutional amendment regarding contributions to the permanent fund. The amendment would add proceeds from severance or production taxes to the list of revenue sources.

While the tax presently imposed under AS 43.55 is often referred to as a "severance tax," it is not clear whether the Alaska Supreme Court would find that it is a severance tax. See Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978). I have therefore included both production and severance tax proceeds in the proposed amendment.

Sincerely,

Jay S. Hammond
Governor

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

February 1, 1982

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

Re: Senate Joint Resolution No. 58

Dear Senator Mulcahy:

At the present time 25 percent of all mineral lease rentals, royalties and royalty sale proceeds are explicitly dedicated under the State Constitution to the Permanent Fund. The Constitution also allows the Legislature by statute to increase this percentage, which it has done for the royalty revenues from the Beaufort Sea leases and for bonus bids received for oil and gas lease sales held after 1979. In addition, the Legislature may make special appropriations to the Permanent Fund, as it has done the past two sessions.

The problem with the dedication of 50 percent of future bonuses and royalties from the Beaufort Sea and other new oil and gas production is that it is statutory in origin. That is, what one Legislature enacts another Legislature may repeal. Thus, while it appears that 50 percent of those one-time-only revenues will be going into the Permanent Fund, it remains possible that future Legislatures could change this or repeal it altogether, in which case the 25 percent minimum under the Constitution would again apply.

At present these constitutionally mandated contributions represent about 10 percent of the State's total revenues dervied from oil and gas development. This is because the State's royalties are slightly less than half of the total petroleum revenues; the balance is from taxes on the oil and gas industry. By far the largest of these taxes is the State's Oil and Gas Properties Production Tax (AS 43.55), which is generally referred to as the "severance tax" even though it calls itself a "production tax" in its title.

The difference between a severance tax and a production tax is nearly metaphysical. Both are taxes imposed on the activity of extracting and removing a valuable resource from the ground. However, a

severance tax, strictly speaking, is imposed on the actual act of severing the mineral from the ground in its natural condition as it emerges or is severed. A production tax is imposed on the reduction of the resource to actual possession in a condition of marketability, which may or may not be the same as its natural condition when the mineral is severed. In the case of oil and gas, the processes of cleaning and dehydration, of separating oil from any water and gases in it, of separating the gas from any condensable liquids in it, etc. are all conducted as part of the "production" process. Thus, the comparatively slight amounts of oil or gas that are consumed, used or lost in the course of these "production" operations would not be counted in determining the taxable volume of the oil or gas for purposes of a "production" tax. In contrast, such oil and gas would be included in determining the taxable volumes of each under a "severance" tax.

Happily, for the sake of keeping things straight, our Oil and Gas Properties Production Tax really is a "production" tax, as opposed to a "severance" tax. However, as I indicated, the distinction between these types of taxes is relatively minor for most purposes.

Senate Joint Resolution No. 58 refers both to production taxes and to severance taxes because of the similarity between these kinds of taxes. The clear intent of the Resolution is to amend the Constitution so that the Permanent Fund will receive at least one-quarter of the one-time-only tax revenue collected by the State from the activity of extracting and removing mineral resources from the ground, regardless whether the Legislature retains the present "production"-type tax structure or changes over someday to a "severance"-type tax structure. It might also develop that the "production"-tax approach is retained for oil and gas, but that future taxes someday enacted for other kinds of mineral extraction would be of the "severance"-tax type. By referring to both kinds of tax, the Resolution will ensure that at least a quarter of the revenues from both kinds of extraction-based taxes will be dedicated to the Permanent Fund.

I hope this will assist you in your consideration of SJR 58. Please do not hestitate to contact me if you have any further questions on this matter.

Very truly yours,

Thomas K. Williams
Commissioner of Revenue

TKW:tw

cc: Governor Hammond

SJR

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Bill No. Senate Joint Resolution No.

Date April 20, 1981

Title Relating to exclusion of state unemployment insurance trust funds from the federal unified budget.

Contact: Judy Knight 465-2700 JK

Funds used for unemployment compensation are generated by payroll taxes enacted by State Legislatures. These funds can be used only to pay unemployment compensation in the state in which they were collected and are held in trust by the federal government and drawn as needed to pay benefits. Since 1969, these funds have been included in the unified budget. The "bottom line" impact of inclusion of state trust funds in the unified budget is that all unemployment compensation--including benefits paid completely from dedicated state funds--appear as federal outlays. This makes unemployment insurance programs the target for budget-balancing proposals such as taxation of benefits, pension offsets, removal of extended benefit claimants from the computation of unemployment rates, and other cost-cutting proposals like those included in the Omnibus Reconciliation Act of December 5, 1980.

In addition to those set out in the Resolution itself, there are a number of other reasons unemployment compensation trust funds should not be included in the unified budget, as follows:

1. The majority of the federal payroll tax is not collected from employers, but is credited if employers participate in an approved state program and are subject to contribution rates set by the state.

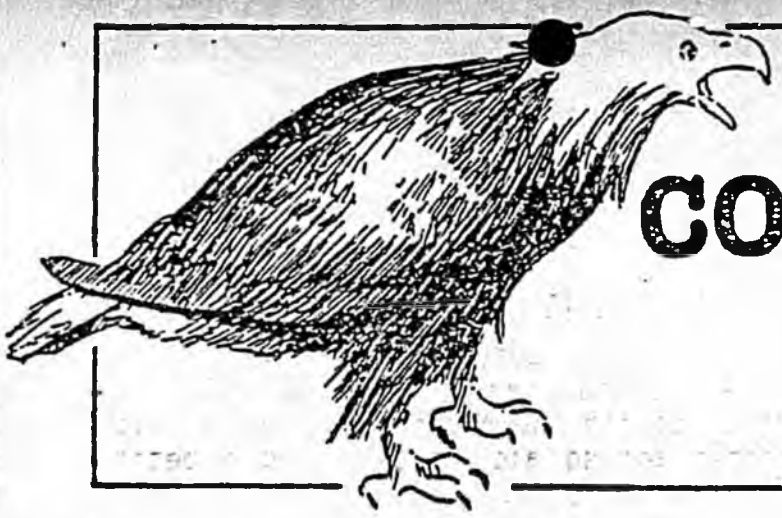
2. The operations of the U.S. Treasury do not require that the accounts be included in the unified budget. The Treasury currently handles accounts for several "off-budget" agencies.

3. Basic program decisions--level and duration of benefits, contribution mechanisms, eligibility, and many administrative functions--are almost entirely in the hands of state legislators.

Policy calling for removal of funds has been adopted by the National Governors' Association, the Interstate Conference of Employment Security Agencies, the Federal Advisory Council on Unemployment Insurance, and the National Commission on Unemployment Compensation. These policy positions were adopted recently and the issue is not yet well-known in Congress. One way to speed consideration of this important issue is to ensure that states' Congressional delegations recognize the impact of inclusion of state unemployment trust funds in the unified budget and are aware of the states' strong desire to remove the funds from the budget. The proposed resolution could be used to convey Alaska's sentiment on this issue to national policy-makers.

Position: The Department of Labor supports the proposed resolution and recommends immediate approval.

POSITION PAPER/Department of Labor



ISSUES & COMMENTARY

ALASKA DEPARTMENT OF LABOR, RESEARCH AND ANALYSIS SECTION APRIL 1981

SHOULD ALASKA OPT OUT OF THE FEDERAL/STATE UNEMPLOYMENT INSURANCE SYSTEM?

By Scott T. Hannigan

The Social Security Act of 1935 established an Unemployment Insurance (UI) program in the United States under joint federal/state management. The major role of the federal partner was administration of a uniform employer tax to fund the program. States were encouraged by the Act to pass local UI legislation with the reserved right to set qualifications and standards for the payment of unemployment compensation. The Act contained provisions for employers to receive credit against the federal tax for contributions to a state UI plan and for states to receive grants to administer their programs. The availability of employer tax credits and state administrative grants were made contingent upon states' compliance with certain features in the Social Security Act. These features were generally found acceptable to the states and a nationwide federal/state UI program was in full effect by 1937. Over the ensuing years, however, numerous amendments to the Act and additional UI legislation by Congress (requiring conforming state legislation) has led to conflicts in the federal/state partnership. The federal government has generally held the upper hand in these conflicts by virtue of the enormous financial clout provided by the tax credits and administrative grants provisions of the Social Security Act. This paper will review the historical beginnings of the federal/state UI program, some of the conformity issues facing the states, and the possibility of future changes including complete separation of the federal and state systems.

Prior to 1935, states had no programs to provide assistance to the unemployed, with the notable exception of Wisconsin, which legislated a comprehensive UI law in 1934. The major obstacle to enactment of UI laws at the state level was directly related to taxes. Specifically, it was felt that a new tax burden on employers would have a detrimental effect on interstate competition. Congress eliminated this obstacle by passing (as part of the Social Security Act) Title IX, which levied a uniform tax on all employers in the country. Title IX allowed employers a 90 percent credit against the tax if they contributed to an approved state UI program. The remaining ten percent of the tax assessment was returned to the states in the form of administrative grants. These financial incentives in Title IX plus the deepening crisis of the 1930's depression strongly encouraged enactment of state UI laws and all states had unemployment insurance programs in operation by 1937. Provisions of Title IX were removed from the Social Security Act and were placed in the Internal Revenue Code by the Federal Unemployment Tax Act of 1939 (FUTA).

Original proponents of the Social Security Act vigorously debated the type of UI program to be recommended--a wholly federal system or a federal/state plan. Arguments for a national system included, among others, that a national system would provide uniform protection from the risks of unemployment, protect the interests of multi-state employers and workers, provide for a national pooling of reserves, and streamline reporting requirements and the payment of taxes. Those who favored a federal/state program argued that a national system would be cumbersome to operate, that centralization would tend to paralyze action, that controversial issues would not receive proper debate and discussion by the states, and that a federal/state system would allow states to tailor the program to fit their needs and would allow wide latitude for experimentation by the states and so aid in producing a better system.[1/] The federal/state plan was the one that finally emerged.

The issues of conformity have existed since the very start of the unemployment insurance program. The Social Security Act contained several provisions that the states were to comply with. Titles III and IX of the Act required state UI laws to include the following major provisions: (1) payment of UI benefits solely through public employment offices or other approved agencies, (2) opportunity for a fair hearing on denied claims, (3) payment of all tax monies collected to the U.S. Treasury (Unemployment Trust Fund), (4) expenditure of all money requisitioned from the Trust Fund for UI benefits only, (5) no benefits to be paid until two years after commencement of tax collections, and (6) several provisions protecting conditions of work acceptance by claimants. Other provisions refer to administrative and reporting requirements. To enforce state conformity to these provisions, the Social Security Act allows for the denial of all employer tax credits and the suspension of state administrative grants. On numerous occasions since the inception of unemployment insurance, Congress has passed amendments to the Act necessitating conforming legislation at the state level. A major example has been amendments that have extensively increased UI coverage to such worker groups as state and local government employees and employees of non-profit institutes.

More recent conformity issues have included pension offset provisions (P.L. 96-364) and provisions of the 1980 Omnibus Reconciliation Act (P.L. 96-499). The pension offset provision requires a reduction of a claimant's weekly benefit by the amount of any pension (attributable to a base period employer) received by the claimant. The Reconciliation Act requires conforming state legislation to deny the payment of extended benefits for voluntary quits and discharges for misconduct regardless of applicable state law for regular benefits (i.e., if state law reinstates benefit entitlement for regular benefits after a penalty period, the entitlement would be cancelled for extended benefits). Failure to accept suitable work (as defined by federal law) or failure to seek work also results in denial of extended benefits.

Even further encroachment by the federal government will occur if recent proposals of the Reagan Administration are adopted. These include (1) changes in the extended benefits program to eliminate the national trigger and to revise the methods of calculating state triggers (both of which determine when extended benefits are to be paid); (2) requirements that unemployed workers who have collected 13 weeks of state UI accept any job that meets minimum wage and safety standards if the wages are equal to or greater than their UI benefits; and (3) eliminate UI for those who leave the military voluntarily.

The rising spectre of federalism in unemployment insurance has caused concern in

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1/ William Haber and Merril G. Murray, Unemployment Insurance in the American Economy, Richard D. Irwin, Inc. 1966.

Alaska and many other states. In most conformity issues, the states have grudgingly complied with federal legislation because they fear to lose tax credits for their employers and administrative grants for their programs. The mere threat of sanctions has kept states in line and the sanctions have never been fully applied. A specific instance where Alaska has run headlong against the federal government has been on the issue of interstate benefits. In 1955 and again 1960 Alaska reduced the maximum weekly benefit amount to out-of-state claimants in order to curtail the amount of UI dollars leaving the state.* The state was required to retreat from this position in 1972 when Congress decided the practice was discriminat ry to the rights of workers to move from state to state seeking employment. This interstate question has become a point of concern in recent years as Alaska has seen one-third of all its UI dollars pouring out of the state, aiding the economies of other states instead of our own. An even larger problem looms in the future amid talk of federal benefit standards requiring a maximum benefit equal to 2/3 of a state's average weekly wages. Alaska traditionally pays more benefits per dollar of total wages than any other state. This standard would put employer costs through the ceiling and could possibly drain the state's trust fund.

Potential solutions to the partnership problem are varied and complex. Many people over the years have advocated complete federalization of unemployment insurance. Most states, however, take a dim view of this type of encroachment on their rights. Another course would be to maintain the present system with some sort of systematic court review of conformity sanctions.[2/] The most extreme solution would be for a state to permanently refuse to comply with federal legislation.

The remainder of this paper discusses ramifications if Alaska chooses to remove itself from the federal/state system. The most direct effect would be monetary. Shown below are cost estimates for Alaska's UI program in 1982 comparing an out of conformity situation with a conforming one.

	Estimated Costs for 1982	
	In Conformity	Out of Conformity
State Taxes	$63.6 million	$63.6 million
FUTA Taxes	7.0 million	34.0 million
UI Administration	Federal Grants (From FUTA Taxes)	11.5 million
ES Administration	Federal Grants (From FUTA Taxes)	7.9 million
Extended Benefits (50% Federal)	Federal Reimbursements (From FUTA Taxes)	4.5 million
TOTAL	$70.6 million	$121.5 million

*Ch. 5, ESLA 1955 and Ch. 60, SLA 1960.

2/ Ibid.

The comparison shows that operating the current program while failing to conform to federal requirements would result in additional costs of $50.9 million. Most of the cost ($27 million) would be levied on employers as a result of lost FUTA tax credits. Employers might also be expected to pay administrative costs as well as funding full benefit outlays. If that were the case, employer costs would increase by approximately seventy percent. This burden could be reduced if employee contributions were increased and/or the state absorbed administrative costs.

One major question of the conformity issue concerns federal responsibility if employers opt to pay the full FUTA tax. The system was designed to pay benefits equal to 2.7 percent of taxable wages. Of the three percent FUTA tax, this 2.7 percent was to be dropped if employers contributed to the benefit fund of an approved state program. The implication is clearly that the 2.7 percent was to be used for paying benefits. Further, if employers opt to pay the full FUTA tax, the implication is that no state taxes would be necessary because the federal partner should be responsible for benefits.

The system was not--at least, should not have been--designed to coerce states into setting up their own unemployment insurance programs. Since costs would be three percent of taxable wages under a state or federal system, states would obviously find it attractive to design systems to fit their own social and economic conditions rather than accept standards determined in Washington. This "logical interpretation" does not coincide with the "legal interpretation." According to an unofficial opinion of the Solicitor General, the federal government has no power to implement an unemployment insurance program in any state. In other words, the system was designed to force states to implement unemployment insurance programs via making them pay for one whether they have one or not.

Failure to maintain an approved program would result in the 2.7 percent "credit" flowing into the federal administrative account rather than a benefit account, with the state receiving no funds in return. No state has informed the federal partner that it intends to drop its own program in favor of federalization and so the position remains unchallenged. It is conceivable that the "back door" federalization now in progress will change this situation in the future. The issue is not a simple one and raises a host of questions about the federal/state relationship. Some alternative relationships that might be considered for the operation of an unemployment insurance program in Alaska are discussed below.

The discussion centers on estimates of the average employer cost per worker (with annual earnings at or above the taxable wage base of $13,300) and includes the current system for comparison purposes.

CURRENT SYSTEM		
FUTA Tax (0.7% of first $6,000)†	=	$ 42
State Tax (3.3% of first $13,300)	=	439
TOTAL TAX	=	$481

One (untested) alternative is to drop the state system in favor of a federal program funded from the maximum FUTA tax. Employers would then pay the full FUTA tax of $204 per employee and all program provisions would be determined in Washington.

FEDERAL SYSTEM		
FUTA Tax (3.4% of first $6,000)†	=	$204
TOTAL TAX	=	$204

A second alternative would supplement a federal system with a separate state system. Costs would be dependent on the level of benefits the state wishes to provide. The state system would also require administrative funds of approximately $19 million.

An independent state program is a third alternative. The cost figures below assume that the FUTA tax is paid and that the state receives no funds in return. Obviously the combined cost of running a state system and paying penalty FUTA taxes could exceed the capabilities of many employers to pay. Some form of state assistance may be necessary (especially in light of expected increases in the taxable wage base for FUTA which will probably become effective in 1983 or 1984). The most plausible forms of state assistance are assumption of the liability for FUTA taxes and/or administrative costs and state support of benefits through appropriations to the UI Trust Fund.

INDEPENDENT STATE SYSTEM		
State Tax (3.3% of first $13,300)	=	$439
FUTA Tax (3.4% of first $6,000)	=	$204
Administrative Costs		$120
TOTAL TAX	=	$703

There are a number of areas where Alaska could effect some cost savings if the state were running an independent UI program. Some cost saving areas and approximate dollar amounts are listed below:

†The FUTA tax is set at 3.0 percent of the first $6,000 of each employees wages. The rate was temporarily increased to 3.4% to reduce the national debt in the FUTA account. If a state's UI law is in conformity with federal law, then employers receive a 90 percent credit on their FUTA taxes and pay in effect 0.7 percent (10% of 3.0% = 0.3 + 0.4 added tax = 0.7%).

Potential Cost Savings

(Projected on basis of Alaska's 1980 UI law)

1. Eliminate dependents benefits for out-of-state claimants (140,000 interstate payments X $8.55 [average interstate dependent payment])	$1.2 million
2. Eliminate extended benefits for out-of-state claimants (assuming Washington, Oregon and California still triggered on) 25% of estimated EB payments of $4.75 million state share)	$1.2 million
3. Reduce interstate benefit to 50 percent of calculated WBA (140,000 interstate payments X $116 [average interstate payment X 50%]) (excludes amount in #1)	$8.1 million
4. Eliminate interstate benefits entirely (140,000 interstate payments X $124.50 [average interstate payment] (includes amount in #1)	$17.4 million
5. Withdraw from interstate wage combining plan (net figure from 1980)	$0.3 million
6. Withdraw from unemployment compensation plan for ex-federal employees and ex-servicemen (5% of administrative costs)	$0.8 million

As indicated, some of these savings overlap. The maximum savings would be about $18.5 million, which is approximately equal to expected administrative costs. The possibilities are limitless in creating an independent state UI system. No state UI program (with the exception of the original Wisconsin plan) has existed outside the federal/state system, so no previous experience is available to formulate such a program. Opportunities exist for Alaska to tailor a UI program to the unique conditions of the state. Alaska's concerns with chronic unemployment, high wages, seasonal jobs, an itinerant labor force, and undiversified industries have not been satisfactorily addressed under the federal/state UI system.

Many legal and political questions arise in relation to separating the state's UI program from the federal/state structure. Would (and can) the federal government permit the state to break away? Would the national system disintegrate if other states wanted to drop out? Is the nature of unemployment beyond the capabilities of any one state to cope? Would the courts become involved in issues of "equal protection" and "due process" on behalf of denied out-of-state claimants? These and a host of other questions can only be answered by the legislature and the courts and are beyond the scope of this paper.

Opting out of the system is an issue that has gained prominance due to recent expansion of the federal partner's role in this cooperative system. It is a radical step and is likely to be accompanied by high costs and by legal battles.

Discussion of opting out is often the result of frustration with the expanding role of the federal partner and of a realization that this expansion cannot be successfully countered by piecemeal resistance to individual intrusions on state prerogatives.

Before taking a radical step, alternatives should be considered. The level of interference by the federal partner has increased substantially since the unemployment insurance trust funds were placed in the federal unified budget in 1969. In attempts to reduce budget deficits, Congress has enacted several changes to the UI system. Although the changes may have been proposed primarily for their budgetary effect, they have had profound impact on the program and on the nature of the federal/state cooperative arrangement. The key to a return to true partnership may lie in removal of state trust funds from the federal unified budget. Alleviating budgetary pressure may accomplish many of the desirable goals of opting out without some of the negative aspects. That is, removal of the trust funds from the budget could reverse the tendency toward federal intervention and would not carry the potential to destroy the existing federal/state partnership.

HB
55

January 12, 1981

Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill allowing temporary licensing of qualified applicants who are waiting to take examinations given by the Board of Veterinary Examiners.

The current law requires an applicant who is qualified to take the veterinary examinations to wait until completing all required examinations before being able to work at all. Sometimes it will be months before an applicant can take the required examinations. This bill would amend the statute to allow an otherwise qualified applicant to be temporarily licensed to work under supervision of a licensed veterinarian after applying to take the required examinations.

The bill also corrects an error in the wording of AS 08.98.060(9) of the current law which creates the false impression that veterinary technologists may practice veterinary medicine.

Sincerely,

S/JSH

Jay S. Hammond
Governor

MEMORANDUM State of Alaska

TO: Michael Thill, Committee Aide
Senate Committee on Labor & Commerce

Pete Jeans, Deputy Commissioner
Department of Commerce and
Economic Development

FROM: Harry D. Treager, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development

DATE: March 13, 1981

FILE NO:

TELEPHONE NO:

SUBJECT: House Bill 55

Responding to your memorandum of March 9, 1981, the following information is as you requested. This division's position in regard to the bill is that we support it. This is a clean-up method for AS 08.98. There is or will be no fiscal impact pertaining to this bill affecting this division. The statute the bill addresses is a matter of cleaning up some of the language and allowing applicants a temporary license with less stringent requirements.

Addressing the questions you proposed -- the veterinarian examination is conducted twice yearly; this is in the months of December and May. There are two examinations required; one is a national examination and the second being a State exam. Both examinations are administered by the State. The reason the examinations are given during the months of May and December is to coincide with other national examinations throughout the country.

As related in the present statute, a temporary license is only given after a written examination. This temporary license is good only until the results of the examination are returned, which usually takes about four to six weeks.

There is fee of $20.00 for a temporary license.

Presently, this division has not issued any temporary licenses.

There are presently 117 licensed veterinarians in the State.

In regards to doing the research for your response, we have found that there has been a decrease in applicants for the veterinarian examination. The present requirements outlined in the statutes are that an applicant can be licensed by credential; however, the applicant must meet certain requirements: 1) pass a national examination; 2) must work as a licensed veterinarian five of the past seven years; and 3) additionally must be licensed in another state. This area of licensing does not deal with temporary licenses.

In regards to comments for SB 31, they will be followed up on a separate memorandum. If I can be of any further assistance, please do not hesitate to contact my division.

HDT/kkk5/3

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY HB 55:

Presently, a veterinarian must meet educational and professional conduct standards and must have completed the examination before qualifying for a temporary license.

HB 55 amends the section relating to temporary licensing of veterinarians. A person is eligible to receive a temporary license if he meets the following;

1. Completion of education requirements
2. Has had no complaints,disciplinary proceedings, or professional review pending
3. Has not had a veterinarian license revoked
4. Has applied for the examination and presently works under the supervision of a licensed veterinarian

The application for a temporary license must be signed by the supervising veterinarian and be accompanied by the fee.

Current law requires that a prospective candidate must complete all the examinations before being allowed to work at all. This bill also corrects wording in the statute which gives the impression that a veterinarian technologist may practice medicine (veterinary).

or other specialty act featuring any number of performers for which a ticket is sold in advance for purposes of profit by a concert promoter; the term does not include dramatic performances;

(2) "department" means the Department of Commerce and Economic Development;

(3) "promoter" means a person who contracts for and arranges a concert for purposes of profit whether engaged full time or part time in the business of booking or hiring concerts. (§ 1 ch 114 SLA 1977)

Chapter 98. Veterinarians.

Article
1. Board of Veterinary Examiners (§§ 08.98.010 — 08.98.100)
2. Licensing (§§ 08.98.120 — 08.98.210)
3. Enforcement (§ 08.98.230)
4. General Provisions (§ 08.98.250)

Article 1. Board of Veterinary Examiners.

Section
10. Creation and membership of board
20. Appointment and term of office
30. Executive secretary of board
40. Board meetings
50. Duties of the board
60. Board regulations
70. Duties of the department
80. Department regulations
90. Applicability of the Administrative Procedure Act
100. Compensation

Sec. 08.98.010. Creation and membership of board. There is a Board of Veterinary Examiners. It consists of three licensed veterinarians. (§ 1 ch 91 SLA 1963; am § 1 ch 94 SLA 1966)

Sec. 08.98.020. Appointment and term of office. The governor shall appoint the members of the board, with the confirmation of the legislature, for terms of four years, or until their successors are appointed. A member serves at the pleasure of the governor. The first members shall be initially appointed for two-, three- and four-year terms. (§ 1 ch 91 SLA 1963)

Sec. 08.98.030. Executive secretary of board. The commissioner of commerce and economic development is the executive secretary of the board. (§ 1 ch 91 SLA 1963; am § 59 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce."

Sec. 08.98.040. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (§ 1 ch 91 SLA 1963)

Sec. 08.98.050. Duties of the board. The board shall

(1) pass on qualifications of applicants for licenses and issue licenses to those who quality;

(2) prepare and grade examinations, provided that the board may use examinations prepared by the National Board of Veterinary Examiners;

(3) after hearing, have the authority to suspend or revoke the license of a licensed veterinarian who

(A) obtained his license by fraud, misrepresentation, or deception;

(B) is chronically drunk or is a drug addict;

(C) makes untruthful statements about his professional ability, to solicit business;

(D) distributes alcohol or drugs except as required by the practice of veterinary medicine, surgery, or dentistry;

(E) in his professional capacity, conducts himself in a way that indicates he is not a competent veterinarian;

(F) is convicted of a felony or any crime involving moral turpitude;

(G) falsifies an official state or federal certificate relating to veterinary medicine. (§ 1 ch 91 SLA 1963; am § 2 94 SLA 1966; am § 1 ch 54 SLA 1967)

Sec. 08.98.060. Board regulations. (a) The board shall adopt procedural regulations describing how a person applies for and takes an examination under this chapter.

(b) The board shall adopt substantive regulations

(1) defining conduct which, if engaged in by a veterinarian, is evidence of incompetence;

(2) specifying approved schools under § 170(1) of this chapter;

(3) specifying the subject matter to be covered in an examination for veterinarians. (§ 1 ch 91 SLA 1963)

Sec. 08.98.070. Duties of the department. The department shall furnish the board with administrative services, including renting space for holding examinations, printing and mailing licenses, sending notices, before December 1 of each year, that licenses must be renewed, collecting fees and issuing receipts, keeping a current register of licensees, employing secretarial assistants, replying to routine requests for information, printing forms and informational bulletins, typing all matter to be reproduced, maintaining records and completed examinations, and keeping records of receipts and disbursements. (§ 1 ch 91 SLA 1963; am § 3 ch 94 SLA 1966)

Sec. 08.98.080. Department regulations. The department shall adopt procedural regulations necessary to carry out the duties imposed on it by § 70 of this chapter. (§ 1 ch 91 SLA 1963)

Sec. 08.98.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 91 SLA 1963)

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Sec. 08.98.180. Temporary license. A person who meets the requirements of § 170 of this chapter is entitled to be licensed. A license issued under this section is valid until the results of the examination following the issuance of the license are published. No person may receive more than one license under this section. (§ 1 ch 91 SLA 1963; am § 7 ch 94 SLA 1966)

Sec. 08.98.190. Fees. The following fees shall be imposed under this chapter when applicable:

(1) examination fee	$25
(2) reciprocity fee	25
(3) initial license fee	25
(4) biennial renewal	50
(5) temporary license	10

(§ 1 ch 91 SLA 1963; am § 1 ch 53 SLA 1968)

Sec. 08.98.200. Reinstatement of lapsed license. A person whose license has lapsed is entitled to have his license reinstated without taking an examination unless his license has remained lapsed more than five years. (§ 1 ch 91 SLA 1963; am § 2 ch 53 SLA 1968)

Sec. 08.98.210. Out-of-state veterinarian. A veterinarian in good standing in a veterinary association of another state or territory or the District of Columbia which licenses veterinarians to practice veterinary medicine may be licensed without examination and otherwise upon substantially the same terms and conditions as are fixed in the jurisdiction from which he has come for the licensure of a veterinarian from this state. As a prerequisite to licensure the board shall require a veterinarian to take and pass an examination, unless the applicant has

(1) passed a state veterinarian examination;

(2) engaged in the active practice of veterinary medicine for at least five out of the previous seven years before filing the application excluding time spent in the military service of the United States;

(3) graduated from an accredited school of veterinary medicine;

(4) met the character requirements established by the board. (§ 1 ch 91 SLA 1963; am § 8 ch 94 SLA 1966; am § 2 ch 54 SLA 1967)

Article 3. Enforcement.

Section
230. Injunction

Sec. 08.98.230. Injunction. When it appears that a person has engaged in or is about to engage in an act constituting a violation of § 120 of this chapter, the board, through its executive secretary, shall

Cross reference. — For present provisions as to the power of the board to enact regulations, see AS 08.98.050.

Editor's note. — The repealed section derived from § 1, ch. 91, SLA 1963.

Article 2. Licensing.

Sec. 08.98.120. License required. No person may practice veterinary medicine, surgery, or dentistry unless he is licensed under this chapter or has a temporary permit, except that a veterinary technician may perform functions authorized by regulation of the board. (§ 1 ch 91 SLA 1963; am § 7 ch 130 SLA 1980)

Effect of amendment. — The 1980 amendment, effective July 1, 1980, added the language beginning "or has a temporary permit" to the end of the section.

Sec. 08.98.130. Examination.

Repealed by § 16 ch 130 SLA 1980.

Editor's note. — The repealed section derived from § 1, ch. 91, SLA 1963.

Sec. 08.98.140. Content of examination. (a) The examination shall be in subjects related to the practice of veterinary medicine, surgery, and dentistry and shall include

(1) the examination prepared by the National Board of Veterinary Medical Examiners or other national veterinary examination determined to be acceptable by the board; and

(2) a standardized written examination testing practical skills.

(b) The board may demand a practical demonstration of skills. (§ 1 ch 91 SLA 1963; am § 8 ch 130 SLA 1980)

Effect of amendment. — The 1980 amendment, effective July 1, 1980, designated the provisions of this section as subsection (a), deleted "veterinary anatomy, surgery, medicine, obstetrics, pathology, chemistry, diagnosis, materia medica, therapeutics, physiology, sanitary medicine, dentistry, and other scientific" preceding "subjects" in the introductory language of subsection (a), added all of the language beginning "and shall include" to the end of subsection (a), and added subsection (b).

Sec. 08.98.165. Qualification for license. (a) An applicant is qualified to receive a license as a veterinarian who

(1) is a graduate of an accredited veterinary school or who has passed the examination of the American Veterinary Association's Education Commission for Foreign Veterinary Graduates;

(2) has passed an examination prepared by the National Board of Veterinary Medical Examiners or an equivalent examination as determined by the board, or qualifies for an exemption under (b) of this section;

(3) has passed the written examination of the state;

(4) has passed a practical examination of skills, if required by the board; and

(5) has no disciplinary proceeding, unresolved complaint, or professional association review proceeding pending at the time a license is to be issued, and has not had a veterinarian license revoked for cause in another jurisdiction.

(b) An applicant is exempted from taking the examination required under (a)(2) of this section if he furnishes proof acceptable to the board that he has passed the examination prepared by the National Board of Veterinary Medical Examiners or an equivalent examination within the five years before application, or has been in active practice of veterinary medicine for five of the seven years before application in another state, territory, or country with licensing requirements substantially similar to or higher than those of this state which were in effect at the time the applicant obtained his license in the other jurisdiction. (§ 9 ch 130 SLA 1980)

Effective date. — Section 17, ch. 130, SLA 1980, makes this section effective July 1, 1980, in accordance with AS 01.10.070(c).

Sec. 08.98.170. Qualification for examination.

Repealed by § 16 ch 130 SLA 1980.

Cross reference. — For present provisions covering the subject matter of the repealed section, see AS 08.98.165.

Editor's note. — The repealed section derived from § 1, ch. 91, SLA 1963; §§ 5, 6, ch. 94, SLA 1966; § 25, ch. 245, SLA 1970.

Sec. 08.98.180. Temporary license. A person who meets the requirements of AS 08.98.165(a)(1) and (5) is entitled to be temporarily licensed after completing the examinations under AS 08.98.165(a)(3) and (4) and after completing the examination required under AS 08.98.165(a)(2) or qualifying for an exemption to it. A license issued under this section is valid until the results of the examinations are published. No person may receive more than one temporary license. (§ 1 ch 91 SLA 1963; am § 7 ch 94 SLA 1966; am § 10 ch 130 SLA 1980)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HOUSE BILL NO. 55
Title An Act relating to regulation and licensing of veternarians
Requested by Governor Date 12/11/80

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Regulation and licensing of professions
(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 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES			0			
200 TRAVEL			0			
300 CONTRACTUAL			0			
400 COMMODITIES			0			
500 EQUIPMENT			0			
600 LAND & STRUCTURES			0			
700 GRANTS, CLAIMS, ETC.			0			
			0			
TOTAL			0			

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME			0			
PART TIME			0			
TEMPORARY			0			

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

IV. DATE 12/11/80 PREPARED BY Harry D. Treager
AGENCY Division of Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

HB

74

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149
JUNEAU, ALASKA 99811
Phone: 465-2700

April 15, 1982

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

Dear Senator Mulcahy:

The Department of Labor was not aware of the requirements prescribed in Section 09.38.115, page 16 and 17, of Committee Substitute for House Bill No. 74 (Rules) until the bill was calendared by the House of Representatives. The department does have the information and the requirements of this section would not present a work load problem.

However, several technical changes are needed. The Consumer Price Index for Anchorage is only published bi-monthly and there is approximately a 30-day delay in publishing data. For instance, data published for January of a given year would not be available until the end of February. Therefore, the following changes are requested.

Page 16, line 17 should read:

"point, between the index for January of the even-numbered year . . ."

Page 17, line 7 should read:

"1) On or before June 15 of each year . . ."

There is no consumer price index for December and the date change would insure the department could adopt the regulation and adhere to the statutory time requirements for promulgating regulations.

Thank you for your consideration of these amendments. If a hearing is scheduled, a representative of the department would be available to provide testimony. A fiscal note is enclosed.

Sincerely,

Judy

Judy Knight
Legislative Liaison
Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill 74 (Rules)

Title "An Act relating to the rights of debtors and creditors.

Requested by Senate Labor and Commerce Date 4/15/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Administrative Services

(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 Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

The information required is already available.

IV. DATE 4/15/82 PREPARED BY Nico Bus, Finance Officer

AGENCY Department of Labor

PHONE 465-2720

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

HB

94

Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

Committee Meeting Minutes: 1 June, 1981

The Senate Labor and Commerce meeting was called to order by Senator Mulcahy, and all committee members were present. The Chairman invited public testimony to address CS HB94am.

Jackie MacClintock, Director of the Division of Worker's Compensation, Department of Labor provided testimony on CS HB94am thru a sectional analysis of the bill. Upon the completion of her section by section overview, she elaborated on Vocational Rehabilitation efforts stressing the positive benefit to the State, employers, the injured workers, and their families.

Senator Mulcahy entertained questions of the committee members, and Senator Rodey wished to know if CSHB94am had been extracted from the original worker's compensation study commission to which Ms. MacClintock responded affirmatively. Senator Ziegler questioned the expansion of the worker's compensation board, and it was explained that the process of hearing and processing claims would be expedited. Senator Fahrenkamp asked about the premium increases relative to the 6% requirement in the bill and Jackie MacClintock responded that the Division of Insurance projected a 1% premium increase to assure the solvency of the second injury fund.

Senator Mulcahy asked if there were any further questions or people who wished to testify. A motion was made that CSHB94am should move from committee with individual recommendations, and the meeting was adjourned.

Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

CSSB 94am; Sectional Analysis:

Section 1: Adds additional panel to the Worker's Compensation Board which in the event regular members are unable to attend, may sit in any district. Members, except the Chairman or his designees, are appointed pursuant to AS 23.30.005, and at times have scheduling conflicts with their own occupations. Amendment will insure that disputed claims are heard expeditiously, by a full board, and will provide the resources to conduct additional hearings when the workload requires.

Section 2: Expands the base for contributions to the second injury fund and incorporates a contribution schedule to insure the solvency of the fund. Changes the base for payments to the fund from permanent partial disability to permanent total, temporary total, and temporary partial disability. Under Section 7, an initial contribution rate of 6% is established, which will build the reserves before a sliding rate scale takes effect in 1983. Allows a more realistic maintenance allowance of $200 a month and total maximum expenditures for retraining to $10,000 in order to cover an inflationary rise incosts for rehabilitation or retraining. Also transfers the administrative expenses of the State from the resources of the second injury fund to the general fund.

Section 3: Amendments are administrative "housekeeping" changes to enable the Division and Board to streamline the processing of claims and provide current claim information and injury statistical data to the public and private sectors.

1. Clarifies a controverted claim, and the requirements under which a notice of controversion must be filed.

2. Requires notice to be filed with the board whenever payment of compensation has begun, is terminated or changed, and provides penalties for failure to file notice.

3. Requires periodic reporting of all payments made on claims

which will be used to provide the public and private sectors with current and accurate statistical data.

Section 4: This section is amended to include a definition for the term "reserve rate" as used in section 2.

Section 5: Repeals provision of AS 23.30.155 (g) due to proposed legislation.

Section 6: Clarifies that the amount of payment to the second injury fund and the conditions under which payment is required, is in accordance with the version of AS 23.30.040(b) that was in effect on the date of injury to the employee.

Section 7: Section establishes an initial contribution rate of 6% beginning July 1, 1981 and ending December 31st, 1982, which will build reserves before a sliding rate scale takes effect in 1983.

Section 8: Provides for an effective date for the bill of July 1, 1981.

COMMITTEE REPORT

SENATE

5/13/81

FURTHER: Finance

Date: [illegible]

Mr. President:

The Committee on LABOR & COMMERCE has had CSHB 94(Fin) am workers' compensation

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[signature]

[signature]
CHAIRMAN

S 60 (Rev. 12/78)

I. REQUEST

Bill/Resolution No. CS HB 94 (Fin) #-3 Rehabilitation amendment

Title An Act relating to workers compensation

Requested by Rogers Date May 12, 1981

II. FISCAL DETAIL

Agency Affected Department of Labor

Program Category Affected Administration of Workers' Compensation

BRU, Program, or Subprogram(s) Affected Public Protection

(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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES				95.0	0	
200	TRAVEL				25.0	0	
300	CONTRACTUAL				40.0	0	
400	COMMODITIES				0	0	
500	EQUIPMENT				0	0	
600	LAND & STRUCTURES				0	0	
700	GRANTS, CLAIMS, ETC.				0	0	
	TOTAL				160.0	0	

FUNDING (Thousands of Dollars)

GENERAL FUND				160.0		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY				5		

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

100. PERSONAL SERVICES:	Project Coordinator (6 months temporary)	30.0
	Legal Researcher & Drafter (6 months temp)	25.0
	Research Analyst (6 months temporary)	15.0
	Secretarial/Clerical (2 @ 6month temp)	25.0
		95.0
200. TRAVEL AND PER DIEM:	In-state (includes 3 public hearings)	10.0
	Out-of-state (consult with other states)	15.0
300. CONTRACTUAL:	Technical consultations	15.0
	Office costs and support	25.0
		160.0

IV. DATE 5/12/81 PREPARED BY [signature]

AGENCY Legislative

PHONE 465-4920

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/78)