

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1969 HRLS. HB 146 - HB 199

1969

Regarding subsection (b), the language "Initiate Payment" is unclear. The initiation of the payment process may be interpreted to mean anything from the approval of a Contractors invoice or the signing of a monthly pay estimate to the actual mailing of the warrant to the Contractor, a process which could entail from three to ten days (or more), depending on the remoteness of the project site or its distance from the finance office.

It is suggested that the term "Intitate payment" be replaced with "Issue Payment", in which case the period of time allowed should be changed to 30 days in order to allow for the time necessary to transmit pay estimates or bills from a remote project site and to allow for the review and approval of complex pay estimates such as those involving multi-million dollar contracts with a multitude of pay items which must all be verified and approved prior to issuing a warrant.

It should also be pointed out that where subsection (b) uses the language "... the contractor submits... a bill for materials or services...", this terminology is not applicable to most all of the construction contracts administered by DOT/PF. Firstly, payment for public works contracts is not made directly for materials or services but for items of work for which unit prices are bid. Secondly, in most cases the contractor does not submit a bill. Instead, a pay estimate is prepared by the State and approved by the Contractor.

It is also unclear whether the Contractor under (b) would be paid on the regular basis as set up in the contract (monthly or semi-monthly), or whether he/she could submit weekly or even daily bills.

Subsection (b) is silent concerning the consequences of the Contractor's failure to submit the sworn statement regarding prevailing wages.

The following language is suggested for subsection (b) in order to clarify the above points:

(b) The State shall issue payment to the Contractor, for the amount due under the public construction or public works contract, within 30 days following the end of the pay period for which payment is being made. The Contractor shall submit a sworn statement, to the State at the end of the pay period, certifying that all employees employed on the project during the pay period by the Contractor and all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor. Failure, by the Contractor, to submit the above sworn statement shall be cause for the State to delay payment, without interest or penalty, until such a sworn statement is submitted.

In reference to subsection (c), it must be stated that this Department strongly opposes the principle of a penalty, other than interest on late payments. This Department has, we believe, an excellent record for making timely payments to Contractors and it is not anticipated that such a penalty provision would ever

be used, were it inacted. Our general contract provisions, in every construction contract, contain an administrative claims clause which provides the vehicle to remedy inequities or disputes whenever they may occur. Such an avenue has always been available to our Contractors and is believed to be much more equitable than an automatic penalty for an event, regardless of its causation or circumstance.

It is recommended that the interest payment provision in (c) be retained, but that the 10 percent penalty provision be deleted.

Regarding subsection (d), interest on retainage, the following language is suggested for the second sentence in order to clarify the beginning of accrual of interest:

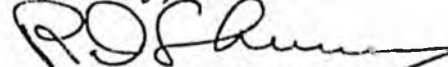
Interest on retainage accrues from the thirtieth day following the end of the pay period from which the retainage is withheld until the date of payment to the Contractor.

Under definitions, Section 36.95.010, the term Contractor must apply only to the prime Contractor as the contract is only between the prime Contractor and the State. The term "unskilled" in (2) should not be used to describe a mechanic or a surveyor but could apply to a laborer. In (3), "Public Construction" or "Public Works", the terms "onsite" and "real property" would not apply to State ferries constructed under contract with this Department. It is suggested that "on-site" be deleted and the term "real Property" be changed to "public Property". (Reference Blacks Law Dictionary for these terms.) The definition of "retainage", (6), would be improved by re-wording as follows:

(6) "Retainage" means money, or other contingency which the Contractor has earned as evidenced by approval of the applicable pay estimate, which is withheld from the Contractor until the completion of the contract.

The above comments are made in the interest of making the proposed legislation a more meaningful and concise document, as it would apply to the Department of Transportation and Public Facilities, which will hopefully accomplish its intended purpose without unduly increasing the cost or adversely affecting the quality of construction projects built with public funds.

Sincerely,



R.D. Shumway, P.E.
Deputy Commissioner

Enclosure: Copy of CS SS HB 146(I&C)

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CS3SHB 146 (Finance)
 Title Re payment procedures on certain public contracts.
 Requested by House Finance Date 3/22/82

II. FISCAL DETAIL
 Agency Affected DOT/PF
 Program Category Affected _____
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 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 | | 135.0 | 135.0 | | | |

FUNDING (Thousands of Dollars)

| | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 |
|------------------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | | 135.0 | 135.0 | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |
| | | | | | | |

POSITIONS

| | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

Costs are those associated only with payment of interest on retainage. It is assumed that the retainage on future contracts will remain stable.

Projection of costs concerning interest on payments after 60 days and payment of penalty is not possible. There will be very few cases where this will occur; we are opposed to the principle of paying penalty. Interest payments are appropriate however.

IV. DATE 3/22/82 PREPARED BY Jon Scribner
 AGENCY DOT/PF
 Original: Legislative Finance PHONE 465-3900
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SC SS HB 146 - Relating to payment procedures on
Title certain public contracts
Requested by Labor & Commerce Committee Date 2/3/82

II. FISCAL DETAIL
Agency Affected Department of Transportation & Public Facilities
Program Category Affected Design and Construction
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
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| TOTAL | | | | | | |

FUNDING (Thousands of Dollars)

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

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

36.90.001 (a) Direct Cost is loss of interest on 20% of contract amount for 73 days. 20% of \$300 million = \$60 million. Assume State earns 12% on its money. Then, \$60 million (0.12) $\left(\frac{73}{365}\right)$ = \$1.44 million.

Indirect Cost is increased cost of bonding (assume 0.5% of contract) \$300 million (.005) = \$1.50 million.

(b) Interest on retainage is calculated at \$135,000.

Estimated total annual cost of this bill is \$3,075,000.

IV. DATE February 11, 1982 PREPARED BY Jerome A. Murphy JM
AGENCY DOT/DF
Original: Legislative Finance PHONE 465-3900
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX 3-1000
JUNEAU, ALASKA 99811
(TELEX 099-45 337)

February 18, 1982

Re: CS SS HB 146(L&C)
Relating to Payment Procedures
on Certain Public Contracts

Honorable John Fuller, Chairman
House Rules Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Fuller:

We have reviewed the referenced version of House Bill 146(L&C) and believe that this proposed legislation is both unnecessary, as it applies to this Department, and not in the best interest of the State, in general. Should it be determined, however, that it should be pursued, the following comments and recommendations are hereby offered for your consideration.

It is recommended that subsection 36.90.001(a) be deleted. The payment, to the contractor, of 20% of the contract amount prior to beginning work is not only fiscally unsound but also would increase the risk of contractors not performing the work in a timely manner.

This Department already operates under policies which minimize the requirements of interim financing by Contractors without increasing the risk to the bondsmen or increasing the premium. In most contracts, a mobilization pay item allows the contractor to recover move-in and set-up costs very early in the job. Contractor payments are made monthly or semi-monthly at the Contractor's request. Retainage is held to a bare minimum on lump sum contracts and is not held at all on most highways, airports and harbors contracts. Provisions are made which pay for stockpiled materials on the job site prior to incorporation into the project and on buildings contracts bonding, insurance and bidding expenses are paid immediately after the notice to proceed is issued. These policies were developed through cooperative efforts with the contracting industry in an effort to minimize financial problems while still maintaining a competitive bidding atmosphere.

Regarding subsection (b), the language "Initiate Payment" is unclear. The initiation of the payment process may be interpreted to mean anything from the approval of a Contractor's invoice or the signing of a monthly pay estimate to the actual mailing of the warrant to the Contractor, a process which could entail from three to ten days (or more), depending on the remoteness of the project site or its distance from the finance office.

It is suggested that the term "Initiate payment" be replaced with "Issue Payment", in which case the period of time allowed should be changed to 30 days in order to allow for the time necessary to transmit pay estimates or bills from a remote project site and to allow for the review and approval of complex pay estimates such as those involving multi-million dollar contracts with a multitude of pay items which must all be verified and approved prior to issuing a warrant.

It should also be pointed out that where subsection (b) uses the language "... the contractor submits... a bill for materials or services...", this terminology is not applicable to most all of the construction contracts administered by DOT/PF. Firstly, payment for public works contracts is not made directly for materials or services but for items of work for which unit prices are bid. Secondly, in most cases the contractor does not submit a bill. Instead, a pay estimate is prepared by the State and approved by the Contractor.

It is also unclear whether the Contractor under (b) would be paid on the regular basis as set up in the contract (monthly or semi-monthly), or whether he/she could submit weekly or even daily bills.

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be used, were it inacted. Our general contract provisions, in every construction contract, contain an administrative claims clause which provides the vehicle to remedy inequities or disputes whenever they may occur. Such an avenue has always been available to our Contractors and is believed to be much more equitable than an automatic penalty for an event, regardless of its causation or circumstance.

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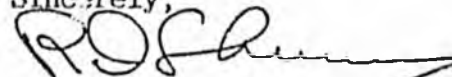
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Sincerely,



R.D. Shumway, P.E.
Deputy Commissioner

Enclosure: Copy of CS SS HB 146(L&C)

HB

154

A M E N D M E N T #2

OFFERED: In the House

By Cuddy

TO: CS FOR HOUSE BILL NO. 154 (State Affairs)

Page 1, line 13:

After "who", insert "gave the public official or candidate a gift of cash or who"

Page 1, line 26:

Delete "(A) a gift of cash;" and redesignate remaining subparagraphs

*This makes only lobbyists
giving cash identified.
Not my next door
neighbor or the Chamber
President.*

AMENDMENT

1-6 failed

3

- Phillips moved

OFFERED IN THE HOUSE

BY Cuddy

TO: CSHB 154(SA)

Page 2, line 18 and 19:

Delete all material and insert:

"(e) A gift from a person who is the spouse of or is related by blood within and including the third degree of kindred to the public official or candidate does not need to be reported under this section."

2
Need explanation/def.

Cousins not
teachers
could be ok.

A M E N D M E N T #4

OFFERED: In the House

By Phillips

TO: CS for House Bill No. 154 (State Affairs)

Page 2, line 20

Delete all material and insert:

"* Sec. 3. This Act takes effect January 1, 1982."

*was
Excellent*

A M E N D M E N T #5

OFFERED: In the House

By Phillips

TO: CS for House Bill No. 154 (State Affairs)

Page 1, line 13

Delete "purchased" and insert "entered into a contract to purchase"

*Some validity, but
maybe as work in deal
just as liable*

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1981

SUBJECT: Section-by-section analysis of Rules
amendments to CSHB 154

TO: Representative Sally Smith, Chairman
House Rules Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

BY: Keith B. Levy *KBL*
Legislative Legal Extern

AS 39.50.030(b) enumerates what must be included in disclosure statements by public officials and candidates. CSHB 154 adds several items to that list. Specifically, paragraph (9) requires disclosure of the names of certain lobbyists and paragraph (10) requires disclosure of certain persons making cash gifts to public officials or candidates.

Amendment No. 2 (there is no Amendment No. 1) by Representative Cuddy changes what a candidate or public official must disclose about lobbyists. Instead of only reporting the names of lobbyists who purchase goods or services in excess of a certain value from him, he will also have to report the names of lobbyists who gave any gift of cash.

Amendment No. 2 also removed the requirement that a candidate or public official report any gift of cash. Instead, he must report only those specific types of gifts listed in Sec. 30(b)(10) as added in this bill.

Amendment No. 3 by Representative Cuddy changes the list of persons whose gifts a candidate or public official is excluded from reporting. Instead of excluding gifts from a spouse, child, mother, father, brother or sister, the amendment excludes the spouse and any person related by blood within

Representative Sally Smith
Page 2
April 3, 1981

and including the third degree of kindred to the public official or candidate.

Amendment No. 4 by Representative Phillips changes the effective date of the Act from July 1, 1981 to January 1, 1982.

Finally, Amendment No. 5 by Representative Phillips changes the requirement that a candidate or public official report the names of lobbyists who purchased goods or services in excess of a certain amount from him. Instead, he must report the names of lobbyists who entered into a contract to purchase goods or services in excess of a certain amount from him.

KBL:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 6, 1981

SUBJECT: Financial disclosure
(CSHB 154 (Rules))

TO: Representative Sally Smith
Chairman, House Rules Committee

FROM: Richard A. Bradley **B**
Legislative Counsel

You have requested a further review of the effect of the floor amendments to HB 154, a bill proposing amendments to AS 39.50.030.

AS 39.50.030 constitutes a core section of the financial disclosure/conflict of interest law: it determines what is required in a financial disclosure statement. The provisions of the bill do not amend existing requirements; rather, they add new areas of information required on the financial disclosure statement.

Note that the existing eight areas of concern under sec. 30(b) are broad ranging; they ask for information regarding the financial activities of the public official or candidate but do not seek to limit the source of the information to contacts with "lobbyists". The word "lobbyist" did not appear within the provisions of AS 39.50 before the amendments proposed in this bill.

Paragraph (9) as added in the bill requires disclosure of the specified activity by a public official or candidate with a lobbyist; paragraph (10) requires disclosure of the specified activity by a public official or candidate with anyone and paragraph (11) asks the public official or candidate to identify a person known as a lobbyist, as a contractor or vendor with the state, or employee of the state who is related to the public official or with whom the public official or candidate has identified business relationships.

The first amendment, Amendment No. 2, adds the phrase "gave the public official or candidate a gift of cash or" at page 1, line 13 of the State Affairs committee substitute; it simultaneously deleted the requirement in sec. 30(b)(10) that "a gift of cash" from anyone be reported.

The amendment was somewhat ambiguous grammatically. As we prepared the committee substitute incorporating the amendments, there was debate in this office as to whether the amendment should be placed with or apart from the conditional phrase: "in excess of \$100". As I viewed the location of the amendment, it seemed grammatically to be apart from the limitation -- to pick up all cash gifts. The revisor disagreed and suggested that the "gifts" were to be treated like contracts; the first \$100 worth were excluded from the report. I considered the matter closed and drafted it the way it appears when Jack Chenoweth, the drafter of the amendment, said that the goal of the sponsor, Representative Cuddy, was to require the disclosure of all cash gifts from a lobbyist -- but not otherwise. If the person making the gift is not a lobbyist, the reporting threshold is not reached. We believe that goal is achieved in the bill.

Note that the effect of the amendment, when contrasted with the State Affairs committee substitute, is to minimize the reports that must identify the receipt of cash. In the State Affairs committee substitute, all cash gifts are reported; in the Rules committee substitute resulting from the floor amendments, cash is reported only if received from a lobbyist and then only when it exceeds \$100.

Note that as adopted the amendment seems consistent with the thresholds in AS 24.45.051(3) and in AS 24.34.061(b)(4). The former section requires a lobbyist to report "the date and nature of any gift exceeding \$100 in value made to a public official and the full name and official position of that person"; the latter section requires the employer of a lobbyist to disclose "the date and nature of any gift exceeding \$100 in value made to any public official and the full name and official position of the recipient of each gift".

Under the State Affairs committee substitute lobbyists would not need to report the gift but public officials and candi-

Representative Sally Smith
Page 3
April 6, 1981

dates would; the Rules committee substitute will establish equal thresholds for the reports of both lobbyists and public officials and candidates.

Amendment No. 3 by Representative Cuddy changes sec. 30(e), added by this bill. The former provision eliminated reports of gifts from a spouse, a child, a mother or father, or a brother or sister. The amendment eliminates reports from a spouse or from a person "related by blood within and included the third degree of kindred to the public official or candidate".

It does not appear that the phrase "third degree of kindred" has been used in the statutes. I located the phrase "second degree of kindred" in two places: AS 39.10.010, an anti-nepotism law prohibits employment of a person related "by blood within and including the second degree of kindred" to the executive head of the department or agency; AS 16.05.407 permits a nonresident to hunt for big game either with a guide or a person who is an Alaskan resident "within and including the second degree of kindred".

The concept is a measurement of blood relationships used most frequently with regard to descent and distribution in estates where no will has been left. As 26A C.J.S., Descent and Distribution, Sec. 22, reports:

Since kindred [relatives] of the degree nearest to the intestate [a person dying without a will] succeed to his estate to the exclusion of those of more distant degree, . . . it is important . . . to ascertain the relative degree of kinship between the intestate and the several claimants. In most states, the civil law rule of ascending from the intestate to a common ancestor and descending from him [the common ancestor] to a claimant, reckoning a degree each generation, both in the ascending and descending lines, is followed in reckoning degrees of consanguinity.

Thus children and parents are kindred of the first degree to a given person. Grandparents, grandchildren, and brothers and sisters are kindred of the second degree to a given person. And kindred of the third degree includes, for a given person, great-grandchildren, great-grandparents, uncles, aunts, nephews, and nieces.

Representative Sally Smith
Page 4
April 6, 1981

Note that the relationships described are limited to those qualifying by "blood". Relationships resulting from marriage are excluded.

The fourth amendment delays the effective date of the Act from the date in the State Affairs committee substitute, July 1, 1981 to January 1, 1982. To the extent that a reporting year is a calendar year (see AS 39.50.030(b)), the amendment may foster some administrative convenience.

Amendment No. 5 changes the language within sec. 30(b)(9)(B) which would have required the reporting of the names of lobbyists who "purchased" goods to read rather than a report is required on lobbyists who "enter into a contract to purchase goods".

Jack Chenoweth tells that the purpose of the amendment is to eliminate any requirement that essentially casual, cash transactions be reported.

If I may assist further, please advise.

RAB:ljb

Original Sponsor: Rules Committee

Offered: 3/23/81
Referred: Rules

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 154 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to financial disclosure; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 39.50.030(b) is amended by adding new paragraphs to
10 read:

11 (9) the name of a person known by the public official or
12 candidate to have been a lobbyist during the preceding calendar year
13 who purchased goods or services

14 (A) in excess of \$100 from a

15 (i) sole proprietorship owned by the public
16 official or candidate;

17 (ii) partnership in which the public official or
18 candidate is a partner;

19 (B) in excess of \$1,000 from a partner of the public
20 official or candidate; or

21 (C) in excess of \$100 from a corporation over 50
22 percent of the stock of which is owned by the public official or
23 candidate;

24 (10) the name of a person from whom he received during the
25 preceding calendar year

26 *Unan. Adopt ** (A) a gift of cash; *in excess of \$100*

27 (B) a single gift not of cash having a reasonable value
28 in excess of \$100;

29 (C) gifts other than cash having an aggregate reason-

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able value in excess of \$250;

(11) the name of a person known by the public official or candidate to have been a lobbyist, or a contractor or vendor who does business with the state, or an employee of the state during the preceding calendar year who is

(A) a partner, officer, or director of a corporation in which the public official or candidate is a partner, officer, director, or employee, with a description of the legislative or administrative matters which were the object of the activity of the lobbyist, the contractor or vendor who does business with the state, or employee of the state; or

(B) a spouse, child, mother or father, brother or sister of the public official or candidate.

* Sec. 2. AS 39.50.030 is amended by adding new subsections to read:

(d) A campaign contribution reported by a public official or candidate under AS 15.13 does not need to be reported under this section.

(e) A gift from a spouse, child, mother or father, brother or sister does not need to be reported under this section.

* Sec. 3. This Act takes effect July 1, 1981.

Uncle, Grandparent or grandchild
Jointly, aunts, uncles, nephews, nieces
2-5

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1981

SUBJECT: Section-by-section analysis of Rules amendments to CSHB 154

TO: Representative Sally Smith, Chairman House Rules Committee

FROM: Richard A. Bradley *RB*
Legislative Counsel

BY: Keith E. Levy *KEL*
Legislative Legal Extern

AS 39.50.030(b) enumerates what must be included in disclosure statements by public officials and candidates. CSHB 154 adds several items to that list. Specifically, paragraph (9) requires disclosure of the names of certain lobbyists and paragraph (10) requires disclosure of certain persons making cash gifts to public officials or candidates.

Amendment No. 2 (there is no Amendment No. 1) by Representative Cuddy changes what a candidate or public official must disclose about lobbyists. Instead of only reporting the names of lobbyists who purchase goods or services in excess of a certain value from him, he will also have to report the names of lobbyists who gave any gift of cash.

Amendment No. 2 also removes the requirement that a candidate or public official report any gift of cash. Instead, he must report only those specific types of gifts listed in Sec. 30(b)(10) as added in this bill.

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KBL:ljb

Enclosure

HB

156

COMMITTEE REPORT

HOUSE

FURTHER:

Date: April 22, 1981

Mr. Speaker:

The Committee on Rules has had HR 156

"An Act relating to legislative contracts."

under consideration and reports it back as follows:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HR 156 (Rules) same title
 new title

and recommends Do Pass.

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Blank lines for other recommendations]

[Handwritten signature]
CHAIRMAN

A M E N D M E N T #1

Offered in the HOUSE

By Phillips

TO: CSHB 156(State Affairs)

Page 1, line 18:

Delete "or"

Page 1, line 20:

After "AS 37.05.230" insert "; or

(5) the service is to be provided by an agency or department of the state government or by a municipality."

OK/needed?

A M E N D M E N T #2

Offered in the HOUSE

By Phillips

TO: CSHB 156(State Affairs)

Page 2:

Delete all material on lines 18 and 19

I just may agree

Page 2, line 20:

Change "(4)" to "(3)"

A M E N D M E N T ³

Offered in the HOUSE

BY PHILLIPS

TO: CSHB 156 (SA)

Page 3, following line 20; Insert:

Sec. 24.23.050. DEFINITION. In this chapter, "services" means professional personal services characterized by skilled, technical, or specialized personal services rendered to the agency or a committee.

#4

AMENDMENT

By Meekins

CS Hb 156 (State Affairs)

Page 1, line 13: delete "the contract amount does not exceed \$5,000;"
insert "the total amount of a contract or contracts
awarded to a person in a twelve-month period
does not exceed \$5,000;"

Page 1, line 21-23: delete (b)

Page 2, line 8: delete (1), renumber existing subparagraphs accordingly

~~Page 2, line 18; after "required," insert "are professional services
which"~~



Alaska State Legislature

House of Representatives

Committee on Rules

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

M E M O R A N D U M

TO: Members of the Rules Committee

FROM: Rep. Sally Smith
Chair, Rules Committee

RE: HB156

DATE: April 3, 1981

Legal Services was unable to prepare an analysis for the attached three proposed amendments. However, Legal Services attorney Jack Chenoweth will be attending the meeting to address questions you may have on the effect of these amendments to the bill.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 17, 1951

SUBJECT: Legislative contracts
(CSHB 156 (Rules))

TO: Representative Sally Smith
Chairman, House Rules Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

You have requested an analysis of the amendments proposed for a Rules Committee Substitute to HB 156, a bill dealing with legislative contracts.

The first amendment that I have is an amendment by Representative Meekins. His amendment deletes the phrase "the contract amount does not exceed \$5,000;" on page 1, line 13 of the bill. He proposes to add in its place:

the total amount of a contract or contracts awarded to a person in a twelve-month period does not exceed \$5,000;

His amendment further deletes (b) at lines 21 - 23 on page 1; on page 2, line 8 he proposes to delete (1) and to renumber the remaining paragraphs. Finally, his amendment would add "are professional services which" after "required" on page 2, line 18.

The basis for the amendment was the conclusion that the bill was not effective in its goal to limit contracts for services to \$5,000 a year. The State Affairs Committee had requested amendments toward that end; for reasons involving essentially nothing more than statutory construction, it had been concluded that the goal was not achieved.

The first three aspects of the Meekins amendment achieve this goal, we believe.

The last aspect of the amendment deals with a different problem: while it seems clear that the language of sec. 24.23.020(b)(3) was intended to reach only professionals such as lawyers or accountants, the language was thought to be uncertain in its scope. The addition of the language solves that uncertainty; it now reads that a request for proposals need not be extended if

(3) the services required are professional services which may, by law or regulation, be provided only by a person licensed to perform the service;

Representative Phillips offered several amendments.

One amendment adds another exception to the list of contracts for services to which the chapter does not apply: to "service" "provided by an agency or department of the state government or by a municipality". The exclusion is, it seems, wholly within the apparent policy goal of the bill to limit the possibility of the award of legislative contracts to arguably favored individuals.

A separate amendment offered by Representative Phillips deletes the exception under sec. 24.23.020(b)(3) for contracts performed by professionals, almost uniformly by lawyers or accountants. As I understand Representative Phillip's goal, his view was that if the services offered by these professionals were unique such that they constitute a single source, then sec. 24.23.020(b)(2) authorized the negotiation of a contract. And if the services were not unique, then he saw no reason why these professional groups should be excluded from the goals of the act. The decision may or may not be reasonable; in my judgment, the matter is uniquely appropriate for legislative judgment. I note in the past that professional ethics of the legal profession and very likely the accounting profession would have viewed a response to a request for proposals as akin to advertising and thus unethical. In my judgment, those days are past and I do not believe that the elimination of the protections to attorneys or accountants presents any ethical problems. The committee should recognize that this amendment and the last aspect of Representative Meekins' amendment are not consistent.

An amendment by Representative Phillips defines "services" under the proposed AS 24.23 to mean "personal services

Representative Sally Smith
Page 3
April 17, 1981

characterized by skilled, technical, or specialized personal services rendered to the agency or a committee".

As I understand the purpose of the amendment, Representative Phillips had a discussion with Dick Berg, director of Legislative Affairs Agency administrative services. As a result of the discussion, Representative Phillips properly concluded that the purpose of the bill was to regulate contracts for personal services. But, as he noted, the term "services" was not defined. This amendment provides such a definition, presumably within the intent of the sponsors.

RAB:ljb

STATE OF ALASKA THE LEGISLATURE

PO BOX Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1981

SUBJECT: Legislative Contracts
(CSHB 156 (State Affairs))

TO: Representative Sally Smith, Chairman
House Rules Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

As requested I have looked at two areas of this bill and I would suggest clarifying amendments.

Good
In sec. 24.23.010 it is my understanding that the intent is that the \$5,000 limit may not be exceeded by use of a series of contracts under \$5,000 to the same person.

I think that (b) in the committee substitute creates an ambiguity since the \$5,000 limitation in (a)(1) (page 1, line 13) is a limitation separate from the remainder. For example the competitive bid procedure excepted in (a)(4) clearly should be available as an option in large contracts.

I would suggest that sec. 24.23.010(b) (page 1, lines 21-23) be deleted and (a)(1) be changed to read:

(1) the total amount of a contract or contracts awarded to a person in a twelve-month period does not exceed \$5,000;

In connection with this sec. 24.23.020(b)(1) (page 2, line 8) should be deleted as redundant since if the chapter does not apply to contracts under \$5,000 the requirement for a request for proposals does not apply.

The second area is the exemption in sec. 24.23.020(b)(3) (page 2, lines 18 and 19). It is my understanding that the

Representative Sally Smith
Page 2
April 3, 1981

intent here is to exempt services requiring exercise of professional judgment. Although today the term "professional" is often used very broadly, the context would narrow the meaning. I would suggest the exemption read:

Good
The services are professional services which may, by law or regulation, be performed only by a person licensed to perform the services.

BGB:ljb



Alaska State Legislature

House of Representatives

Committee on Rules

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

M E M O R A N D U M

TO: Members of the Rules Committee

FROM: Rep. Sally Smith
Chair, Rules Committee

RE: HB156

DATE: April 3, 1981

Legal Services was unable to prepare an analysis for the attached three proposed amendments. However, Legal Services attorney Jack Chenoweth will be attending the meeting to address questions you may have on the effect of these amendments to the bill.



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with

affect

FREE Committee

HB156

Recommended Amendments

discuss
1. Sec 24.23.020(a) (Page 2, line 3 - last sentence in subparagraph)

The FREE Committee believes that this sentence provides loopholes to allow informal solicitation of contracts. Emphasis should be on formal public advertising.

too much
2. Sec 24.23.030(b) provides that the contract award amount is to be stated on the first page of the contract. The FREE Committee is recommending that the language should be more specific and require that the contract amount be included on all research reports which are a product of such a contract.

70
3. The FREE Committee also recommends that a payment procedure be outlined in this bill. Said payment would be based on work performance and would not be received until portions of the contract had been completed. There would be no prepayment for services at time of contract award.

Bill Berrier's response to above recommendations:

1. Mr. Berrier pointed out that an amendment to this language may alter the bill's intent. Should there be equal attention to informal solicitation of contracts and formal public advertising. How much leeway is wanted?

2. This recommendation may be more appropriately considered a policy issue than a statutory requirement.

3. Again, payment procedure may be more appropriately considered as a policy issue. Failure to provide partial payment at the time of contract award, may prevent small contractors from participating. The larger businesses may, theoretically, be the only ones able to meet these requirements. Depends upon the legislative intent.

Original sponsor: Rules Committee

Offered: 3/23/81
Referred: Rules

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 156 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to legislative contracts."

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

8 * Section 1. AS 24 is amended by adding a new chapter to read:

9 CHAPTER 23. LEGISLATIVE CONTRACT PROCEDURE.

10 Sec. 24.23.010. APPLICATION. (a) This chapter applies to
11 contracts for services to be provided to a legislative agency or
12 committee unless

13 (1) the contract amount does not exceed \$5,000;

14 (2) the contract is an employment contract for services to
15 be performed under direct supervision regardless of the existence of an
16 employer-employee relationship;

17 (3) the contract is for construction, repair, or maintenance
18 of a structure; or

19 (4) the contract is awarded based on competitive bids ob-
20 tained under the competitive bid procedure provided in AS 37.05.230.

21 ~~(b)~~ A legislative agency or committee may not negotiate a con-
22 tract or contracts with a person that exceed \$5,000 in a 12-month
23 period.

24 Sec. 24.23.020. REQUESTS FOR PROPOSALS. (a) A formal written
25 request for proposals soliciting an offer to perform the services
26 required under a contract must be extended to a sufficient number of
27 providers of the required services to assure that public interest in
28 competition is adequately served. Proposals from at least six firms
29 shall be solicited for contracts in excess of \$100,000 if the expertise

1 required is widely available. Proposals from at least three firms
2 shall be solicited for contracts of less than \$100,000 if the expertise
3 required is widely available. Formal advertising in a medium which
4 will reasonably bring the proposal to the attention of persons able to
5 provide the required service may be substituted for direct solicitation
6 or used jointly with direct solicitation of proposals.

7 (b) A request for proposals need not be extended if

8 (1) the contract amount does not exceed \$5,000;

9 (2) there is a single source of the expertise or knowledge
10 required or if one person or firm can clearly perform the required
11 tasks more satisfactorily because of the person's or firm's prior work;
12 however, this exemption from a request for proposals applies only when
13 a legislative committee by vote of the majority of the members of the
14 committee has approved the exemption and a written justification signed
15 by the person responsible for awarding the contract which details the
16 reasons for the exemption is filed with the Legislative Affairs Agency
17 as a public record;

18 (3) the services required may, by law or regulation, be
19 performed only by a person licensed to perform the service;

20 (4) the contract is for services provided to the office of
21 the ombudsman for an investigation under AS 24.55.100.

22 (c) A proposal should be designed to demonstrate to legislative
23 committees and staff who will review the proposal that the proposed
24 research project represents a sound approach to the investigation of an
25 important public policy question. A proposal should be self-contained
26 and written with care and thoroughness.

27 (d) Unless the contract is for services exempt under AS 24.23 010
28 or (b) of this section, a contract for

29 (1) the Legislative Affairs Agency shall be approved by the

1 Legislative Council;

2 (2) the legislative finance division or the legislative
3 audit division shall be approved by the Legislative Budget and Audit
4 Committee.

5 Sec. 24.23.030. AWARD OF CONTRACT. (a) If a contract is made by
6 a legislative committee, execution of the contract on behalf of the
7 committee must be authorized by a majority vote of the full membership
8 of the committee. The contract must be executed by the provider of the
9 service and the project director, be approved by the executive director
10 of the Legislative Affairs Agency, the director of the legislative
11 finance division or the legislative audit division, and be approved as
12 to form by the legislative legal counsel.

13 (b) A contract awarded under this section shall contain the
14 amount of the contract stated on its first page.

15 Sec. 24.23.040. FILING. A copy of each contract must be filed
16 with the Legislative Affairs Agency, the ombudsman, the legislative
17 finance division, or the legislative audit division, and is open for
18 public inspection. The request for proposals and each proposal sub-
19 mitted must be attached to the filed copy unless the contract is one in
20 which requests for proposals are not required.

21 * Sec. 2. AS 24.5. is amended by adding a new section to read:

22 Sec. 24.55.315. CONTRACT PROCEDURES. The ombudsman shall adopt
23 by regulations procedures consistent with AS 24.23 to be followed by
24 the office of the ombudsman in contracting for services.

Original sponsor: Rules Committee

Offered: 3/23/81
Referred: Rules

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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14 committee has approved the exemption and a written justification signed
15 by the person responsible for awarding the contract which details the
16 reasons for the exemption is filed with the Legislative Affairs Agency
17 as a public record;

18 *Chg* → (3) the services required may, by law or regulation, be
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19 mitted must be attached to the filed copy unless the contract is one in
20 which requests for proposals are not required.

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23 by regulations procedures consistent with AS 24.23 to be followed by
24 the office of the ombudsman in contracting for services.

25 *Add comm eff*

26
27 *Bill*

28
29

HB

159

Finance: unanimous do pass

0 notification ok

LAC notification: announced subject matter
not bill in weekly schedule - had
bill on day's schedule however
fiscal notes ok (317.9)

Carrier: Martin

COMMITTEE REPORT

HOUSE

4/2 Rules

(11)

FURTHER:

3/3/82

Date: 4/1/82

Mr. Speaker:

The Committee on FINANCE has had HB 159

"An Act relating to workers' compensation; and providing for an effective date."

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 159 (Fin) same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" ~~New Fiscal~~ Note
- reports it back without recommendation (2178) Sub 35
- referred to the no note Committee

MEMBERS SIGNING

DO PASS

Debra Adams, ch.

R. B. ...

...

...

...

David Cuddy

Joseph ...

Meekins

Jarrell

Montgomery

MEMBERS HAVING

OTHER RECOMMENDATIONS:

Debra Adams
CHAIRMAN

COMMITTEE REPORT

3/3

HOUSE

2/13/81

FURTHER: FINANCE

(5)

Date: 3-2-82

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 159

"An Act relating to workers' compensation; and providing for an effective date."

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 159 (L.C.) same title
revises and recommends do pass new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING

DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING

OTHER RECOMMENDATIONS:

[Signature] NO Rec

[Signature]
CHAIRMAN

A M E N D M E N T

Offered in the HOUSE

By Martin and Rogers

TO: CSHB 159(L&C)

Page 2, after line 6: insert the following new material:

* Sec. 3. AS 23.30.040(a) is repealed and reenacted to read:

(a) There is created a second ~~injury~~ injury fund, administered by the commissioner. Money in the second injury fund may be used only for

(1) payments for the benefit of persons entitled to benefits from the second injury fund under this chapter as ordered or awarded by the board; and

(2) the cost of the rehabilitation services administered under AS 23.30.041.

Renumber subsequent bill sections.

Opportunity

- Section 1. This section sets forth the legislative intent of AS 23.30.041 as found in section 5.
- Section 2. This section allows for the issuance of an insurance policy that provides for a deductible amount to be paid by the employer. The policy must provide that the deductible amount be paid by the insurer to the employee on behalf of the employer. The deductible may be recovered from the employer.
- Section 3. This section forgives contributions by the employer or insurance carrier to the second injury fund in those cases in which the total contribution is less than \$20. Contributions of less than \$20 result in administrative costs by the carrier and the Division of Workers' Compensation which offset any positive contribution to the second injury fund.
- Section 4. This section deletes language now provided in AS 23.30.041 found in section 5. Additionally, standards are established for the award of an additional \$200 per month for maintenance from the second injury fund. A \$10,000 maximum payment for books, tuition, tools, and supplies has been eliminated because reports indicated expectation was created by its inclusion.
- Section 5. This section provides for the administration of rehabilitation and establishes fundamental duties and obligations of the parties. Primary responsibility to provide necessary and appropriate rehabilitation services is the employer's. The Board is charged with adopting regulations which will specify those cases when rehabilitation services are warranted. In the event the employer, or carrier, does not voluntarily offer the rehabilitation services, the Rehabilitation Administrator may retain a rehabilitation provider.
- The Rehabilitation Administrator is a new partially exempt position and will be selected and employed by the Board. The intent is to create a strong impartial referee to resolve disputes and provide information prior to entering the rehabilitation process. The administrator's decision may be appealed to the Board by requesting a hearing.
- Vocational rehabilitation services are limited to 37 weeks, with an additional 37 weeks allowed if special circumstances exist. The intent is to quickly return an injured worker to gainful employment. Most direct return to work programs and on the job training programs can be accomplished in less than the initial 37 weeks. Temporary total or temporary partial disability compensation shall be paid to an injured worker during the rehabilitation process.
- Section 6. This section adds language necessary because of the addition of AS 23.30.041 found in section 5.
- Section 7. This section allows placement of disabled employees who are being rehabilitated for gainful employment into work situations where the employer is willing to pay some wages to the trainee but is not willing to accept the risk of new injury to the handicapped person. The statute presently is limited to situations in which the trainee is not being paid at all. This section also permits the Board to place eligible persons in rehabilitation programs with an employer in the event a request is not made through the Division of Vocational Rehabilitation in the Department of Education.
- Section 8. This section deals with the employer's failure to insure and provides authority for the issuance of a stop order if an employer fails to file evidence of insurance or obtain a certificate of self-insurance. It also provides for a civil penalty of \$1,000 a day for failure to comply with a stop order, and the employer may

- Section 9. This section provides authority for the Board to establish time limits for the submission of medical reports by physicians treating injured workers.
- Section 10. This section deletes language which gives the right to the injured worker to have his physician present, paid for by the employer, at an examination requested by the employer or ordered by the Board.
- Section 11. This section directs the Board to adopt and use a schedule determining the existence and degree of permanent impairment consistent with the American Medical Association's Guide to the Evaluation of Permanent Impairment.
- Section 12. This section specifically provides for the release of medical and rehabilitation information to the Rehabilitation Administrator. This section does not limit the obligation of the parties to provide relevant medical and rehabilitation information to other parties upon request.
- Section 13. This section removes the "presumption of compensability" contained in AS 23.30.120 if the employee fails to provide notice of the injury to the employer within 30 days of its occurrence.
- Section 14. This section provides realistic time frames in the Board hearing process and rids the statute of Board authorization to rule on a claim without benefit of the parties to be heard.
- Section 15. This section reflects changes necessary because of amendments to AS 23.30.235 found in section 31.
- Section 16. This section clarifies and emphasizes the role of the Board in determining the credibility of witnesses and the weight to be accorded medical testimony and reports. The Board's findings are conclusive, even if the evidence is conflicting or susceptible of contrary conclusions. It is the intent of this section to restore to the Board the decision making power granted by the Legislature when it enacted the Alaska Workers' Compensation Act. Credibility is a difficult area to articulate objective standards. Such factors as demeanor, recollection, bias, and motive are best determined by the fact finding agency and not the reviewing court. Because the Board has a certain amount of expertise, particularly in the area of medicine, it has the ability to assign weight to the testimony or reports of the medical community.
- Section 17. This section allows an employer who has advanced or overpaid compensation to be recompensed out of any unpaid installment or installments of compensation. The employer must obtain prior approval by the Board.
- Section 18. This section increases the minimum compensation from \$65 to \$110 per week and reflects changes necessary because of the reenactment of AS 23.30.220 found in section 29 which makes spendable weekly wage of an employee the basis of compensation.
- Section 19. This section changes the method by which the average weekly wage is determined in all jurisdictions for purposes of computing compensation and provides for a consistent and equitable means to adjust compensation rates for claims being paid to out-of-state recipients.
- Section 20. This section clarifies the rules under which compensation rates are adjusted for recipients not residing in Alaska consistent with legislative intent and regulations, insures adequate benefit levels for those recipients and provides for an annual adjustment in the compensation rate commensurate with changes in average weekly wages.
- Section 21. This section authorizes the Commissioner of Labor to determine the average weekly wage in jurisdictions in which no average weekly wage is computed by the Secretary of Labor.

section 29 which makes the employees spendable weekly wage the basis for determining compensation.

Eighty percent of the employee's spendable weekly wage minimizes the possibility of an employee receiving more in workers' compensation than his take home pay while working. The change is consistent with recommendation of the 1972 Report of the National Commission on State Workers' Compensation Law which states at page 19:

The decision fixing the proportion of lost wages to be replaced must balance incentives to employers to improve safety within incentives to the disabled to take full advantage of rehabilitation services and to return to work.

We recommend that cash benefits for [disability compensation] be at least two-thirds of the workers' gross weekly wage. The two-thirds formulation should be used only on a transitional basis until the State adopts a provision making payments at least 80 percent of the worker's spendable weekly earnings.

- Section 23. See comments to section 22.
- Section 24. See comments to section 22. Additionally, this section provides for inflationary increases in the maximums paid for "scheduled" and "unscheduled" permanent partial disabilities.
- Section 25. See comments to section 22.
- Section 26. This section reflects changes consistent with the repeal and reenactment of AS 23.30.220 found in section 29.
- Section 27. See comments to section 22. Additionally, this section provides for inflationary increases in funeral expenses on death claims. The current limit for reasonable and necessary funeral expenses are not adequate and result in a hardship to the family of the deceased or the employer for payment of the additional costs.
- Section 28. This section reflects changes consistent with the repeal and reenactment of AS 23.30.220 found in section 29. Additionally, the minimum weekly compensation for a widow or widower is increased from \$45 to \$75 per week.
- Section 29. This section adopts a new basis for computing compensation known as the "spendable weekly wage". The spendable weekly wage is the employees gross weekly earnings, minus payroll tax deductions, which are defined in section 35. The change is consistent with the 1972 report of the National Commission on State Worker's Compensation Laws.

It is an administratively feasible procedure which can simultaneously take into account the difference between gross and spendable earnings, the virtues of dependents' allowances and the impact of the progressive income tax. This procedure first determines the worker's gross earnings prior to disability (which must be determined under the present Act) and the number of his dependents. The gross earnings and dependency data are then inserted into a formula prepared and published by the Department of Labor to determine the worker's spendable earnings. Once spendable earnings are calculated, workers' compensation benefits for all sizes of families can be calculated as a fixed proportion of spendable weekly earnings. No further allowances for dependents for tax considerations are necessary or appropriate.

This section also adopts a new basis for determining the gross earnings of an injured worker. If the injured worker has been in the employ of the employer for the full reporting quarter

computed by dividing by 100 the gross earnings of that reporting quarter. This allows for a more current basis for compensation for the portion of the work force that is "permanently employed". Utilizing a reporting quarter allows an easy method for the employer to provide wage information to the carrier which should allow compensation to be timely paid.

If an injured worker has not been in the employ of the employer for the full reporting quarter preceding the injury, his gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury. This formula provides a basis for computing compensation for the portion of the labor force which is not "permanently employed". Utilizing the preceding two years tends to eliminate the cyclical nature of many industries. Dividing by 100 instead of 104 tends to adjust previous years' earnings for inflation.

Section 30. This section clarifies the relationship between workers' compensation and unemployment benefits. Temporary total and permanent total disability compensation are not consistent with the eligibility of an injured worker to receive unemployment benefits, and accordingly, are not payable to an injured worker receiving unemployment benefits. This section does not affect the payment of temporary partial or permanent partial disability compensation to an employee who is receiving unemployment benefits.

Section 31. This section changes the instances when compensation is not payable to an injured employee. If the injury is proximately caused by the employee's willful intent to injure or kill himself or another, or by intoxication by the injured employee then compensation is not payable. Under the present act an employer must prove the injury was occasioned solely as a result of the employee's intoxication.

The employee is still aided by the presumption contained in AS 23.30.120 found in section 15 which presumes the injury was not proximately caused by the intoxication of the injured employee. The term proximately caused means legally caused, i.e., a substantial factor.

Section 32. This section provides penalties for persons who willfully make false or misleading statements for the purpose of obtaining or denying workers' compensation benefits.

Section 33. This section provides for criminal sanctions for the failure to secure the payment of workers' compensation.

Section 34. See comment to Section 33.

Section 35. This section provides for new definitions.

"Arising out of and in the course of employment" is limited to exclude activities of a personal nature away from employer provided facilities. The intent is to limit the scope of the "bunkhouse rule" or "remote site doctrine" which has evolved in workers' compensation law.

Specifically excluded from coverage are activities of a personal nature not sanctioned by the employer which occur away from employer provided facilities such as personal hunting trips, travel to and from a job site when employer provided housing at the site is available to the employee, travel to a banking facility when check-cashing facilities are available at the remote site, and similar incidents. Travel to and from a job site provided or required by the employer, recreational activities sanctioned by the employer or activities within the confines of or immediately surrounding the "bunkhouse" or premises, are not excluded from coverage.

"Gross earnings" includes payments before any authorized or lawfully required deduction such as credit union, dues check off, social security, federal withholding, or deferred compensation which is optional to the employee at the time of his injury. Specifically,

to those employees of government and non-profit corporations and associations which may elect to defer income from a particular pay period or pay periods but have the option of terminating the deferral of that income at any time during their employment. Excluded from gross earnings are irregular bonuses, reimbursement of expenses, expense allowances and any benefits not taxable to the employee during the pay period. "Any benefit not taxable to the employee during the pay period" would include the general items referred to as "fringe benefits" such as: payments providing for health, welfare, retirement, vacation or annual leave and other similar benefits received by the employee for which he is not taxed other than deferred compensation which is optional to the employee at the time of his injury.

The value of room and board may be considered in gross earnings only for those injured workers whose gross weekly earnings otherwise computed are less than the Alaska average weekly wage at the time of injury. The value of room and board may be included only to raise the gross weekly earnings up to the level of the Alaska average weekly wage. The value of room and board that would raise an employee's gross weekly earnings above the Alaska average weekly wage is excluded.

Payroll taxes are defined to exclude to the amount that would be withheld from an employee's gross weekly earnings under the Internal Revenue code as though he had claimed the maximum number of dependents per actual dependency, blindness, and old age. Also deducted is the amount of earnings subject to the Social Security Act irrespective of whether the employee may have paid the maximum Social Security for the year at the time the injury occurs. Employees of employers not subject to the Social Security Act are not subject to the payroll deduction for Social Security withholding.

"Suitable gainful employment" provides criteria for determining the need for, and the appropriateness of, rehabilitation or a particular rehabilitation plan.

- Section 36. This section designates the Rehabilitation Administrator as a partially exempt position.
- Section 37. This section repeals provisions that are unnecessary or inconsistent with proposed legislation.
- Section 38. This section requires the board to publish Section 31 and 32 of this Act as part of a document describing the employee's rights and obligations under the Alaska Workers' Compensation Act.
- Section 39. This section provides that sections 5, 18-29, 31, and 35 of the Act apply only to injuries sustained after the effective date of this Act.
- Section 40. This section provides that the Act takes effect July 1, 1982.

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill No. 159 (L & C) (1 of 3)
 Title "An Act relating to workers' compensation, and providing for an effective . . ."
 Requested by Labor and Commerce Committee Date 3/1/82

II. FISCAL DETAIL

Agency Affected Labor
 Program Category Affected Worker Protection
 BRU, Program, or Subprogram(s) Affected Workers' Compensation
 (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 | | 161.8 | 178.0 | 18.8 | 215.4 | 236.9 |
| 200 TRAVEL | | 20.0 | 22.0 | 24.2 | 26.6 | 29.3 |
| 300 CONTRACTUAL | | 122.3 | 71.3 | 78.4 | 86.2 | 94.9 |
| 400 COMMODITIES | | 3.4 | 3.7 | 4.1 | 4.5 | 4.9 |
| 500 EQUIPMENT | | 10.4 | 0 | 0 | 0 | 0 |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | 0 | 317.9 | 275.0 | 302.5 | 332.7 | 366.0 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|---|---------|---------|---------|---------|---------|
| GENERAL FUND | 0 | (132.3) | (197.2) | (216.9) | (233.6) | (262.5) |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |
| **Second Injury Fund | | 450.2 | 472.2 | 519.4 | 571.3 | 628.5 |

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL TIME | 0 | 4 | 4 | 4 | 4 | 4 |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

This fiscal note provides that the state administrative costs for rehabilitation under the proposed AS 23.30.041 be paid from the Second Injury Fund. This includes the costs of four new positions, plus the cost of four existing positions which entails a transfer in funding source from General Funds to Second Injury Funds.
 (Continued page 2)

IV. DATE 3/2/82 PREPARED BY Nico Bus
 AGENCY Labor
 PHONE 465-2720
 Original: Legislative Finance
 cc: Budget and Management
 Time Sponsor (First Legislator Named)

1. Assumes an inflation rate of 10% per annum after FY '83.
2. Assumes an effective date of July 1, 1982.
3. The total cost for FY'83 for the four new positions is detailed on attached forms 13. In addition the following items are included in the FY '83 costs.

A Workers' Compensation Officer I reclassification to a Workers' Compensation Officer II with related travel and contractual services. Cost \$16.6

| | |
|----------------------------------|---------------|
| 100 Personal Services | \$ 5.5 |
| 200 Travel | 5.0 |
| 300. Auto, Lease, Indirect, etc. | 6.1 |
| | <u>\$16.6</u> |

The data processing operations cost will increase by \$14.0 because of enhancements for a tickler system, running two systems parallel and the files expansion to retain the addresses of all claimants.

The printing of 10,000 Workers' Compensation Acts and 25,000 Employee Information booklets. \$35.0

The design and printing of new forms. \$2.5

Computer program modifications to implement the changes introduced by the bill. \$20.0

Equipment expense for computer terminals, panelling, cabinets, and files. \$6.0

Included one-time items in FY '83

| | |
|----------------------------------|---------------|
| Equipment | \$10.4 |
| Booklets and Acts | 35.0 |
| Design and printing of new forms | 2.5 |
| Computer programs | 20.0 |
| | <u>\$67.9</u> |

Funding Change

Items included in the FY 83 Governor's budget that will change funding sources from General Fund to the Second Injury Fund.

| | |
|---|--------------|
| 4 positions (including benefits) | \$141.3 |
| Non-personal service costs relating to these 4 existing positions | |
| 200: travel | 9.9 |
| 300: contractual | 25.8 |
| 400: commodities | 2.3 |
| | <u>179.3</u> |

TITLE: An Act relating to workers' compensation, and providing for an effective . . ."

Agency Affected: Department of Labor

Page 3

FY'83 Component Breakdown:

Workers' Compensation Administration

Second Injury Fund

| | | |
|-------------|---------------|----------------|
| PS | | \$161.8 |
| Travel | | 20.0 |
| Contract* | \$47.0 | 75.3 |
| Commodities | | 3.4 |
| Equipment | | 10.4 |
| TOTAL | <u>\$47.0</u> | <u>\$270.9</u> |

| <u>Funding</u> | General Fund | Second Injury |
|---|----------------|---------------|
| Funding transfer | (179.3) | 179.3 |
| Rehabilitation Services/ delivery system | 47.0 | 270.9 |
| | <u>(132.3)</u> | <u>450.2</u> |

*\$35,000 Workers Compensation Acts and Information Booklets; \$12,000 Data Processing

**Second Injury Fund is currently being reviewed to determine whether revenues are sufficient to cover the cost of rehabilitation. It may be necessary to amend AS 23.30.040 to increase the maximum percentage contribution rate.

| | | | | | | | | |
|---|--|--------------------|---------------|-------------------------|-------------|-----------------------------|----------------|---------|
| 1 | POSITION TITLE Rehabilitation Administrator | | | RANGE/STEP 22A | BARG. UNIT. | LOCATION ERA | APPROV. BY: | DISAPP. |
| 2 | TYPE OF POSITION PFT | STAFF MONTHS 12 | RP No. N/A | PCN No. New Position | PRIORITY | FORM 12 PAGE/LINE N/A | LEAD | |

| 3 | TYPE OF EXPENDITURE | AMOUNT |
|----|--|--------|
| | 1 | 2 |
| 4 | PERSONAL SERVICES: SALARY 3714 x 12 | 44,568 |
| 5 | BENEFITS .1592 | 7,095 |
| 6 | SBS .0613 | 2,188 |
| 7 | FIXED BENEFITS 183 x 12 | 2,196 |
| 8 | TOTAL PERSONAL SERVICES 01 | 56,047 |
| 9 | TRAVEL 02 | 10,000 |
| 10 | CONTRACTUAL 03 | 15,607 |
| 11 | COMMODITIES 04 | 850 |
| 12 | EQUIPMENT 05 | 1,600 |
| 13 | OTHER | |
| 14 | TOTAL COST | 84,104 |

JUSTIFICATION:
 It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The rehabilitation administrator is necessary to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

| | RECEIPT CODE | FUNDING SOURCE |
|----|--------------|--------------------------|
| 15 | | FED RCPTS. 1002 |
| 16 | | GF MATCH. 1003 |
| 17 | 100 | GEN. FUND 1004 |
| 18 | | I-A RCPTS. 1005 |
| 19 | | PGM RCPTS 1028 |
| 20 | 841 | OTHER Second Injury Fund |
| | | 84,104 |

Extensive travel within the state is necessary to provide assistance to approximately 12,000 employers in developing programs for re-employment of injured workers and coordinating counselor services with workers, insurers/employers, labor unions, and rehabilitation providers.

- 9. Travel: \$10,000 (20 trips @ \$500 per trip)
- 10. Contractual: Space \$3,100 (to be transferred to DOA)
 Auto Lease & Operating Costs \$5,600
 Indirect (11.46% x 44,568 = \$5,107)
 Other costs which include communications, equipment rental, etc., \$1,800
- 11. Commodities: Cost per position
- 12. Equipment: Desk, desk chair, side chairs, bookcase, file - \$1,600

| | | |
|----|--------------|---|
| 21 | CONTINUATION | |
| 22 | ADDITION | X |

FOR B&M USE ONLY

44 KEY NUMBER _____ COLUMN NO _____

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION.

FY 83

| | | | | | | | | | |
|---|---|--------------------|---------------|-------------------------|--------------------|-----------------|------------------|---------|---------|
| 1 | POSITION TITLE Workers Compensation Officer II | | | RANGE/STEP 18A | BARG. UNIT. GRU | LOCATION JBA | GOV. | APPROV. | DISAPP. |
| 2 | TYPE OF POSITION PFT | STAFF MONTHS 12 | PP No. N/A | PCN No. New Position | PRIORITY | FORM 12 N/A | PAGE/LINE N/A | LEG. | |

| 3 TYPE OF EXPENDITURE | | AMOUNT |
|------------------------------|---|--------|
| 1 | 2 | 3 |
| PERSONAL SERVICES: | | |
| 4 SALARY 3249 x 12 | | 38,988 |
| 5 BENEFITS .1592 | | 6,207 |
| 6 SBS .0613 | | 2,188 |
| 7 FIXED BENEFITS 183 x 12 | | 2,196 |
| 8 TOTAL PERSONAL SERVICES 01 | | 49,579 |
| 9 TRAVEL 02 | | 5,000 |
| 0 CONTRACTUAL 03 | | 14,968 |
| 1 COMMODITIES 04 | | 850 |
| 2 EQUIPMENT 05 | | 1,395 |
| 3 OTHER | | 0 |
| 4 TOTAL COST | | 71,792 |

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilitation providers to expedite the retraining and re-employment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

- 9. Travel: \$5,000 (10 trips @ \$500 per trip)
- 10. Contractual: Space \$3,100 (to be transferred to DOA) Auto Lease, Maintenance Agreement & Operating Costs \$5,600 Indirect Costs (11.45% x 38,988 = \$4,468) Other costs which include communications, equipment rental, etc. \$1,800
- 11. Commodities: Cost per position
- 12. Equipment: Desk, desk chair, side chair, file, work-table, bookcase \$1,395

| RECEIPT CODE | FUNDING SOURCE | AMOUNT |
|-----------------------|--------------------------|--------|
| | FED RCPTS. 1002 | |
| | GF MATCH. 1003 | |
| 100 | GEN. FUND 1004 | |
| | I-A RCPTS. 1005 | |
| | PGM RCPTS 1028 | |
| 841 | OTHER Second Injury Fund | 71,792 |
| CONTINUATION ADDITION | X | |

FOR B&M USE ONLY

| | |
|---------------|------------|
| 1A KEY NUMBER | COLUMN NO. |
|---------------|------------|

NCY Labor PROGRAM Worker Protection
Workers' Compensation
 DRU Second Injury Fund
 COMPONENT _____

13 REQUEST FOR NEW POSITION.

FY 83

| | | | | | | | | | | |
|---|------------------------------------|---------------------|---------------|-------------------------|------------------|--------------------|------------------|------|---------|---------|
| 1 | POSITION TITLE Clerk Typist III | | | | RANGE/STEP 8B | BARG. UNIT. GRU | LOCATION AWA | GOV. | APPROV. | DIGAPP. |
| 2 | TYPE OF POSITION PFT | STAFF MONTHS. 12 | RP No. N/A | PCN No. New Position | PRIORITY | FORM 12 | PAGE/LINE N/A | LEG. | | |

| 3 | TYPE OF EXPENDITURE | AMOUNT |
|----|--|--------|
| | 1 | 2 |
| 4 | PERSONAL SERVICES: SALARY 1530 x 12 | 18,360 |
| 5 | BENEFITS .1592 | 2,923 |
| 6 | SBS .0613 | 1,125 |
| 7 | FIXED BENEFITS 183 x 12 | 2,196 |
| 8 | TOTAL PERSONAL SERVICES 01 | 24,604 |
| 9 | TRAVEL 02 | |
| 10 | CONTRACTUAL 03 | 7,004 |
| 11 | COMMODITIES 04 | 850 |
| 12 | EQUIPMENT 05 | 700 |
| 13 | OTHER | |
| 14 | TOTAL COST | 33,158 |

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk III position will provide clerical assistance to the Workers' Compensation Officer in the Juneau Second Injury Fund office and will be responsible for providing and coordinating distribution of information from the claim files to the other regions.

| | RECEIPT CODE | FUNDING SOURCE | |
|----|--------------|--------------------------|--------|
| 15 | | FED RCPTS. 1002 | |
| 16 | | GF MATCH. 1003 | |
| 17 | 100 | GEN. FUND 1004 | |
| 18 | | I-A RCPTS. 1005 | |
| 19 | | PGM RCPTS 1028 | |
| 20 | 841 | OTHER Second Injury Fund | 33,158 |

10. Contractual: Space \$3,100 (to be transferred to DOA)
 Indirect (11.46% x 18,360 = \$2,104)
 Other costs which include communications, equipment rental, etc. \$1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair \$700

| | | | |
|----|--------------|---|-----------------------------|
| 21 | CONTINUATION | | FOR B&M USE ONLY |
| 22 | ADDITION | X | |

4A KEY NUMBER _____ COLUMN NO. _____

AGENCY Labor PROGRAM Worker Protection

DRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

FY 80

| | | | | | | | | | |
|---|----------------------------|--------------------|---------------|-------------------------|---------------------|-----------------|-----------|---------|---------|
| 1 | POSITION TITLE Clerk IV | | | RANGE/STEP 9B | BARG. UNIT. GBUJ | LOCATION ERA | GOV. | APPROV. | DISAPP. |
| 2 | TYPE OF POSITION PFT | STAFF MONTHS 12 | RP No. N/A | PCN No. New Position | PRIORITY | FORM 12 N/A | PAGE/LINE | | |

| 3 | TYPE OF EXPENDITURE | AMOUNT |
|----|--|--------|
| | 1 | 2 |
| 4 | PERSONAL SERVICES: SALARY 1627 x 12 | 19,524 |
| 5 | BENEFITS .1592 | 3,108 |
| 6 | SBS .0613 | 1,197 |
| 7 | FIXED BENEFITS 183 x 12 | 2,196 |
| 8 | TOTAL PERSONAL SERVICES 01 | 26,025 |
| 9 | TRAVEL 02 | 0 |
| 10 | CONTRACTUAL 03 | 7,137 |
| 11 | COMMODITIES 04 | 850 |
| 12 | EQUIPMENT 05 | 700 |
| 13 | OTHER | |
| 14 | TOTAL COST | 34,712 |

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk IV position will provide clerical assistance to the Rehabilitation Administrator and Workers' Compensation Officer and will be responsible for maintaining follow-up on all rehabilitation files.

- 10. Contractual: Space \$3,100 (to be transferred to DOA) Indirect (11.46% x \$19,524 = \$2,237) Other costs which include communications, equipment rental, etc. \$1,800
- 11. Commodities: Cost per position
- 12. Equipment: Desk and desk chair \$700

| | RECEIPT CODE | FUNDING SOURCE |
|----|--------------|---------------------------------|
| 15 | | FED RCPTS. 1002 |
| 16 | | GF MATCH. 1003 |
| 17 | 100 | GEN. FUND 1001 |
| 18 | | I-A RCPTS. 1005 |
| 19 | | PGM RCPTS 1028 |
| 20 | 841 | OTHER Second Injury Fund 34,712 |

21 CONTINUATION
22 ADDITION X

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4A-KEY NUMBER _____ COLUMN NO: _____

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

FY 83

13 REQUEST FOR NEW POSITION.

Page 4 of 4 REVISED DATE _____

To: Rep. Al Adams - Chairman - Finance
Rep. Joe Montgomery - Vice Chairman
Rep. Bettisworth Rep. Fuller
Rep. Carney Rep. Haugen
Rep. Chuckwuk Rep. Hurlbert
Rep. Cotton Rep. Meekins
Rep. Cuddy

From: Bob Nestel, CPCU, ARM
P. O. Box 1753
Eagle River, Alaska 99577-1753
(907) 694-4372

Subject: CS for House Bill 159 (L&C) "An Act Relating To Workers' Compensation and Providing For An Effective Date."

This is a follow up to my public opinion message of 3/12/82.

- Section 1. Rehabilitation Services. AS 23.30.041
This is a duplication of rehabilitation service currently provided by private worker compensation who use private rehab facilities.
Isn't this a duplication of the activities of the Division of Vocational Rehabilitation?
- Section 2. AS 23.30.025 Permitting a Deductible.
This is a new section.
No limit is placed on the size of deductible.
Is the insured going to have to prove his financial ability by filing a sworn statement with the Div. of Workers' Compensation.
Currently self insureds on Workers' Compensation have a self insured retention (S.I.R.).
How is the deductible different from a S.I.R.?
- Section 5. AS 23.30.041 Rehabilitation of Injured Workers (New Section)
Div. of Vocational Rehabilitation currently is established.
Why create another division when private carriers provide this service?
- Section 6. AS 23.30.045 Payment to Employees.
What if the subcontractor carries his own W/C Policy.
No action needed by contractor?

Section 22. AS 23.30.180 Permanent Total Disability
why increase the amount from 66 2/3 to
80%? The 66 2/3 was assumed to be a persons
take home salary.
All that has been eliminated is State Income Tax.
Federal Income Tax and FICA is certainly more
than 20% on wages. Don't enact legislation to
reward an employee by paying him more for than if
the person was working.

Section 29. AS 23.30.220 "Determination of Spendable Weekly Wage."
What if Federal Taxes and FICA total to 28% of wages;
does the injured collect 72% or 80%?

The Bill has many sections that must be addressed in your committee.

AMENDED TITLE:

AN ACT RELATING TO WORKERS' COMPENSATION; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: HOUSE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 3/03/82 IN (H) FINANCE

HB 159 HOUSE ACTION
DATE SEQ PAGE

LEGISLATIVE ACTION

02/13/81 01 0249
03/03/82 02 0643
03/03/82 03 0643

FIRST READING -- COMMITTEE REPORTS
L&C -- CS01, NR01
FISCAL NOTE HCE SUPPL #20
FINANCE
RULES

**** ** ** *** **

H B

194

Technical sk.
UNAM. HESS + ~~Finance~~
fiscal note ~~355.5~~
P 84 580.5 FY85 728.5 FY86 708.7 FY87 770.3
Governors bill

✓ get carrier - Bodine will carry

DHS wants

148.1 Prisoner Treatment Program HB 457

~~355.5~~

~~Prisoner~~

~~Industries~~

HB 194

~~150.5~~

COMMITTEE REPORT
HOUSE

2/3

2/19/81

FURTHER: FINANCE

(5)

Date: 2/1/82

Mr. Speaker:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had HB 194

"An Act relating to prisoner employment and correctional industries; and providing for an effective date."

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 194 (New) same title
 new title
- and recommends it do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Bette Cato
Silly Smith
Terry Martens, ch

Terry Martens
 VIO CHAIRMAN

COMMITTEE REPORT

3/12

HOUSE

Revised

(11)

FURTHER:

2/3/82

Date: Mar 11, 1982

Mr. Speaker:

The Committee on FINANCE has had HB 194

"An Act relating to prisoner employment and correctional industries; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 194 (HESS) same title
 new title
and ^{replaces} recommends do pass w/attached amendment
- AND attaches a "Letter of Intent" New Fiscal Note (#355.5)
- reports it back without recommendation - Suppl No. 24
- referred to the new E Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Albert P. Adams, Ch.

R. Bethinworth

Franklin

Robert Keene

Jim Cotton Cotton

Joseph (Chuck) Wuk Chuck Wuk

Russ Muckers

Jan Fuller Fuller

MONTGOMERY

Albert P. Adams
CHAIRMAN

A M E N D M E N T

Offered in the HOUSE

By Finance Committee

To: CS HOUSE BILL NO. 194 (HESS)

 SENATE BILL NO.

AMENDMENT: Page 3 Line 1

Before "use" insert "subject to the Fiscal Procedures Act
(AS 37.05),"

HB 194 TITLE & SPONSOR SUMMARY

14:31 3/12/82 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO PRISONER EMPLOYMENT AND CORRECTIONAL INDUSTRIES; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: HOUSE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 2/03/82 IN (H) FINANCE

HB 194 HOUSE ACTION
DATE SEQ PAGE

14:32 3/12/82 PAGE 2 OF 2

LEGISLATIVE ACTION

| DATE | SEQ | PAGE | LEGISLATIVE ACTION |
|----------|-----|------|------------------------------------|
| 02/19/81 | 01 | 0303 | FIRST READING -- COMMITTEE REPORTS |
| 02/19/81 | 02 | 0303 | GOV TRANSMITTAL LETTER |
| 02/19/81 | 03 | 0303 | GOV F/NOTE HSE SUPPL #9 |
| 02/03/82 | 04 | 0227 | HESS -- CS03 FINANCE RULES |

**** ** ** *** ** *

I. REQUEST
Bill/Resolution No. CSHB 194 (HESS) Page 1 of 3
Title An Act Relating to prisoner employment and correctional industries
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Confinement, Prison Industries
(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 | | 39.8 | 127.3 | 374.8 | 364.9 | 397.7 |
| 200 TRAVEL | | 21.8 | 23.8 | 19.7 | 21.5 | 23.4 |
| 300 CONTRACTUAL | | 10.9 | 11.9 | 13.0 | 14.1 | 15.5 |
| 400 COMMODITIES | | 100.0 | 150.0 | 163.5 | 178.2 | 194.3 |
| 500 EQUIPMENT | | 150.0 | 200.0 | 100.0 | 25.0 | 25.0 |
| 600 LAND & STRUCTURES | | - | - | - | - | - |
| 700 GRANTS, CLAIMS, ETC. | | 33.0 | 67.5 | 97.5 | 105.0 | 114.4 |
| TOTAL | -0- | 355.5 | 580.5 | 728.5 | 708.7 | 770.3 |

FUNDING (Thousands of Dollars)

| | | * | * | * | * | * |
|------------------------|--|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

* See Analysis, Paragraph I

POSITIONS

| | | 1 | 2 | 4 | -0- | -0- |
|-----------|--|---|---|---|-----|-----|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

Assumptions:

A. Staff

- It is anticipated that seven additional shop supervisors will be needed to fully implement the Prison Industries Program. The seven shop supervisors would be hired during the next three fiscal years, on the following schedule:

Roger C. Lange

IV. DATE February 4, 1982 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

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

33-001 (Rev. 12/81)

Jeanne C. Clark, Acting Director
Division of Management & Budget

| <u>DATE</u> | <u>LOCATION</u> | <u># OF POSITIONS</u> |
|-------------|-----------------|-----------------------|
| July, 1982 | Palmer | 1 |
| July, 1983 | Juneau | 2 |
| Oct., 1984 | Eagle River | 2 |
| Oct., 1984 | Fairbanks | 2 |

A. The positions will all be Range 16. - Shop Supervisors; FY 1983 cost is computed as follows:

Monthly Salary \$2556

| | |
|-----------------------|----------|
| Annual Salary | \$30,672 |
| Variable Benefits | 5,101 |
| Supplemental Benefits | 7,880 |
| Health Benefits | 2,196 |
| Total | \$39,849 |

B. Travel

1. Board travel consists of 4 board meetings to be held at institutions with industries programs. It is assumed an average of 6 board members will attend each meeting, with 4 requiring air travel. It is assumed each meeting will be of a three day duration. \$10,560.
2. Public Hearings will be conducted at @ Board meeting whenever possible. However two meetings a year in addition may be needed in FY 83 and FY 84 for start up of industries. \$5,280
3. Staff travel of \$6,000 is included for supervision of the program.

C. Contractual funds are included for specialized services not available from state agencies plus long distance telephone and postage costs. It is assumed that the cost for additional heat and electricity will be absorbed by the institutions conducting the industries programs.

D. Commodities funds are to purchase raw materials needed in the manufacturing of products.

E. Funds to purchase equipment will be needed in significant amounts for the first three years for the new product/service lines, as they are developed.

F. Funds requested in Grants and Claims is for the payment to inmates of wages earned. The following table represents the estimates of persons in the program, average wages, etc.

| <u>FISCAL YEAR</u> | <u>FULL TIME INMATES</u> | <u>DAYS PER YEAR WORKED</u> | <u>HOURS PER DAY WORKED</u> | <u>AVE. HOURLY WAGE</u> | <u>TOTAL WAGES</u> |
|--------------------|--------------------------|-----------------------------|-----------------------------|-------------------------|--------------------|
| 1983 | 40 | 250 | 7.5 | \$.44 | \$33,000 |
| 1984 | 75 | 250 | 7.5 | .48 | 67,500 |
| 1985 | 100 | 250 | 7.5 | .52 | 97,500 |
| 1986 | 100 | 250 | 7.5 | .56 | 105,000 |
| 1987 | 100 | 250 | 7.5 | .61 | 114,375 |

G. Capital expenditures are addressed in the Governor's Capital budget, as follows:

| | | |
|---------|-----------------------------------|-------------|
| FY 1983 | Juneau Prison Industries Building | \$1,248,500 |
| FY 1983 | Eagle River Prison Industries | 1,306,200 |
| FY 1983 | Fairbanks Prison Industries | 1,542,000 |
| FY 1985 | Palmer Prison Industries Remodel | 200,000 |

The above costs are, therefore, not included in the fiscal note.

H. Inflation

It is assumed that there will be a uniform 9% inflation rate through FY 1986.

I... Funding identification has not been made as the proposed legislation is not specific as to the manner program receipts are to be handled. Funding could be identified as all general funds or a combination of general funds and program receipts.

Without knowing what specific industries are to be developed or the time frame in which goods or services are available to the specified consumers, no estimate of program receipts can be made at this time. It is assumed, however, that all program receipts will either be identified as part of the funding or deposited directly into the state treasury.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 194 (Page 1 of 2)
 Title An Act Relating to Prison Industries
 Requested by _____ Date _____

II. FISCAL DETAIL

Department of Health and Social Services - Division of Adult Corrections
 Agency Affected _____
 Program Category Affected Offender Confinement, Reformation & Supervision
 BRU, Program, or Subprogram(s) Affected Adult Confinement, Prison Industries
 (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 | | | 40.4 | 110.2 | 324.2 | 366.5 |
| 200 TRAVEL | | | 1.0 | 3.3 | 8.3 | 9.0 |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | .2 | .6 | 1.5 | 1.6 |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| 800 Misc. - Revolving Fund | | | 500.0 | | | |
| TOTAL | | | 541.6 | 114.1 | 334.0 | 377.1 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|--|-------|-------|-------|-------|
| GENERAL FUND | | | 541.6 | 114.1 | 334.0 | 377.1 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|--|---|---|---|---|
| FULL TIME | | | 1 | 3 | 7 | 7 |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

Assumptions:

A. Staff

- It is anticipated that seven additional shop supervisors will be needed to fully implement the Prison Industries Program. The seven shop supervisors would be hired during the next three fiscal years, on the following schedule:

Roger C. Lange

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

Prepared by: Roger C. Lange Date: December 30, 1979
 Division/Office: Adult Corrections PH: 465-3376
 Department of Health & Social Services

| <u>Date</u> | <u>Location</u> | <u># of Positions</u> |
|---------------|---------------------------|-----------------------|
| July, 1981 | Palmer | 1 |
| July, 1982 | Eagle River | 1 |
| January, 1983 | Juneau | 1 |
| July, 1983 | Juneau, Palmer, Fairbanks | 3 |
| October, 1983 | Juneau | 1 |

2. The positions will all be Range 16 - Shop Supervisors; FY 1982 cost is computed, as follows:

| | |
|-----------------------|-----------------------------|
| Monthly Salary \$2640 | |
| | Annual Salary \$31,680 |
| | Variable Benefits 5,243 |
| | Supplemental Benefits 1,942 |
| | Health Benefits 1,560 |
| | <u>Total 40,425</u> |

B. Revolving Fund

The bill would authorize a revolving fund, for which \$500,000 is requested. This fund would be used to purchase industries equipment and the raw materials necessary for the manufacture of products. Inmate labor costs will be paid from this fund. Receipts from the sale of products would be deposited into the revolving account so that the program could gradually expand without additional appropriations. The fund will also be used to replace worn-out and obsolete equipment.

It is a long range goal to have the entire cost of the Prison Industry Program to be paid from the revolving fund, including the salary and related costs of the staff. It is not possible to project at this time when the self-sustaining level might be achieved.

C. Inflation

It is assumed that there will be a uniform 9% inflation rate through FY 1985.

14B 194

February 18, 1981

The Honorable Jim Duncan
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 which would provide for the creation of certain industries within our present correctional system. The purpose of the bill is to provide appropriate employment for prisoners, consistent with proper penal administration, and to direct prisoner effort toward self-betterment, financial responsibility, and the creation or improvement of job skills that can be used upon release.

The commissioner of health and social services would be empowered to establish the necessary mechanisms for correctional industries and would be responsible for marketing the products and services. Sales would be made to governmental agencies and to private non-profit organizations. Prices to be charged for the products and services provided would be determined by the commissioner, and the program would be exempt from collective bargaining and the provisions of AS 23.

Wages for work done by prisoners would be determined by the commissioner and would be credited to the individual prisoners. Disbursement of a portion of these wages would be made so as to allow the state to recover any related violent crime compensation award made and to pay any restitution order or court award against the prisoner for damages arising out of the criminal conduct. The prisoner could also be made to pay for care of his dependents. The prisoner may then opt to buy personal items, retain the balance of earnings until his release, or for another proper purpose.

A correctional industries commission would be established to hold public hearings to provide an opportunity for persons or organizations who may be affected by the

program to contribute ideas. The commission would then make recommendations to the commissioner regarding the industries program. The commission would have representatives from private industry, labor, agriculture, the public, the state government, and one ex-offender.

This bill also includes provisions dealing with institutional employment of prisoners in general. They declare a policy of the state that prisoners be productively employed while imprisoned; list the types of employment, one of which is the correctional industries program; provide for earnings as determined appropriate by the commissioner; and provide for the forfeiture of all or a portion of earnings of prisoners who escape as determined appropriate by the commissioner. Section 4 of the bill would repeal three provisions which would be inconsistent with and superseded by the statutes in this bill. (However, existing AS 41.20.110(b), on trail and campsite work by prisoners, is left intact.)

It is suggested that, if this bill passes, the revisor of statutes should relocate the "general provisions" article of AS 33.30 to the end of the chapter.

Sincerely,

S/SSH

Jay S. Hammond
Governor

HB

199

MARINE MAMMAL PROTECTION ACT AMENDMENT

SEPTEMBER 16, 1981.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 4084]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 4084) to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. OPTIMUM SUSTAINABLE POPULATION.

(a) BASIC AMENDMENT.—Paragraph (8) of section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(8)) (which Act shall hereafter in this Act be referred to as the "Act of 1972") is repealed.

(b) CONFORMING AMENDMENTS.—(1) Section 2(6) of the Act of 1972 (16 U.S.C. 1361(6)) is amended by striking out "optimum carrying capacity" and inserting in lieu thereof "carrying capacity".

(2) Section 3 of the Act of 1972 (16 U.S.C. 1362) is further amended—

(A) by amending paragraph (1) to read as follows:

"(1) The term 'depletion' or 'depleted' means any case in which—

"(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that a species or population stock is below its optimum sustainable population;

"(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109, determines that such species or stock is below its optimum sustainable population; or

"(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.";

(B) by striking out "the optimum carrying capacity of their habitat" in paragraph (2) and inserting in lieu thereof "their optimum sustainable population";

(C) by redesignating paragraphs (9) through (15) as paragraphs (8) through (14), respectively;

(D) by striking out "optimum carrying capacity" in paragraph (8) (as so redesignated) and inserting in lieu thereof "carrying capacity"; and

(E) by amending paragraph (13) (as so redesignated) to read as follows: "(13) The term 'United States' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Northern Mariana Islands."

SEC. 2. MORATORIUM ON TAKING AND IMPORTING MARINE MAMMALS.

Section 101 of the Act of 1972 (16 U.S.C. 1371) is amended—

(1) by amending subsection (a)—

(A) by striking out the first four sentences of paragraph (2) and inserting in lieu thereof the following: "(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable."

(B) by striking out "is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or" paragraph (3) (B), and

(C) by adding at the end thereof the following new paragraphs:

"(4) (A) During any period of 5 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by citizens of the United States while engaging in commercial fishing operations, of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice and opportunity for public comment—

"(i) finds that the total of such taking during such 5-year period will have a negligible impact on such species or stock; and

"(ii) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved for the monitoring of such taking.

"(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals under subparagraph (A) if the Secretary finds, after notice and opportunity for public comment, that—

"(i) the taking allowed under subparagraph (A) is having more than a negligible impact on the species or stock concerned; or

"(ii) the policies, purposes and goals of this Act would be better served through the application of this title without regard to this subsection.

Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

"(5) (A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

"(i) finds that the total of such taking during each 5-year (or less) period concerned will have a negligible impact on such species or stock and its habitat, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 100(c); and

"(ii) prescribes regulations setting forth—

"(1) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

"(II) requirements pertaining to the monitoring and reporting of such taking.

"(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C) (1) applies), that—

"(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

"(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

"(C) (1) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well being of the species or stock concerned.

"(2) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph."; and

(2) by amending subsection (b)—

(A) by amending the matter preceding paragraph (1) to read as follows: "Except as provided in section 103, the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—", and

(B) by amending paragraph (1) to read as follows:

"(1) is for subsistence purposes; or".

SEC. 3. PROHIBITIONS AND PENALTIES.

(a) PROHIBITIONS.—(1) Section 102(a) of the Act of 1972 (16 U.S.C. 1372(a)) is amended—

(A) by inserting "100," immediately after "104," in the matter preceding paragraph (1);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

"(4) for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; and".

(2) Section 102(b) (3) of such Act is amended by striking out "or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973".

(3) Section 102(d) (1) of such Act is amended by striking out "or endangered".

(b) PENALTIES.—Section 105(a) of the Act of 1972 (16 U.S.C. 1375(a)) is amended by inserting "(1)" immediately after "(a)." and by inserting at the end thereof the following new paragraph:

"(1) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry."

SEC. 4. STATE MANAGEMENT.

(1) TRANSFER OF MANAGEMENT AUTHORITY.—Section 100 of the Act of 1972 (16 U.S.C. 1370) is amended—

(1) by redesignating subsections (c) and (d) as subsections (k) and (l), respectively; and

(2) by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"Sec. 100. (a) No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as 'management authority') to the State under subsection (b) (1).

"(b) (1) Subject to paragraph (2) and subsection (f), the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species—

"(A) is consistent with the purposes, policies, and goals of this Act and with international treaty obligations;

"(B) requires that all taking of the species be humane;

"(C) does not permit the taking of the species unless and until—

"(1) the State has determined, under a process consistent with the standards set forth in subsection (c)—

"(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as 'OSP'), and

"(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

"(II) the determination required under clause (1) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d) (1), such an agreement is implemented;

"(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C) (I) (II), and, in the case of taking for subsistence uses (as defined in subsection (f) (2)), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

"(E) does not permit the taking of the species for scientific research and public display purposes, except for taking for such purposes that is undertaken by, or on behalf of, the State;

"(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at that level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C) (1);

"(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d) (1); and

"(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

"(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1) (C) (II) are complied with—

"(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 101; and

"(B) the Secretary shall continue to regulate, under this title, all takings of the species within the State.

"(3) After the determination, required under paragraph (1) (C) (1) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d) (1), if required, is implemented for such species—

"(A) such determination shall be treated, for purposes of applying this title beyond the territory of the State, as a determination made in accordance with section 103 and as an applicable waiver under section 103 (a) (3);

"(B) the Secretary shall regulate, without regard to this section other than the allocation specified under such an agreement, the taking of the species—

"(1) incidentally in the course of commercial fishing operations (whether provided for under section 101(a)(2) or (4)), or in the course of other specified activities provided for under section 101(a)(5), in the zone described in section 3(14) (B), and

"(II) for scientific research or public display purposes (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 101(a)(1) after the date of the enactment of the 1981 amendment to this subtitle, allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, within 30 days after the date of issuance of the permit, such taking as being inconsistent with the State program; and

"(C) section 101 (b) shall not apply.

"(c) The State process required under subsection (b) (1) (C) must comply with the following standards:

"(1) The State agency with management authority for the species (hereinafter in this section referred to as the 'State agency') must make an initial determination regarding the factors described in clause (1) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

"(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the initial determination made by it under paragraph (1) at which interested parties may—

"(A) present oral and written evidence in support of or against such determination; and

"(B) cross-examine persons presenting evidence at the hearing.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

"(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph (1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

"(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706(2) (A) through (E) of title 5, United States Code, must be available under State law. The Secretary may not initiate judicial review of any such decision.

"(d) (1) If the range of a species with respect to which a determination under paragraph (1) (C) (1) of subsection (b) is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 302 of the Act of April 13, 1970 (16 U.S.C. 1852)) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1) (C) (1) (II) of subsection (b), as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 101 (a) within the zone described in section 3(14) (B).

"(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 3(14) (B) for subsistence uses or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 101 (a) within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of title 5, United

States Code, and with respect to such insurance the Regulatory Flexibility Act, the Paperwork Reduction Act, Executive Order No. 12291, dated February 17, 1981, and the 30-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 105, 106, and 107, such regulations shall be treated as having been issued under this title.

"(c) (1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b) (1) if the Secretary finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b) (1).

"(2) (A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless—

"(i) the Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

"(ii) during the 90-day period after the date of the notice of intent to revoke—

"(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

"(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

"(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this Act (and in the case of Alaskan natives, section 101(b) and subsection (1) of this section shall apply upon such revocation or return of management authority).

"(f) (1) The Secretary may not transfer management authority to the State of Alaska under subsection (b) (1) for any species of marine mammal unless—

"(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses—

"(i) is accomplished in a nonwasteful manner.

"(ii) will be the priority consumptive use of the species, and

"(iii) if required to be restricted, such restriction will be based upon—

"(I) the customary and direct dependence upon the species as the mainstay of livelihood,

"(II) local residency, and

"(III) the availability of alternative resources; and

"(B) the State has adopted a statute (or regulation) that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that—

"(i) such use will have no significant adverse impact upon subsistence uses of the species, and

"(ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

"(2) For purposes of paragraph (1), the term 'subsistence uses' means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handcraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph—

"(A) The term 'family' means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

"(B) The term 'barter' means the exchange of marine mammals or their parts, taken for subsistence uses—

"(i) for other wildlife or fish or their parts, or

"(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

"(g) Neither the transfer of management authority to a State under subsection (b) (1), nor the revocation or voluntary return of such authority under subsection (c), shall be deemed to be an action for which an environmental impact statement is required under section 102 of the National Environmental Policy Act of 1969.

"(h) Nothing in this title shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) from taking, in the course of his duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

"(1) the protection or welfare of the mammal,

"(2) the protection of the public health and welfare, or

"(3) the nonlethal removal of nuisance animals,

and, in any case in which the return of the mammal to its natural habitat is feasible, includes steps designed to achieve that result.

"(i) The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 101(b).

"(j) The Secretary may make grants to States to assist them—

"(1) in developing programs, to be submitted for approval under subsection (b), for the conservation and management of species of marine mammals; and

"(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 percent of the costs of developing a State program before Secretarial approval, or of administering the program thereafter."

(b) **NO EFFECT ON CERTAIN COOPERATIVE AGREEMENTS.**—Nothing in the amendments made by subsection (a) shall be construed as affecting in any manner, or to any extent, any cooperative agreement entered into by a State under section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) before, on, or after the date of the enactment of this Act.

SEC. 5. MARINE MAMMAL RESEARCH.

Section 110(a) of the Act of 1972 (16 U.S.C. 1380(a)) is amended by adding at the end thereof the following new sentences: "In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f)."

SEC. 6. MARINE MAMMAL COMMISSION.

Title II of the Act of 1972 (16 U.S.C. 1401-1407) is amended—

(1) by striking out "furnish its reports and recommendations to him, before publication, for his comment." in section 202(b) and inserting in lieu thereof "provide each annual report required under section 204, before submission to Congress, to the Secretary's comment."; and

(2) by inserting ", or provide such grants to," immediately after "agreements with" in section 206(3).

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) **DEPARTMENT OF COMMERCE.**—There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, \$8,000,000 for fiscal year 1983 and \$8,800,000 for fiscal year 1984.

(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under such title I, \$1,700,000 for fiscal year 1983, and \$2,000,000 for fiscal year 1984.

(c) MARINE MAMMAL COMMISSION.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out title II of such Act of 1972, \$1,000,000 for fiscal year 1983, and \$1,100,000 for fiscal year 1984.

LEGISLATIVE HISTORY

During hearings in April on H.R. 2948, providing the Fiscal Year 1982 authorization of appropriations for the Marine Mammal Protection Act, the Subcommittee on Fisheries and Wildlife Conservation and the Environment heard testimony from several witnesses advocating amendments to the Act. In May 1981, the Committee reported H.R. 2948 to the House but stated its intention to hold additional hearings in an attempt to develop solutions to the problems addressed by witnesses and to remedy certain problems which make administration of the Act difficult.

As a result of the April authorization hearings and the Committee's commitment to develop an amendment package which would be reported to the Floor of the House before the end of the First Session of the 97th Congress, Mr. Breaux and Mr. Forsythe introduced H.R. 4084 on July 9, 1981, for the purpose of improving the operation of the Marine Mammal Protection Act and extending the authorization of appropriations through Fiscal Year 1984.

On July 13, the Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on the legislation. Testimony was received from the fishing industry, the Alaska Federation of Natives, state fish and game agencies, the fur industry, the oil and gas industry, representatives of the environmental and conservation community, the Departments of Commerce and the Interior, and the Marine Mammal Commission.

After giving careful consideration to the evidence presented at the hearing, the Subcommittee, on July 21, unanimously ordered H.R. 4084 reported, with an amendment, to the Full Committee. On July 31, 1981, the Committee on Merchant Marine and Fisheries, by voice vote, unanimously ordered H.R. 4084 reported to the House with an amendment.

THE AMENDMENT

The amendment to H.R. 4084 was accomplished by striking out all after the enacting clause and inserting new language. The amendment:

Deletes the definition of "optimum carrying capacity", since it is indistinguishable from optimum sustainable population (OSP) and because both are used interchangeably throughout the Act. Wherever "optimum carrying capacity" appears it is replaced with "carrying capacity".

Redefines the term "depleted" to mean any case in which the Secretary, or a State to which management authority has been returned, determines that a species or population stock is below its OSP, or is listed as endangered or threatened under the Endangered Species Act.

Retains the Act's goal of reducing the incidental taking of marine mammals pursuant to commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate but clarifies that this goal shall be satisfied in the case of purse seine fishing for yellowfin tuna by "a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable".

Directs the Secretary to allow the incidental, but not the intentional, taking by U.S. non-tuna commercial fishermen of small numbers of marine mammals if (1) the population is not depleted, (2) the total of such taking will have a negligible impact on the stock, and (3) there is a system established among the fishermen for monitoring such taking. The Secretary must withdraw the permission to take marine mammals under this section if he finds that the take is having more than a negligible impact on the species or that the policies, purposes and goals of the Act would be better served through implementation of the other sections of the Act.

Directs the Secretary to allow the taking of small numbers of a non-depleted species by U.S. citizens who engage in specified activities (other than commercial fishing) within specified geographical areas, if he (1) finds that the total of such taking will have a negligible impact on the species, on its habitat, and on the availability of such species for subsistence uses in Alaska, and (2) prescribes regulations which set forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species or its habitat (with particular attention given to rookeries, mating grounds, and other areas of significance) and which set out the requirements for monitoring and reporting the takings. The Secretary must withdraw his permission to take marine mammals pursuant to this section if the regulations are not substantially complied with or if he finds such taking is having more than a negligible impact on the species concerned.

Makes it unlawful for any person to transport, purchase, sell or offer to purchase or sell any marine mammal or marine mammal product unless otherwise provided under the Act.

Authorizes the Secretary to allow individuals to abandon marine mammal imports made for personal or family use to the enforcement officer at the port of entry without the individual going through a formal notice of violation and forfeiture proceeding.

Establishes a procedure to return marine mammal management to any state. The Secretary may transfer management authority to a state if the state has developed and will implement a program which: (1) is consistent with the purposes, policies and goals of the Act and with international treaty obligations; (2) requires that all taking be humane; (3) does not permit taking until the state determines (through a simplified hearing process) the OSP of the population and the maximum number of animals that may be taken without reducing the species below its OSP; (4)

provides procedures for acquiring data relating to the OSP of the species and the maximum allowable take and for amending the determinations made during the informal hearing process; (5) provides procedures for resolving the differences between the state and the Secretary which may arise regarding the allocation of the allowable take between the state and the Federal Government; and (6) provides for an annual report to the Secretary concerning the administration of the state program. The Secretary cannot transfer management authority to the State of Alaska unless the state has adopted a statute and regulations which insure that taking for subsistence will be the priority consumptive use of the species and that such taking will be accomplished in a nonwasteful manner. Any other consumptive uses—such as sport hunting—can be authorized only if it would not have an adverse effect on subsistence uses. During the interim period when the Secretary has transferred management authority to a state but before the state is able to implement its program, the Secretary would continue to regulate all takings of marine mammals within the state. Once the state is able to implement its program, the Secretary would still be responsible for regulating any takings in the 200-mile zone and all takings for scientific research or public display purposes in state and Federal waters.

Authorizes the Secretary to revoke the transfer of management authority for any species if the state does not implement its approved program or if the program is not being implemented consistently with the provisions of the state plan. Before the Secretary can revoke the transfer of management authority, he must first consult with the state and provide the state with the opportunity to take any remedial measures the Secretary considers necessary.

Permits the Secretary to prescribe marking, tagging and reporting requirements applicable to the subsistence take of Alaska natives at any time the state is not exercising management authority over the species concerned.

Expands the Secretary's authority to make grants to the states for developing their programs. Under existing provisions of the Act, such grants can only be made to administer the state program upon the transfer of management authority.

Adds a new sentence to the research section of the Act to direct the Secretary to undertake, and provide assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals.

Authorizes to be appropriated \$8.0 million in fiscal year 1983 and \$8.8 million in fiscal year 1984 to the Department of Commerce, \$1.76 million in fiscal year 1983 and \$2.0 million in fiscal year 1984 to the Department of the Interior, and \$1.0 million in fiscal year 1983 and \$1.1 million in fiscal year 1984 to the Marine Mammal Commission to carry out their responsibilities under the Act.

For further details or clarification of the amendment, see the Section-By-Section Analysis.

BACKGROUND AND NEED

The Marine Mammal Protection Act (MMPA) was enacted in 1972 for the purpose of ensuring that marine mammals are maintained at healthy population levels. In passing the Act, Congress responded to the growing concern about the decline of certain species and recognized the important role that marine mammals play in the ecosystem as well as their economic, aesthetic and recreational value.

Under the MMPA the Department of Commerce is charged with responsibility for whales, dolphins (porpoises), sea lions and seals. The Department of the Interior has responsibility for polar bears, walrus, sea otters, manatees and dugongs. The Act establishes a moratorium on the taking of marine mammals unless the population of an animal is determined to be at its optimum sustainable level. State management of resident marine mammal populations is preempted until such time as a state prepares a marine mammal management program consistent with the Act. Criminal and civil penalties are prescribed for violations of the Act and the importation of marine mammals and their products is subject to regulation. The Act created a three-member Marine Mammal Commission which is charged with monitoring the implementation of the Act, recommending policies to the two Secretaries, and undertaking such research as is deemed appropriate.

In many respects, the Marine Mammal Protection Act has been a remarkably successful piece of legislation. In the area of reducing the incidental take of porpoises in tuna fishing operations, for example, the number of porpoises killed has dropped from an estimated 308,000 animals in 1972 to an estimated 15,303 porpoises in 1980. This dramatic accomplishment has been achieved because of improvements in gear design and fishing techniques. A number of other species, such as the California sea otter and the West Indian manatee, also seem to be benefiting from the protection provided pursuant to the Act. However, during hearings held on April 7, 1981, on legislation to reauthorize the MMPA, the Committee received testimony regarding a number of problems associated with the implementation and administration of the Act.

The most notable difficulty experienced in the administration of the Act occurred when the Departments of Commerce and the Interior attempted to return management of certain marine mammal species to the State of Alaska, as provided for in section 109 of the Act. On January 31, 1973, Alaska requested the Secretaries of Commerce and the Interior to grant a waiver of the moratorium to permit the hunting of nine species of marine mammals and to return management of the species to the state. Six of the species were under Commerce's jurisdiction and three were under Interior's jurisdiction. Pursuant to the Act, the state's request required formal hearings before an administrative law judge concerning the status of the population of each species, as well as consideration of the state's proposed laws and regulations that would govern the taking of that species. The proposed waiver of the moratorium to allow a taking of marine mammals also required compliance with the provisions of the National Environmental Policy Act.