

ALPHA INSTITUTE FOR COLLEGE STUDENTS

2440 HJ - HB 200 - HB 211

29-2-9. Probationary period; length; permanent commission; salary.

All new appointments as members of the New Mexico state police shall be for a probationary period of two years. During such probationary period such new members may be removed or suspended at the discretion of the chief of the New Mexico state police. At the end of two years of satisfactory service and upon recommendation of the chief and with concurrence of the New Mexico state police board, the appointee may receive a permanent commission as a member of the New Mexico state police. However, the probationary period may be extended beyond a two-year period upon the recommendation of the chief with the concurrence of the board.

The salaries of all members of the New Mexico state police, probationary and permanent, and that of the chief shall be fixed by the board.

History: 1941 Comp., § 40-209, enacted by Laws 1941, ch. 147, § 9; 1953, ch. 80, § 2; 1953 Comp., § 39-2-9; Laws 1977, ch. 257, § 25; 1979, ch. 202, § 20.

The 1979 amendment substituted "chief" for "director" in three places, inserted "and with concurrence of the New Mexico state police board" and "as

a member of the New Mexico state police" in the third sentence in the first paragraph, added the last sentence in the first paragraph, substituted "board" for "secretary" at the end of the section and made other minor changes.

29-2-10. Promotions.

All promotions in the New Mexico state police to the rank of sergeant shall be made after written examinations; provided, however, that on such examination for the rank of sergeant, the record of the party seeking promotion as a member of the New Mexico state police and his length of service shall be given a weight of forty percent in such examination. All promotions above the rank of sergeant shall be made by the chief after concurrence and approval by the New Mexico state police board. The ranks of sergeant, lieutenant and captain shall be permanent unless established as an exempt rank by the chief with the concurrence of the board. All promotions above the rank of captain are by executive appointment of the chief with concurrence of the board and such persons shall serve at the pleasure of the chief with the concurrence of the board.

History: 1941 Comp., § 40-210, enacted by Laws 1941, ch. 147, § 10; 1953 Comp., § 39-2-10; Laws 1979, ch. 202, § 21.

The 1979 amendment added the catchline, inserted "to the rank of sergeant" and "for the rank of ser-

geant" in the first sentence, inserted "New Mexico" preceding "state police" near the middle of the first sentence and added the second, third and fourth sentences.

29-2-11. Disciplinary proceedings.

No member of the New Mexico state police holding a permanent commission shall be removed from office, demoted or suspended except for incompetence, neglect of duty, violation of a published rule of conduct, malfeasance in office or conduct unbecoming an officer, and only on specific written charges filed with the New Mexico state police board with timely and adequate notice thereof to the person charged, and after a hearing on such charges by the board. The person so charged has the right to be represented by counsel at such hearings. A complete record of the hearing shall be made and, upon request, a copy thereof shall be furnished to the person charged. Such person may require that the hearing be public. In the event the board determines that the person charged shall be removed, hearing shall be made and, upon request, a copy thereof shall be furnished to the person charged. Such person may require that the hearing be public. In the event the board determines that the person charged shall be removed, demoted or suspended for a period in excess of thirty days, such person may appeal from the decision of the board to the district court of the district wherein the alleged cause or any one of the alleged causes for the proceeding arose. Such appeal shall be filed within twenty days after the decision of the board is rendered and the court shall determine promptly whether there is substantial

evidence to support the board's action and dispose of the appeal accordingly. Such determination shall be made on the basis of the record except that, for cause shown, the court shall permit either the board or the person charged to introduce new evidence; provided, however, that the chief of the New Mexico state police may suspend members of the New Mexico state police for disciplinary reasons for periods of not to exceed thirty days. Any member holding a permanent commission thus suspended by the chief shall have the right to have such suspension reviewed by the board, but no further review or appeal shall be allowed.

History: 1941 Comp., § 40-211, enacted by Laws 1941, ch. 147, § 11; 1953, ch. 80, § 3; 1953 Comp., § 39-2-11; Laws 1970, ch. 5, § 1; 1977, ch. 257, § 27; 1979, ch. 202, § 22.

The 1979 amendment inserted "New Mexico" preceding, and deleted "division" following, "state police" in the first sentence and preceding "may suspend" in the ninth sentence, substituted "New Mexico state police" for "advisory" preceding, and deleted "and the secretary" following, "board" near the middle of the first sentence, deleted "advisory" preceding, and "and the secretary" following, "board" at the end of the first sentence, substituted "board" for "secretary" in the fifth, seventh, eighth, ninth, and tenth sentences, substituted "chief" for "director" in the ninth and tenth sentences, substituted "New Mexico state police" for "division" preceding "for disciplinary reasons" near the end of the ninth sentence and made other minor changes.

Compiler's note. — The fifth and sixth sentences inadvertently repeat preceding and following provisions and first appeared in Laws 1970, ch. 5, § 1, which amended this section.

Incompetence includes physical inability to perform. — Incompetence includes physical inability to perform, which inclusion fits in with the pattern and purpose of the statutory plan. A termination or removal for physical unfitness is no less final than one for another form of incompetence. *Tafuya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

Physical inability to perform constitutes voluntary resignation not governed by section. — Request by officer injured in line of duty who had used all his sick leave for leave of absence which was improper under Rule 7, regulatory rule promulgated by state police board, issued pursuant to 29-2-22 NMSA 1978, and his physical inability to perform the functions of his job as senior patrolman, constituted a voluntary resignation, not a termination governed by this section. *Budgher v. New Mexico State Police Bd.*, 82 N.M. 787, 487 P.2d 489 (1971).

Officer must first pursue administrative remedy. — Police officer who was wrongfully dismissed and who claimed salary and other benefits must first pursue them administratively. *Tafuya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

29-2-12. Oath.

All members of the New Mexico state police and the New Mexico state police board shall take the oath of office required of all state officials.

History: 1941 Comp., § 40-212, enacted by Laws 1941, ch. 147, § 12; 1953 Comp., § 39-2-12; Laws 1977, ch. 257, § 28; 1978, ch. 82, § 3; 1979, ch. 202, § 23.

The 1978 amendment deleted "and bond" at the end of the sentence, and "and the director and such other members of the state police or clerical employees as the state police division may direct shall give bond in such amount as the division shall direct for the

Transcript expense may be incurred by board. — Such expense as is necessary may be incurred to enable the board to make a factual determination in a disciplinary proceeding. It would be absurd to vest disciplinary power in the board and then hamstringing such proceedings by refusing to pay the necessary expenses thereof. For this reason, if in their discretion the board feels a copy of the transcript is necessary, such expenditure is permissible. 1957-58 Op. Atty Gen. No. 58-212.

No moneys expended for transcript expense in appeal. — If a transcript is necessary for the board to weigh disciplinary action, the transcript expense would be expendable in the same fashion as the board might incur a different type of expense for the same purpose. On the other hand, if the expense of the transcript is to be incurred wholly or partially to assist in the appeal of a judgment rendered personally against a state policeman, then and in that event such moneys cannot be expended either from the budgeted line item of "professional services" or from any other public moneys appropriated to the department. 1957-58 Op. Atty Gen. No. 58-212.

Board is required to meet statutory procedures when it desires to terminate office, and if this is not done consequently the severance from service is short of statutory right. *Tafuya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

Where doubts as to right to procedural safeguards. — Any doubt as to the right to procedural safeguards should be resolved in the officer's favor unless the right to remove at will or pleasure is clearly expressed. *Tafuya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

No hearing required when reduction in rank. — The procedures of advancement, not a promotion, and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanent enable the chief to shift key personnel to positions where their interest and ability are used to best advantage, without the necessity of a hearing by New Mexico state police board. *Wimberly v. New Mexico State Police Bd.*, 81 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

C.J.S. reference. — 81A C.J.S. States § 110.

faithful performance of their duties" at the end of the section.

The 1979 amendment inserted "New Mexico" preceding, and "and the New Mexico state police board" following, "state police" near the beginning of the section.

C.J.S. reference. — 81A C.J.S. States § 91.

29-2-21. Details.

The governor of New Mexico may from time to time detail all or any part of the New Mexico state police to such part of the state as in his judgment may be necessary to bring about proper law enforcement in the state to handle disturbances or to investigate specific law violations.

History: 1941 Comp., § 40-220, enacted by Laws 1941, ch. 147, § 20; 1953 Comp., § 39-2-20; Laws 1977, ch. 257, § 36; 1979, ch. 202, § 30.

The 1979 amendment deleted "order the secretary of the criminal justice department to" preceding "detail all or any part" near the beginning of the section.

29-2-22. Rule-making power; rules to establish standards of conduct.

The New Mexico state police board shall have authority to make and promulgate rules and regulations for the purpose of carrying out the provisions of Sections 29-2-1 through 29-2-29 NMSA 1978. The New Mexico state police board shall establish by rules, from time to time, standards of conduct for members of the New Mexico state police and a copy thereof shall be delivered to each such member and displayed at each station of the department. Such rules shall be filed pursuant to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: 1941 Comp., § 40-221, enacted by Laws 1941, ch. 147, § 21; 1953, ch. 80, § 5; 1953 Comp., § 39-2-21; Laws 1977, ch. 257, § 37; 1978, ch. 82, § 5; 1979, ch. 202, § 31.

The 1978 amendment substituted "state police director, with the approval of the secretary of the criminal justice department" for "state police director" near the beginning.

The 1979 amendment substituted "board" for "director" and "29-2-29" for "29-2-28" in the first sentence, in the second sentence, substituted "board" for "division" preceding "shall establish," substituted "New Mexico state police" for "division" near the middle of the sentence and substituted "department" for "division" at the end of the sentence and made other minor changes.

Board's authority to make rules controlled by statute. — Authority of the police board to promulgate rules and regulations must be found in and is limited by statute. Such authority is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. *Winston v. New Mexico State Police Bd.*, 80 N.M. 310, 454 P.2d 967 (1969).

Agency's authority includes express and implied powers granted. — It is a fundamental principle of administrative law that the authority of an agency is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. *Wimberly v. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972).

Temporary rank adjustments within scope of powers. — Where New Mexico state police board has adopted a regulation providing that "all ranks above captain will be appointments and not permanent," and the officers who hold these ranks are given additional salary and emoluments, but these ranks, according to the record, are considered by the board and the department to be temporary, plaintiff's adjustments in rank from captain to major and major to lieutenant colonel were not promotions as such but

were temporary advancements within the framework of administration of the New Mexico state police and both chief of police and the board acted within the scope of their authority under the laws of the state of New Mexico in adjusting plaintiff's rank from lieutenant colonel to major and from major to captain. *Wimberly v. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

As well as regulation allowing director to shift key personnel. — The procedures of advancement and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanent enable the chief of police to shift key personnel to positions where their interest and ability are used to best advantage. *Wimberly v. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

No authority for rule requiring mandatory retirement after 30 years. — There is no delegated authority for the state police board to promulgate a rule requiring mandatory retirement after 30 years of service; such rule would be unreasonable, arbitrary and conflict with the retirement by age requirement of 29-2-6 B NMSA 1978. 1967 Op. Att'y Gen. No. 67-72.

And such rule is invalid. — State police board regulation providing for involuntary retirement of all police officers who had completed 30 years of service, even where such officers had not reached mandatory retirement age, exceeded statutory authority of the board and therefore was invalid. *Winston v. New Mexico State Police Bd.*, 80 N.M. 310, 454 P.2d 967 (1969).

Effect of using all of sick leave. — Rule 7 of regulation promulgated by state police board filed pursuant to this section makes it clear that under no circumstances can an officer who was injured in line of duty but who has used up all of his sick leave be granted a leave of absence from the police department, and request for such leave constitutes a voluntary resignation. *Budagher v. New Mexico State Police Bd.*, 82 N.M. 787, 487 P.2d 489 (1971).

29-2-23. Repealed.

Repeal. — Laws 1975, ch. 202, § 53, repeals 29-2-23 NMSA 1978, relating to the transfer of powers and

duties in the bureau of identification of the department of justice to the technical services bureau of the

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3500

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 18, 1983

SUBJECT: Individual rights of peace officers
(HB 200)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: James H. Lear
Legislative Counsel *JHL*

Steve Cramer of your staff has asked our office for a sectional analysis of HB 200 ("An Act relating to individual rights of peace officers").

HB 200 addresses the rights of a peace officer when subjected to an investigation that can result in four different types of sanctions. Those sanctions are set out in descending order of severity starting with conduct of a peace officer which would subject the peace officer to criminal prosecution (sec. 18.65.530); followed by sanctions in the form of punitive action (sec. 18.65.531) and disciplinary action (sec. 18.65.532) against a peace officer by the employer of the peace officer instead of criminal prosecution; and a final sanction in the form of civil liability of the peace officer (sec. 18.65.533).

The rights of a peace officer during an investigation with those four different possible outcomes may vary slightly according to the severity of the outcome. For example, under sec. 18.65.530, a peace officer subject to criminal action is entitled to all of the rights granted the accused under law, but is also granted specific rights set forth for the benefit of a peace officer subjected to punitive action.

Sec. 18.65.531 establishes specific rights for a peace officer subject to punitive action that might not otherwise be available because the peace officer would not be charged with a criminal offense entitling him to the full panoply of constitutional rights. The specific rights are set out in eleven paragraphs as follows:

(1) The peace officer has a right to be informed of the nature of the investigation if instituted by the employing agency, or a formal written complaint if instigated by a complainant. The peace officer must also be informed of his rights under this section.

(2) The peace officer is entitled to have a witness or other person present to participate on behalf of the peace officer.

(3) This paragraph ensures that the interrogation or interview would not be an extreme imposition on the peace officer.

(4) Under this paragraph the peace officer would be entitled to compensation if interviewed while not on duty.

(5) This paragraph ensures that the peace officer would be free from harrassment during the interview and establishes that punitive action may not be taken against the peace officer for failure to answer questions unless he is informed that such failure could result in punitive action. The peace officer can exercise the right to remain silent if the peace officer's alleged conduct would be criminal.

(6) The peace officer may record the interrogation or interview and have access to the employer's tape recording, if any is made.

(7) This paragraph guarantees access to transcripts and other relevant information, including information in the peace officer's personnel file, if not confidential.

(8) This paragraph addresses the right of the peace officer to review adverse material before it is placed in the peace officer's personnel file and affords the peace officer an opportunity to respond to such material and have the response included in the peace officer's personnel file.

(9) The peace officer may not be compelled to submit to a polygraph examination.

March 18, 1983

(10) Certain personal information may not be coerced from a peace officer.

(11) The peace officer's locker space or other space assigned to the peace officer is free from unlawful search and seizure.

Under sec. 18.65.532 a peace officer subjected to disciplinary action has the same rights specified for a peace officer subject to more severe penalties in the form of punitive action, as outlined in the above eleven paragraphs. In addition, the peace officer has the right to have the personnel file purged of disciplinary proceeding matters within one year and is presumed to be innocent unless proven otherwise.

Under sec. 18.65.533 if a peace officer is subject to possible civil liability, the peace officer may exercise those same rights set out in the above eleven paragraphs and is entitled to have an attorney present at the peace officer's expense during the investigation.

Under sec. 18.65.534 a peace officer may not be subjected to any reprisals for exercising rights specified in this bill.

Section 2 of HB 200 amends AS 23.1(.037(b) to provide that a police department may polygraph an applicant for employment but may not require a polygraph of an employee.

JHL:ljb
10/010

M E M O R A N D U M

March 15 , 1983

TO: Committee on Judiciary File
FROM: Staff
SUBJ: Requested Amendment to HB 200, "An Act relating to individual
 rights of peace officers."

A M E N D M E N T # 1

page one (1); line seventeen (17) and eighteen (18);
delete:

" in addition to the rights specified in AS 18.65.531"

ANALYSIS OF SB 115 AND HB 200

- Sec. 18.65.531(1) (a) When a person is arrested by warrant or summons, a copy of the complaint is given to suspect.
- (b) If not, arraignment is held within 24 hours and at that time he/she is advised of charges against him/her.
- (c) At a minimum, when placed under arrest, an individual is informed verbally of charges.
- (d) At a bail hearing, immediately after arrest, circumstances surrounding alleged offense are told to a magistrate/judge in front of the accused and on tape.
- (e) If suspect is being interviewed prior to arrest, person is advised of the nature of the offense which promulgated the interview.
- (2) (a) Right to have an attorney as per mirandar.
- (b) Right of an employee to have a representative present in an interview which could lead to punitive action as per Weingarten, 420 VS 251 (1975) and Material Research Corporation, 262 NLRB 122 (1982).
- (3) (a) Unless seriousness of offense requires otherwise, it is standard procedure to conduct an interview with suspect during the day or directly after work.
- (4) Any employer that calls an employee in to work is required to compensate him/her under the Federal and State Wage and Hour Laws (although the state and political subdivisions are currently exempt).
- (5) All suspects are allowed to take the fifth amendment and employees are not required to answer questions put to them by an employer in an interview. This section gives peace officers less rights in that it allows for punitive action to be taken if the peace officer fails to answer questions unless the conduct would be criminal.

- (6) Same as criminal rules of discovery of evidence.
- (7) Same as criminal rules of discovery of evidence.
- (8) If a person is a suspect in a case and is found to be innocent, no record is kept in the state law enforcement computer. A peace officer, on the other hand, can have allegations put into his/her personnel file before it is determined that he/she is innocent.
- (9) No other persons are required to take a polygraph and polygraph results, if voluntarily given, are not admissible in court.
- (10) A peace officer is granted less rights than an other person with regard to potential conflict of interests, otherwise, the rights are subject to rules of discovery of evidence, the same as any other individual.
- (11) These rights for all other persons exist and cannot be abridged unless a valid search warrant is obtained.

Sec. 18.65.532 (3) All persons are presumed innocent until proven guilty.

TAX RULINGS

With Pocketbook Impact—

IRS powers. Taxpayers who take a "who will ever know" attitude in filling out tax returns need to note the awesome powers granted the Internal Revenue Service to protect federal income.

When the IRS denied many deductions claimed by Daniel Leimel and demanded \$2,287 in added taxes, Leimel petitioned his case to the Tax Court. The IRS then proposed a conference to let him present his evidence. Leimel appeared but offered only a few miscellaneous receipts. He ignored other IRS requests for evidence and spurned a Tax Court order setting a deadline for production of proof. At trial recently, he tried to present evidence allegedly substantiating his deduction claims. Now, in a brief decision, the court has excluded that evidence and sided with the IRS.

Commuting. A worker may manage to deduct some of his cost incurred in driving to work in order to carry the tools of his trade, but only if he can prove costs that he would not have without the need to transport tools.

Alonzo McLaughlin, Jr., obviously needed to drive his car in order to take 75 pounds of tools. And in court he argued that, otherwise, he would have taken the Long Island Railroad to work. So he deducted the difference in cost. But now the Tax Court has ruled that McLaughlin failed to show that he drove to work only because of his need to carry tools.

Note: Even if he had convinced the court, his deduction would be limited to the difference between his driving cost with the tools and driving without them.

Pregnancies. Sick-leave pay during normal pregnancies is no longer exempt from Social Security payroll taxes, the IRS points out in a new ruling that implements tax amendments recently enacted by Congress. Effective January 1 of last year, such payments during the first six months of absence from work are taxable.

Requests for citations should be addressed to Reader Service, 2300 N Street, N.W., Washington, D.C. 20037.

NEWS-LINES®

Court and Government Decisions With Impact on Business, Employees, Consumers

CHEMICAL HAZARDS to unborn children must be amply demonstrated before fertile women can be barred from certain jobs, decides a U.S. appeals court in remanding a case for further consideration. The policy of the Olin Corporation in excluding women of childbearing capacity from areas where hazards to fetuses may exist must be objectively justified, says the court. The company must show, it concludes, that support for its view is so considerable within the scientific community that an informed employer could not responsibly fail to believe that its opinion might be the accurate one.

A SEX-BIAS finding does not entitle a victim to automatic back pay or promotion, finds a U.S. appeals court. A female school administrator, not considered for an opening because of her sex, is denied back pay and promotion, because the Greenwood, S.C., school district shows that two other women would have been selected over her.

A COURT ORDER specifying how the Labor Department must carry out an affirmative-action program is denied because a U.S. district court says it cannot second-guess the department's discretionary conduct. The order was sought by black workers unhappy with government handling of an affirmative-action program for the Philadelphia construction industry. While not enforced to the degree the workers would have wished, the record does not justify judicial intrusion, holds the court.

DISABILITY BENEFITS may not be ended because an employee's union goes on strike, decides the National Labor Relations Board. Conoco's contract with employees ruled out disability payments during strikes. But the NLRB rejects this, determining that employees on disability before the strike are entitled to payments until their disability ends or benefits are exhausted.

DISCLOSURE LAWS requiring public access to family finances of non-policymaking city employees are unconstitutional, holds a U.S. district court. A challenge to a New York City disclosure law by firefighters and police officers is upheld. The court finds that "Americans do not lose their right to privacy by accepting public employment." It adds that at times reasons for the public to know may exist, but these must be stated before information is dispensed.

FAILURE TO REPORT that a hospital patient took the wrong medicine is not ground for a nurse's dismissal, finds an arbitrator. A patient nearly died after a nurse, who knew he had been given the wrong medication, failed to mention the mix-up. Noting favorable endorsements from three doctors, the arbitrator rules that the nurse be reinstated but that any subsequent serious error will justify her discharge.

PUNITIVE DAMAGES are recoverable from the estate of a dead person, decides the West Virginia Supreme Court of Appeals. While traditionally courts deny such damages because "the dead cannot be punished by earthly judgment," the state court finds punitive damages serve other important functions, for example, providing benefits to injured parties and serving as a deterrent to others.

REVISED PAY and work rules at federal projects are struck down by a U.S. district court. The changes ordered by the administration would have allowed 2 semiskilled "helpers" for every 3 journeymen at federal projects and excluded wage rates at federal work sites or adjacent metropolitan areas as factors in determining rates for rural areas. The court, however, allows a change in the criteria for "prevailing wage rates"—from wages being paid to at least 30 percent of workers to wages being paid to a majority of workers. The revisions had been designed to save 600 million dollars annually.

Conclusions expressed here are based on decisions of courts, government agencies and Congress. For reasons of space, these decisions cannot be set forth in detail. On written request, U.S. News & World Report will refer readers to the basic material.

HB 200 or SB 115

AS 18.65.530
AS 18.65.531 a1
AS 18.65.531 a2
AS 18.65.531 a3
AS 18.65.531 a4
AS 18.65.531 a5
AS 18.65.531 a6
AS 18.65.531 a7
AS 18.65.531 a8
AS 18.65.532 a2
AS 18.65.532 a3
AS 18.65.533 1&2
AS 18.65.534 1&2

CURRENT A.P.D. CONTRACT

Article V Sec. 1 & 1g7
Article V Sec. 1g3
Article V Sec. 1b
Article V Sec. 1g1
Article V Sec. 1g2
Article V Sec. 1g5
Article V Sec. 1g6
Article V Sec. 1g6
Article V Sec. 1h
Article V Sec. 1h
Article V Sec. 1b
Article V Sec. 1g5(a)
Article V Sec. 1e

- Sec 18.65.530 If the complaint against the officer causes criminal action, the officer has all the rights afforded any other defendant in a criminal investigation
- Sec 18.65.531a When the investigation is internal or criminal charges could evolve and punitive action may be taken then the following shall apply:
- (1) The officer shall be informed of the allegation or given a copy of the complaint when first interviewed.
 - (2) The officer can have a person of their choice present at each state of the investigation.
 - (3) Interview will be during the officer's on duty time unless the seriousness demands otherwise.
 - (4) If the officer is called in when off duty, compensation will be given at the regular rate.
 - (5) If the allegation is criminal in nature the officer has the right to remain silent. If the allegation is not criminal and if founded would result in employing agency internal punitive action; days off, written letter, etc., the officer will be informed that to not cooperate with the investigation in itself could result in punitive action, but the officer will not be subject to adverse language.
 - (6) Either party has the right to tape record any interview and both will have access to those tapes.
 - (7) The officer can have a copy of all material within the investigation except that of confidential nature.
 - (8) Adverse information must be signed by the officer and a copy provided to the officer prior to that being placed in the officer's personnel file. The officer has 30 days to file a response. All unfounded complaints or information must be promptly removed from the officer's personnel file.
 - (9) If the officer declines a polygraph examination in any investigation, this cannot be used or held against the officer and no record of that can be kept.
 - (10) Personal matters of the officer's will remain so unless the employing agency is looking into possible conflict of interest with respect to official duties and all matters are subject to rules of discovery of evidence.
 - (11) The right of privacy and the expectation of such with regards to assigned lockers, briefcases and sole use areas is the same as assigned school lockers, gym lockers, and a student's book bag.
- Sec 18.65.532b Action taken by the employing agency which is noncriminal in nature; days off, dismissal, reprimand, etc.

Sec 18.65.532a When a complaint filed if found to be true will result in only disciplinary action. No criminal.

- (1) The officer has all the rights in Sec 18.65.531.
- (2) Any record of disciplinary action must be removed after one year.
- (3) The officer is presumed innocent until guilt is proven.
- (3b) If the complaint is founded, disciplinary action may be taken by the employing agency against the officer but does not apply to minor on the spot admonishments.

Sec 18.65.533 If the officer under investigation may be subject to civil liability the officer can:

- (1) Exercise the rights in Sec 18.65.531.
- (2) Have at the officer's expense, an attorney present in all investigative steps.

Sec 18.65.534 No officer will suffer reprisals or be in anyway disadvantaged for exercising any rights in Sec 18.65.531 thru 18.65.533:

- (1) As evidence against the officer in any proceedings.
- (2) Cannot be used to change the officers work schedule, wages or working conditions.

Sec 2 AS 23.10.037b Excludes peace officers from polygraph examinations after being hired and employed by any agency. Still allows for preemployment polygraph examinations.

Individual Rights
Under

SB115/HB200

SEC 18.65.531a1

SEC 18.65.531a2

SEC 18.65.531a3

SEC 18.65.531a4

SEC 18.65.531a5

SEC 18.65.531a6

SEC 18.65.531a7

SEC 18.65.531a8

SEC 18.65.531a9

SEC 18.65.531a10

SEC 18.65.531a11

SEC 18.65.532.3

SEC 18.65.533.2

SEC 18.65.534

Prisoner Rights
Under

7AAC 60.400-505

7AAC 60.410C

7AAC 60.420 b4C

7AAC 60.415 Uses working days

7AAC 60.425 Uses working days

Prisoner is not compelled to
answer questions.

7AAC 60.420 b4C

Right of Appeal

7AAC 60.465a

7AAC 60.480b

No Polygraph in any criminal
or infraction hearing.

Right of Privacy

Right of Privacy

7AAC 60.455

7AAC 60.440e

7AAC 60.480 c & h -- No execution
of punishment until appeals are
complete.

The following items are taken from 7 AAC 60.400 - 480 which governs DISCIPLINE of a prisoner in a state institution:

- 7 AAC 60.400 Prohibited conduct Major infractions are listed as homicide, rioting, etc.
High Moderate infractions are listed as fighting, stealing over \$100 value, sexual acts, etc.
Low Moderate infractions are listed as indecent exposure, stealing more than \$50 less than \$100 value, false statement, etc.
Minor infractions are listed as gambling, stealing or damaging state property under \$50 value.
It should be noted that those infractions contained in Low Moderate and Minor are same as misdemeanor crimes.
- 7 AAC 60.405 States that any infraction must be reported to the superintendent and that those of a Low Moderate or Minor nature may be handled by a staff member informally (non-criminal) or referred to the superintendent for formal action.
- 7 AAC 60.410 If formal disciplinary action is to be taken, a report is to be written citing the rule violated.
- 7 AAC 60.410 (c) A copy of the disciplinary report must be given to the prisoner no later than five working days after the infraction occurred.
- 7 AAC 60.410 (e) If no hearing is scheduled for the infraction, the prisoner is to be treated as not guilty and all reports are to be removed from his institutional file.
- 7 AAC 60.415 A prisoner must have 48 hour notice prior to his disciplinary committee hearing.
- 7 AAC 60.415 (c) After the notice of a hearing, the prisoner must inform the committee in writing of any witnesses or evidence he wishes to introduce.
- 7 AAC 60.420 (b4c) The accused prisoner or his advocate may call witnesses or introduce evidence.
- 7 AAC 60.420 (c2) The disciplinary committee must consider the evidence the prisoner or his advocate present.

- 7 AAC 60.425 (b) The accused prisoner can postpone his appearance before the disciplinary committee for two working days.
- 7 AAC 60.430 (a) The accused prisoner can present witnesses or evidence at any hearing.
- 7 AAC 60.440 (b) The staff advocate may be from correctional offices, institutional counselors or probation officers.
- 7 AAC 60.440 (e) The accused prisoner has a right to counsel in any hearing where felony prosecution may result. The felony prosecution is eliminated if the district attorney indicates in response to an injury under Section 460 of this chapter that no felony complaint will be filed.
- 7 AAC 60.455 A prisoner is presumed innocent of the infraction and the institution has the burden of establishing guilt.
- 7 AAC 60.460 The superintendent will notify the district attorney of any infraction which if found true would constitute a violation of a felony criminal statute.
- 7 AAC 60.465 If the prisoner is found to have not committed the infraction, the disciplinary report and any other documentation which mentions the incident must be removed from the prisoner's file.
- 7 AAC 60.470 Punishment: The disciplinary committee will impose at least one and may impose any or all the penalties in this section. Some examples are:
1. Reprimand
 2. Suspension of activities
 3. Confinement to punitive segregation

The following items are taken from 7 AAC 60.485 - 505 which govern SEGREGATION in a state institution:

- 7 AAC 60.485 A prisoner may be temporarily assigned to administrative segregation under different reasons, one of which is, the prisoner represents a substantial immediate threat to the security of the institution or requires protective custody.
- 7 AAC 60.485 (b) Prisoners assigned administrative segregation must be immediately informed of the reason.

7 AAC 60.485 (c) The prisoner will be granted a hearing no later than three days after he is placed in segregation.

7 AAC 60.485 (e) The prisoner is entitled to written notice at least 24 hours in advance of the hearing, can have a staff advocate at the hearing, offer evidence, present witnesses and cross examine witnesses.

E BEN H. LEWIS

2073 ARLINGTON DRIVE NORTH

ANCHORAGE, ALASKA 99503

February 1, 1983

Honorable Jan Faiks
Alaska State Senate
State Capitol, Pouch V
Juneau AK 99811

Dear Jan:

A couple of weeks ago I was seated next to Joe Hayes on a flight down from Fairbanks, and had a chance to discuss with him some ideas I have had about reinforcing the criminal justice system in Alaska, which is now in such disarray. I have followed up on the discussion by sending on to Joe some material I had prepared several years back on providing some legislative limitation on the courts' application of the so-called 'exclusionary rule', which bars the use of criminal evidence seized under circumstances which a court may later determine violated a defendant's right against 'unreasonable search and seizure'. The courts have been extremely restrictive in allowing use of evidence taken without a warrant, even though the officer may have been acting in good faith at the time it was taken. The time is long overdue for legislative bodies to take the matter in hand and provide some definition of what a 'reasonable search' is, and I submit that legislation along the lines suggested in Fritz Pettyjohn's SB 49 ought to be strongly supported. Since I don't have a copying machine at home, I would hope Joe Hayes could have any of the material I sent him made available for your use and that of other interested legislators.

My 15 years on the bench strongly persuaded me that the indispensable component of an effective criminal justice system is a professional police organization. I feel that Anchorage is fortunate in having such an organization serving the community. Like any large organization there are morale and personality problems present in its continuing function, which I feel deserve attention. I have a good friend of many years' standing who is serving on the legislative committee of the Anchorage Police Officers Association, who tells me there is some dispute with management over a policy requiring officers to submit to a polygraph examination under certain circumstances, under pain of discharge from the force if he/she refuses. The Association is supporting a Peace Officers Bill of Rights which, if enacted by the Legislature, would bar such practise.

My experience judicially with the polygraph dictates my conclusion that the Association's anti-polygraph position is correct. I researched the question thoroughly several years ago when I was assigned for retrial the case of State v. Fageriak, in which refusal of a key witness to submit to a pre-trial polygraph became relevent. I found that only a few jurisdictions

permit any reference to the polygraph in any circumstances, and then, only under the most stringently controlled limitations. It is never allowed as evidence against a criminal defendant. Interpretation of polygraph results is a highly subjective matter with the individual operator, subject to widely swinging variations in results. It is patently unfair to require a police officer under investigation to submit involuntarily to a test like this, particularly after a highly stressful incident, such as shooting at a suspect, when the officer's emotions could substantially affect the result. I suspect that the APD policy requiring the test, in fact, may violate the 5th amendment of the U S Constitution. Any bold lawyer who suggests otherwise can't show an Alaska case supporting his position.

The polygraph does have useful functions, when voluntarily taken by suspects to assist in deciding if they should remain under suspicion, and also as a pre-hiring management tool in interviewing applicants for sensitive positions (including police officers). An officer under investigation might even wish to have a polygraph examination to assist with the investigation, and in clearing himself, but such uses involve no due process questions. I hope, if you have an opportunity to consider this question, you will give my comments careful consideration.

There are also other bills pending on other matters of concern to peace officers safety: HB 100 and companion SB 24, which includes causing physical injury to a public safety officer among the acts constituting (felony) third-degree assault. Also, HB 2, a sentence-enhancing proposal, provides for substantially increased sentence, without probation, if a person uses 'armor piercing' ammunition in a gun while committing any crime of violence. Badly needed legislation.

Shirley and I were delighted that your campaign was successful, and that you have the opportunity to serve our interests in Juneau. Best of luck!

Sincerely,



Eben H. Lewis



March 4, 1983

Mr. Jim Stirling
Anchorage Police Department
Employees Association
701 West 58th Avenue
Anchorage, Alaska 99502

Dear Mr. Stirling:

The Anchorage Native Caucus supports and endorses HB 200 and SB 115. We believe that no person should be discriminated against because of race, religion, or occupation. Individual protection under the law should be equal for all people.

The above endorsement was passed by vote of our membership on March 2nd, 1983, during a regularly scheduled meeting.

Please keep us informed of the progress of these pieces of legislation and if we can be of further assistance please do not hesitate to call me at 278-4787.

Sincerely,


Clifford A. Black
President

ANCHORAGE FIRE FIGHTERS UNION



LOCAL 1264
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
AFL-CIO

801 W. Fireweed, #102
ANCHORAGE, ALASKA 99503



3-10-83

TO: Members of the House Judiciary Committee

Dear Legislators,

As president of the 270 person Anchorage Firefighters Union I wish to inform you of the total support of our union for House Bill 200.

We believe that Peace Officers and other emergency responders should enjoy the same rights as other citizens, and should not be subjected to interrogations of a type that are not admissible for the very people these officers protect, at great personal risk. It is interesting to note that the Anchorage Fire Department in a current review of their personnel rules and regulations is proposing polygraph examinations for firefighters and paramedics, as well as support personnel working for the department.

In the interest of protecting the rights of all citizens of our state, I would strongly urge your support for the passage of HB 200 into law.

Sincerely,

John Kiewik, President
Anchorage Firefighters Union
Local 1264, IAFF



March 10, 1983

Mr. James Stirling
Anchorage Police Department Employees' Association
701 West 58th
Anchorage, Alaska 99502

Dear Mr. Stirling:

The Anchorage Crime Commission is pleased to inform you that the Board of Directors, at their March 7, 1983 meeting, unanimously voted to support HB200 and SB115, an act relating to individual rights of peace officers.

It is our belief that the constitutional right of due process should be afforded to every citizen and not be denied to peace officers because of their occupation.

You may use this letter of support to communicate the Anchorage Crime Commission's position on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read 'I. Olsonoski'.

I. "Ski" Olsonoski, Chairwoman
Anchorage Chamber of Commerce Crime Commission

cc: Board of Directors)
 and) Anchorage Chamber of Commerce
 Advisors to the Board) Crime Commission

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill 200 Date on Bill: February 14, 1983
 Title: An Act relating to individual rights of peace officers
 Sponsor: Bussell, Liska, Barnes, Szymanski & Lindauer
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

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

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

N/A

3. Assumptions:

N/A

4. Disclaimer:

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

Prepared By: Guy Stinson Phone: 465-4404
 Division: Labor Relations Date: February 22, 1983

Approved by Commissioner: Dora S. Ruedd Date: 5/14/83
 Department: Administration

5. Distribution:

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

2/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT



Bill No: HB 200 Date on Bill: 2-14-83
 Title: An Act relating to individual rights of peace officers
 Sponsor: Bussell
 Requestor: HOUSE JUDICIARY

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

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

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

Source of funds not identified by sponsor

3. Assumptions:

No fiscal impact

4. Disclaimer:

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

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 2-23-83

Approved by Commissioner: *[Signature]* Date: 3/1/83
 Department: Public Safety

5. Distribution:

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

2/15/83

SPONSOR: Rep. Bossell - H. Judiciary
 leg non-leg pub hear work sess inv hear
 SUBJECT: HB 200 - Rights of Piece
 MAILING ADDRESS: Officers

DATE TAKEN/BY 3/8 QAD
 T/C DATE/DAY Fri - 3/11
 TIME: 1:30-2:30 PM PACIFIC
~~12:30 1:30~~
~~11:30 - 12:30~~ YUKON
~~10:30 - 11:30~~ ALASKA
10:30 - 11:30 BERING

PHONE 4990 CONTACT Catherine Zalewski

SITES PARTICIPATING:

- | | | | | |
|--|--|--|---|--|
| <u>North Slope</u>
Anaktuvuk Pass
* Barrow
Kaktovik
Point Hope
Wainwright

ALL ALASKA
ALL LIO's
WASH., D.C. | <u>NANA</u>
* Ambler
* Kotzebue
Noorvik
Selawik

<u>Norton Sound</u>
Gambell
Hooper Bay
* Nome
Savoonga
Shishmaref
** Unalakleet | <u>Bristol Bay</u>
<u>Aleutians</u>
* Bethel
* Dillingham
St. Paul
Sard Point
** Unalaska

<u>Interior</u>
* Delta Junction
* Fairbanks
** Fort Yukon
Galena | <u>South Central</u>
* Anchorage
Homer
* Kenai (Sol)
* Kodiak
* Mat-Su
Seward
* Valdez | <u>Southeast</u>
Cordova
Haines
Hoonah
* Juneau *
* Ketchikan
* Petersburg
* Sitka
Wrangell
Yakutat |
|--|--|--|---|--|

Chairing Site/Person JUN - Rep Bossell Special Offnet Location/Phone# NA
Catherine Zalewski
 Signature of Sponsor/Contact Person Date

-----TELECONFERENCE OFFICE USE ONLY-----

- 2-Wire 4-Wire _____
 Bridges: #1 (206)447-3620
 #2 (206)447-1554
 #3 (206)447-3627
 #4 (206)447-3470
 Bridge operator (800)426-3232
 JNU trouble #'s 596-1162
 445-3816
- Publicity:
 _____ Local calls/list attached
 _____ Media/P.S.A. attached
- Can expect:
 _____ Longday back-up
 _____ Bill summary
 _____ Participants list

POST TELECONFERENCE NOTES
 Site/Date: _____
 Local Moderator _____
 T/C Started: _____ T/C Ended _____
 T/C Recorded? _____
 Testified/Participated: _____
 Unable to Testify: _____
 Observers: _____
 Total Number _____

Red Henderson Palmer Police Chief

MSG 83-00014740 PRTY 1 03/11/83 13:27:51 ORIG: LA08 IN= 0007 OUT= 0004
FROM: BARBARA IN ANC TO: TOM IN JNU
TARGET: LJ03 SURJ: (H) JUDICIARY, T/C, 3/11 PAGE 0001

TO TESTIFY IN ANCHORAGE:

1. RICHARD POTTER, ANCHORAGE POLICE DEPT. EMPLOYEES ASSOCIATION
2. R.B. ZAKRZEWSKI, APEA, EPIC
3. JAMES STIRLING, 625 C STREET, ANC.,
4. JOHN R. YARBOR, APEA ANCHORAGE EPIC, CHUGIAK, AK
5. HOLLI FLOOG, APEA, 701 W. 58TH , ANCHORAGE, 99502, 561-1158

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 200 Date on Bill: 2-14-83
 Title: "An Act relating to individual rights of peace officers."
 Sponsor: Representative Bussell
 Requestor: House Finance Committee

1. Estimated fiscal impacts on:

a. Expenditures:

		(Thousands of Dollars)			
		FY 83	FY 84	FY 85	FY 86
Capital					
Operating					
Total					

b. Revenues:

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

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

No information provided.

3. ASSUMPTIONS: This bill gives peace officers who are the subject of internal disciplinary investigations broad substantive and procedural rights, even during investigations of conduct which may constitute a crime. Passage of the bill will seriously impair a police agency's ability to conduct investigations of police officers who are accused of criminal behavior. Requirements such as advance written notice of the commencement of an investigation and giving the officer evidence as it is gathered during the course of the investigation would substantially interfere with the course of an investigation. It is estimated that passage of the bill would have little or no fiscal impact on the Department of Law, other than it would preclude criminal investigations in situations where an investigation would be instituted under current law.

4. Disclaimer:

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

Prepared By: Daniel W. Hickey, Chief Prosecutor
 Division: Department of Law, Criminal Division

Phone: 465-3428
 Date: 3-3-83

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

Date: 3-3-83

5. Distribution:

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

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
248-1515



43200 JR

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 24, 1983

Mr. Michael O'Neill
O'Neill Security Services
3707 Woodland Drive
Anchorage, Alaska 99503

Dear Mr. O'Neill:

Thank you for your letter of March 17, 1983, inquiring about legislation regarding the uses of the polygraph.

During testimony taken at committee hearings in the House Judiciary Committee an operator of a polygraph testified, Richard Potter, Anchorage Police Department, 701 W. 58th Avenue, Anchorage, Alaska 99502, phone 561-1158, regarding the polygraph and its uses in the State of Alaska. He also remarked about its history.

If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Charlie Bussell'.

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosure: House Bill 200

• O'NEILL
SECURITY
SERVICES

3707 Woodland Dr.
Anchorage, Alaska
99503
907-248-2677 ✓

Prudhoe Bay
Box 6449
Anchorage, Alaska
99502
907-658-5140

Kuparuk
Box 6105
Anchorage, Alaska
99502
907-659-7213



March 17, 1983

Representative Charles Bussell
Chairman - House Judiciary Committee
State House of Representatives
Juneau, Alaska

Dear Representative Bussell:

A recent Anchorage Times article indicates that there is some legislation pending concerning the Polygraph. Would you please send me a copy of the bill and/or any information relating to the Polygraph, Polygraph Examiners and use of the Polygraph.

I would like to be advised when any hearings are set on anything relating to Polygraph and may wish to testify.

Thank you for your attention to this inquiry.

Sincerely,

A handwritten signature in cursive script that reads "R. Michael O'Neill".

R. Michael O'Neill

February 1, 1983

E BEN H. LEWIS
2073 ARLINGTON DRIVE NORTH
ANCHORAGE, ALASKA 99503

Done
(Received - Sup. Court Judge)
(Delivered By Jim Sterling)
Anch. Police Dept.
625 C Street
Anch 99501
264-4128

Honorable Jan Faiks
Alaska State Senate
State Capitol, Pouch V
Juneau AK 99811

Dear Jan:

A couple of weeks ago I was seated next to Joe Hayes on a flight down from Fairbanks, and had a chance to discuss with him some ideas I have had about reinforcing the criminal justice system in Alaska, which is now in such disarray. I have followed up on the discussion by sending on to Joe some material I had prepared several years back on providing some legislative limitation on the courts' application of the so-called 'exclusionary rule', which bars the use of criminal evidence seized under circumstances which a court may later determine violated a defendant's right against 'unreasonable search and seizure'. The courts have been extremely restrictive in allowing use of evidence taken without a warrant, even though the officer may have been acting in good faith at the time it was taken. The time is long overdue for legislative bodies to take the matter in hand and provide some definition of what a 'reasonable search' is, and I submit that legislation along the line suggested in Fritz Pettyjohn's SB 49 ought to be strongly supported. Since I don't have a copying machine at home, I would hope Joe Hayes could have any of the material I sent him made available for your use and that of other interested legislators.

My 15 years on the bench strongly persuaded me that the indispensable component of an effective criminal justice system is a professional police organization. I feel that Anchorage is fortunate in having such an organization serving the community. Like any large organization there are morale and personality problems present in its continuing function, which I feel deserve attention. I have a good friend of many years' standing who is serving on the legislative committee of the Anchorage Police Officers Association, who tells me there is some dispute with management over a policy requiring officers to submit to a polygraph examination under certain circumstances, under pain of discharge from the force if he/she refuses. The Association is supporting a Peace Officers Bill of Rights which, if enacted by the Legislature, would bar such practise.

My experience judicially with the polygraph dictates my conclusion that the Association's anti-polygraph position is correct. I researched the question thoroughly several years ago when I was assigned for retrial the case of State v. Fageriak, in which refusal of a key witness to submit to a pre-trial polygraph became relevant. I found that only a few jurisdictions

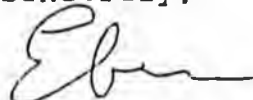
permit any reference to the polygraph in any circumstances, and then, only under the most stringently controlled limitations. It is never allowed as evidence against a criminal defendant. Interpretation of polygraph results is a highly subjective matter with the individual operator, subject to widely swinging variations in results. It is patently unfair to require a police officer under investigation to submit involuntarily to a test like this, particularly after a highly stressful incident, such as shooting at a suspect, when the officer's emotions could substantially affect the result. I suspect that the APD policy requiring the test, in fact, may violate the 5th amendment of the U S Constitution. Any bold lawyer who suggests otherwise can't show an Alaska case supporting his position.

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There are also other bills pending on other matters of concern to peace officers safety: HB 100 and companion SB 24, which includes causing physical injury to a public safety officer among the acts constituting (felony) third-degree assault. Also, HB 2, a sentence-enhancing proposal, provides for substantially increased sentence, without probation, if a person uses 'armor piercing' ammunition in a gun while committing any crime of violence. Badly needed legislation.

Shirley and I were delighted that your campaign was successful, and that you have the opportunity to serve our interests in Juneau. Best of luck!

Sincerely,



Eben H. Lewis

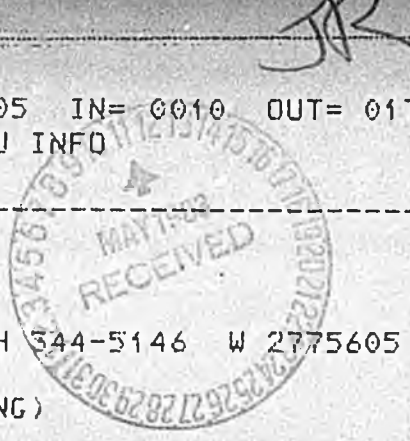
H

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2

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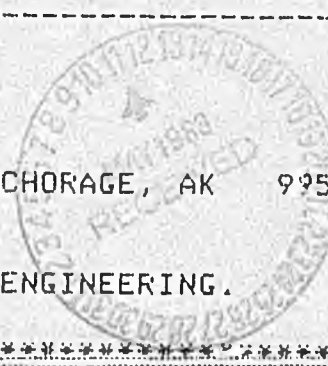
MSG 83-00016105 PRTY 1 05/09/83 17:33:52 ORIG: LA05 IN= 0010 OUT= 0174
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: F O M



TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: CLAUDE LAWS, 941 WEST 77TH AVE., ANC 99502 H 544-5146 W 2775605
RE: HB 211 (RE: CONTRACTS/ARCHITECTURAL ENGINEERING)
I'D LIKE TO GIVE MY SUPPORT TO THIS BILL.

EOM
5/9/83, JUNE, ANC LIO, MSG 16135

TO: ALL REPRESENTATIVES
FROM: LEWIS E. DICKINSON, 4017 NORTH POINT DRIVE, ANCHORAGE, AK 99502
H- 243-1079 W- 562-2000



I URGE YOU TO SUPPORT HB 211-CONTRACTS/ARCHITECTURAL ENGINEERING.

MSG 83-00016129 PRY 1 05/09/83 18:51:54 ORIG: L001 IN= 0005 OUT= 0193
FROM: ROBERTA/KODIAK TO: JUNEAU
TARGET: LJHL SUBJ: PUBLIC OPINION MESSAGE

TO: ALL MEMBERS HOUSE OF REPRESENTATIVES
ALL MEMBERS SENATE

FROM: JACK JOHNSTON
P.O. BOX 1065, KODIAK, AK. 99615 486-3823

RE: HB 17 DRINKING BILL

I WOULD LIKE TO SEE THE DRINKING AGE RAISED TO THE AGE OF 21 YEARS OLD.
I SUPPORT HB 17 AND URGE YOU TO DO THE SAME.



G 83-00016024 PRY 1 05/09/83 15:40:38 ORIG: LA02 IN= 0012 OUT= 013;
DM: JUNE, ANC LIO TO: POM, JNU INFO
RGET: LJHL SUBJ: P O M

9/83, JUNE, ANC LIO, MSG 16024

TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

OR

FROM: KENNETH J. HUSEBY, P.E.
7201 EAST 17TH AVENUE
ANCHORAGE, AK 99504 H- 333-0920 W- 274-3660

URGE YOUR SUPPORT FOR HB 211, CONTRACTS/ARCHITECTURAL ENGINEERING BILL.
FEEL THIS BILL IS IN THE BEST INTERESTS OF THE STATE AND THE TAX PAYING
PUBLIC. THIS BILL WILL BE THE STATE EQUIVALENT OF THE BROOKS BILL FOR THE
FEDERAL GOVERNMENT, WHICH HAS BEEN THE LAW FOR THE LAST SEVERAL YEARS.

S/ KENNETH J. HUSEBY, P.E.

MSG 83-00016062 PRTY 1 05/07/83 16:50:14 ORIG: LA02 IN= 0013 OUT= 0163
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: P O M

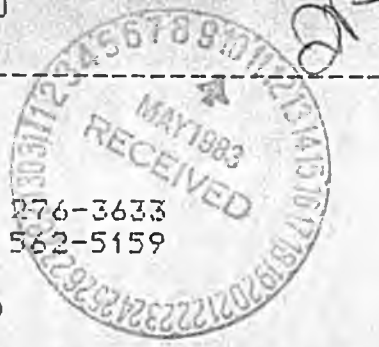
4/9/83, JUNE, ANC LIO, MSG 16061

ALL REPRESENTATIVES

FROM: BILL HAMM, 3324 KNIK, ANCHORAGE, AK 99503
H- 243-1004 W- 562-2000

PLEASE PASS HB 211 TO ESTABLISH THE PROPER PROCEDURE FOR SELECTION OF
DESIGN PROFESSIONALS FOR PUBLIC PROJECTS. WE NEED THE MOST QUALIFIED
AND EXPERIENCED INDIVIDUALS WHEN THE HEALTH AND SAFETY OF THE USING
PUBLIC IS AT STAKE. HIGH QUALITY DESIGNS WILL BE THE MOST ECONOMICAL
IN THE LONG RUN.

SG 83-00016224 PRTY 1 05/10/83 10:46:32 ORIG: LA05 IN= 0001 OUT= 0039
FROM: MARCIE, ANC INFO TO: FOM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M



TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: DALE A. NELSON, 1012 WEST 53RD AVE, ANC W 276-3633
MAIL: 430 WEST 7TH AVE., SUITE 210, ANC 99501 H 562-5159
RE: HB 211 (CONTRACTS/ARCH., ENG., LAND SURV. SERVICES)

YOUR SUPPORT IN THE PASSAGE OF HB 211 WOULD BE APPRECIATED. THE PASSAGE OF THIS BILL WILL ALLOW FOR THE SELECTION OF ARCHITECTURAL, ENGINEERING OF LAND SURVEYING FIRMS OR PERSONS BASED ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS.

FOM

MSG 83-00014902 PRTY 4 03/11/83 17:06:59 ORIG: LA02 IN= 0008 OUT= 0105
FROM: JEAN, ANCH LIO TO: POMS, JUNEAU INFO
TARGET: LJHL SUBJ: POMS

3/11/83 JEAN, ANCH LIO, MSG 14902

TO: ALL MEMBERS OF THE HOUSE JUDICIARY COMMITTEE
REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, MALONE,
CLOCKSIN, WENDTE

FROM: BILL HAMM
3324 KNIK
ANCHORAGE, AK 99503 (W) 562-2000 (H) 243-1004

I HAVE REVIEWED A COPY OF HB 211, WHICH YOUR COMMITTEE WILL
CONSIDER SOON, AND AM CONVINCED IT IS IN THE BEST INTEREST OF THE
PUBLIC TO ENACT THIS BILL INTO LAW AS SOON AS POSSIBLE.

FROM: VELI KALLIO

SRA 455-C

ANCHORAGE, AK 99507

(H) 345-6417 (W) 277-5605

I AM CALLING IN SUPPORT OF HB 214. I AM AGAINST BIDDING FOR THE PERFORMANCE OF PROFESSIONAL ENGINEERING SERVICES BECAUSE I FEEL VERY STRONGLY THAT IS THIS WILL RESULT IN THE DEVELOPMENT OF LESS DETAIL DURING THE DESIGN PHASE AND RESULT IN THE PLACEMENT OF CRITICAL ENGINEERING DECISIONS ON CONSTRUCTION FORCES.

FROM: VELI KALLIO

SRA 455-C

ANCHORAGE, AK 99507

(H) 345-6417 (W) 277-5605

JK

I AM CALLING IN SUPPORT OF HB 214. I AM AGAINST BIDDING FOR THE PERFORMANCE OF PROFESSIONAL ENGINEERING SERVICES BECAUSE I FEEL VERY STRONGLY THAT IS THIS WILL RESULT IN THE DEVELOPMENT OF LESS DETAIL DURING THE DESIGN PHASE AND RESULT IN THE PLACEMENT OF CRITICAL ENGINEERING DECISIONS ON CONSTRUCTION FORCES.

1. [Illegible text]

2. [Illegible text]

3. [Illegible text]

JR

4. [Illegible text]

(M) 277-5445 (H) 263-8130

5. [Illegible text]

6. [Illegible text]

1. JAMES EARL RAY, 1928, 1930

JR

2. LEGISLATIVE COMMITTEE, WOLFE, KINGSTON, EDWARDS,
MORSE, WOOD, ROBERTS, RUSSELL, LING, WARD,
MORSE AND CLOUTIER

3. JAMES EARL RAY, 1928, 1930, 1932
10-10-1950

MEMORANDUM FOR THE RECORD, RE: RAY'S PASSAGE OF H.R. 211. STAFF
MEMORANDUM FOR PREPARING DETAILED COPY OF RAY TO ALLOW
RELEASING A.E. RAY IS GREATER COST THAN POTENTIAL
BENEFIT. ALSO CHECK WITH A.E. WARD OF RAY HOUSE IF
RAY WANTS TO REPEAL H.R. 211. DON'T KNOW OF ANY FACT
THAT WOULD HELP.

4. JAMES EARL RAY, 1928, 1930, 1932, 1934, 1936, 1938, 1940, 1942, 1944, 1946, 1948, 1950

MSG 83-00000286 PRTY : 03/14/83 14:52:43 ORIG: LA03 IN= 0003 OUT= 0083
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SURJ: POM

3/14/83, JUNE, ANC LIO, MSG 286

TO: REPRESENTATIVES FURNACE, UEHLING, RINGSTAD, COWDERY, MALONE, WENDTE,
KOPONEN, ~~BUSSELL~~, BARNES, AND CLOCKSIN

FROM: ART JACOBS
706 SATURN CIRCLE
ANCHORAGE, AK 99504 (H) 337-6843 (W) 274-3660

THE NATURE OF ENGINEERING AND ARCHITECTURAL DESIGN CONTRACTS, AS OPPOSED TO
CONTRACTS FOR CONSTRUCTION, IS SUCH AS TO NECESSITATE NEGOTIATION RATHER
THAN BIDDING. PASSAGE OF HB 211 IS DEFINITELY IN THE PUBLIC INTEREST. PRE-
SENT PROCEDURES OF DOT/PF PARALLEL THE INTENT OF THIS BILL.



MSG 03-00000824 PRTY 1 03/15/83 18:25:54 ORIG: LA02 IN: 0005 OUT: 0130
FROM JUNE, ANC LIO TO POM, RHI INFO
TARGET: LJHL SUBJ: POM

03/15/83, JUNE, ANC LIO, MSG 824

JR

TO REPRESENTATIVES FURNACE, MALONE, BUSSELL, AND HAYES

FROM NELS KGELSTAD, PE & LS
2220 NORTH STAR #23
ANCHORAGE, AK 99503 (H) 277-6810 (W) 277-5605

REGARDING HB 211, RELATING TO CONTRACTS FOR ARCHITECT ENGINEER AND LAND SURVEYING SERVICES, I BELIEVE THAT THE STATE OF ALASKA AND ALASKA PROFESSIONALS WILL BE BEST SERVED BY PASSAGE OF THIS LEGISLATION. PLEASE SUPPORT HB 211.

REF 83-00000991 PRTY 1 03/16/93 12 17:35 ORIG 1.001 IN= 8000 OUT= 0046
FROM SHERLEY AND CO TO BUREAU GENERAL INFO

3-15-93 SHERLEY AND CO, 291

JR

TO REPRESENTATIVES FURBERG AND BUSHELL
FROM FRED BROWN, 5421 ARCTIC BLVD., ANCHORAGE 99502
W 561-2120

AS A PROFESSIONAL ENGINEER AND THE ANCHORAGE OFFICE MANAGER
FOR SHANNON & WILSON, INC., I STRONGLY URGE YOU TO SUPPORT
HR 211. IT IS IN THE BEST INTEREST NOT TO HAVE A COMPETITIVE
BID SITUATION WHEN A CONCEPT OR DESIGN IS NEEDED RATHER THAN
A TANGIBLE PRODUCT.

ISS 83-00001442 PRTY 4 03/17/83 15:13:19 ORIG LAG1 IN= 0013 OUT= 0007
FROM: SHIRLEE AND LIO TO: FOMC JUNEAU INFO
TARGET: LHL SUBJ: FOR

3/17/83, SHIRLEE AND LIO, 1442

JR

TO: REPRESENTATIVES RUSSELL, FURNACE AND PHILLIPS
FROM: ART RONIMUS, 3041 SANCTUARY DRIVE, EAGLE RIVER 99577
H 694-5157 W 277-5605

I SUPPORT HOUSE BILL NO. 211 KNOWN AS THE MINI-BROOKS BILL.
I URGE YOU TO SUPPORT THIS LEGISLATION.

CG 87-00001507 PRTY 1 03/17/83 17 06 46 ORIG. LA01 IN= 0015 OUT= 0106
FROM JUNE, ANC LIO TO: POM, JRU INFO
TARGET: LJHL SUBJ: POM

17/83, JUNE, ANC LIO, MSG 1507

JR

OF REPRESENTATIVES ~~RUSSELL~~ AND FURNACE

FROM: TED TRUEBLOOD
1621 WINTERSET DRIVE
ANCHORAGE, AK 99504 (H) 561-0274 (W) 265-2457

ON BEHALF OF THE 446 ANCHORAGE AREA CIVIL ENGINEERS, I URGE YOU TO SUPPORT
THE ENACTMENT OF HB 211.

BY TED TRUEBLOOD
PRESIDENT OF THE ANCHORAGE BRANCH
AMERICAN SOCIETY OF CIVIL ENGINEERS

4/26/83. SHIRLEE AND LIO, 12215

TO REPRESENTATIVES BUSSELL, LISKA, HAYES, BARNES, BALONE,
WENDTE AND KOPONEN

JR

FROM: LEWIS DICKINSON, 4040 B STREET, ANCHORAGE 99503
W 582-2000

I REQUEST THAT YOU SUPPORT HOUSE BILL 244. IT IS VERY IMPORTANT
TO ESTABLISH A STRONG PROFESSIONAL APPROACH FOR NEGOTIATING
ENGINEERING/ARCHITECTURAL CONTRACTS. PLEASE CALL IF THERE ARE
ANY QUESTIONS.

/S/ LEWIS DICKINSON, CONSULTING ENGINEER

4/26/83, SHIRLEE AND LTD 12346

TO: REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES,
MALONE, CLOCHSIN, AND WENDTE

FROM: BRIAN MATHER, 2346 LOUSSAC DRIVE ANCHORAGE 99503
H 248-1846 W 276-0521

I URGE YOUR SUPPORT OF HOUSE BILL 211.

BR



4/27/83 JUDY ANC LIO, 12679

TO: REPRESENTATIVES BUSSELL, LISKA, MALONE, CLOCKSIN, WENDTE

FROM: ROBERT L. ENGELBACH, T.E., 7813 ARLENE STREET, ANCHORAGE
99502 W - 279-0543

DR

I SUPPORT HB 211 WITH AWARD OF STATE CONTRACTS TO PROFESSIONAL ENGINEERS, ARCHITECTS AND LAND SURVEYORS BASED ON COMPETENCE AND QUALIFICATION.

PLEASE SUPPORT THIS BILL. IT IS IN THE BEST INTERESTS OF THE STATE TO MAINTAIN DESIGN QUALITY.



MSG 83-00012725 PRTY 1 04/27/83 15:52:54 ORIG: LA02 IN= 0008 OUT= 0138
FROM: JEAN, ANCH LIO TO: JUNEAU INFO, POMS
TARGET: LJHL SUBJ: POMS

4/27/83 JEAN, ANCH LIO #12725

JR

TO: REPRESENTATIVE CHARLES BUSSELL
FROM: JONATHAN KUMAN
3301 DENALI STREET
SUITE 200
ANCHORAGE, AK 99503 (W) 276-4311

I AM IN FAVOR OF HB 211 BEING PASSED.

Primary Referral

TO: REPRESENTATIVES BUSSELL AND HAYES

FROM: KATHRYN GILLESPIE, 3290 MONTCLAIRE COURT, ANCHORAGE, AK 99503
(H) 276-5262 (W) 277-2641

I SUPPORT HB 211, AND URGE YOUR APPROVAL OF BILL AS REVISED BY THE HOUSE LABOR AND COMMERCE COMMITTEE.

/S/ KATE GILLESPIE
ASSOCIATE MEMBER OF AMERICAN INSTITUTE OF ARCHITECT



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

- Alaska Chapter -

11 March 1983

Dear Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Dear Representative Charlie Bussell:

Our organization at its March 9 meeting voted to send you this letter requesting your support of HB No. 211. This bill provides for State agencies to award contracts for professional services on the basis of competence and qualifications rather than low bid. We feel that sufficient competition exists in Alaska due to the large number of qualified firms ready to do business that a low bid procedure will not increase competition.

Rather, we feel that bidding will drive all efforts to the lowest common denominator, which will result in the barest minimum contract documents being supplied to clients. This in turn will result in much larger costs 'downstream' when the construction contract is awarded and the Contractor must either bid high to cover himself for deficiencies in the contract documents, or apply for extras afterward to cover specified items just to finish the project.

Thus, more poorly engineered projects at higher total cost will result which are not in the best interest of the general public. We feel that the health, welfare and safety of the general public is best served by the passage of this bill and urge your support.

Sincerely,

Professional Engineers in Private Practice

A handwritten signature in cursive script, appearing to read "K. Huseby", written in dark ink over a light background.

Kenneth J. Huseby, P.E.
Chairman, PEPP

KJH:lbh



CONSULTING ENGINEERS
COUNCIL OF ALASKA



2550 Denali Street, 8th Floor
Anchorage, Alaska 99503
907/278-2551

JR

March 22, 1983

Mr. Walt Furnace, Chairman
Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, AK 99811

Subject: House Bill 211

Dear Mr. Furnace:

I want to thank you very much for the time that you spent with myself and Mitch Gravo last Thursday, March 17, working with House Bill 211. I believe that your interest and effort during the mark-up process will be helpful in the progress of the bill. After mark-up, the revised wording made the changed version a more palatable document than that which was originally proposed. However, the clarity of the bill's intent and the problems of some of the using agencies as imposed by the regulations built into the document, as we expressed to you, continue to make it awkward.

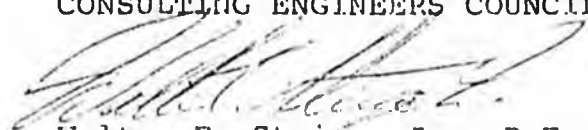


After more lengthy and rational study of the effect of the effort we put in on Thursday, I believe that some additional refinement, change in wording, and clarification, including the word flow in the bill, will be essential as it progresses through the legislative process with the ultimate objective to develop a final form that will be acceptable to the using agencies and the architects and engineers whose contracting-selection methods are directly affected by the bill.

Again, we appreciate very much your time and interest spent with us, and we look forward to the successful movement of the bill out of your committee.

Very truly yours,

CONSULTING ENGINEERS COUNCIL, ALASKA


Walter E. Steige, Jr., P.E.
President

WFS/wlf

PRESIDENT
VICE PRESIDENT
SECRETARY
TREASURER

W.E. Steige, CREWS, MACINNES & HOFFMAN
C.W. Tryck, TRYCK, NYMAN & HAYES
A.R. Jacobs, ANDERSEN-BJORNSTAD-KANE-JACOBS
S.E. Clark, ARCTIC ENVIRONMENTAL ENGINEERS

Committee on Judiciary

April 19, 1983

*Judiciary
Referral*

Mr. Donald R. Dent
2064 Delair Drive
Anchorage, Alaska 99503

Dear Mr. Dent:

Pursuant to our conversation I have enclosed the minutes from the House Labor and Commerce Committee regarding House Bill 211 along with a copy of the bill.

Thank you.

Very truly yours,

Charlie

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosures



DONALD R. DENT PE/RLS

Professional Engineer
Land Surveyor

Civil • Forensic

Committee on Judiciary

RE: HB 211 RE/CONTRACTS/ARCHITECTURAL ENGINEERING; ED

Charlie:

You requested a transcript of the hearings on HB 211 from the Labor and Commerce Committee. The first day of hearings is almost complete. They are requesting clarification on exactly what your request is for. Is it for all the hearings or are you interested in one particular issue? Do you want a package of all the paperwork submitted? Let me know.

Thanks,

Cyndie

*YES
- it's for the
people who over
flew Juneau that
day -*



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 7, 1983

Donald R. Dent, PE
National Director
2064 Belair Dr.
Anchorage, Alaska 99503

Dear Don:

HB 211 under went a couple of minor changes to clean up 'typo's and zipped right through the the Judiciary Committee on the 27th of April. It is now in the Rules Committee and likely will come through the House this session.

Thanks for taking the time to become involved with the legislative process. If I can be of further help, please give me a call.

Best regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

*The Alaska Society of
Professional Engineers*



Address Reply To:

Donald R. Dent, PE
National Director
2064 Belair Dr.
Anchorage, AK 99503

April 30, 1983

(907) 277-6855

Representative Charles Bussell
Chairman, Committee on the Judiciary
Alaska State House of Representatives
Pouch V
Juneau, AK 99811



Re: CS HB 211 (L&C)

Dear Charlie;

I must apologize for being remiss in acknowledging the hospitality you showed Vlad Paten and me on March 20th. It was appreciated.

I also want to thank you for the materials forwarded on the Labor and Commerce Committee hearings on HB 211, and the L&C Substitute. The info points out several areas in which there is a chance for misunderstanding by others who will be looking at the bill in committee and on the floor.

I do wish that I would have been able to attend the March 21st hearing when the question regarding the pending US DOJ suit was broached. With the research I've done and contacts with the NSPE Legal staff, it was evident that Mr. Barry was transmitting the information given him by the AG's office. That info is short on complete facts involved, with the latest case history omitted. It is understandable that the relation between the suit and HB 211 would come up. In my opinion, however, the DOJ suit is irrelevant to the purpose and importance of HB 211.

The form of CS HB 211 (L&C) forwarded to your committee is virtually the same as originally introduced, with the only change being made on page 1, line 12, by addition of "AS 36.98.010(3)". Without this change it would appear that the bill would have been a "catch 22" situation.

The only change I would suggest in the bill is on page 1, line 29, where it states, "(c) Subject to the criteria in (c) of this section..." I think that there was a typographical error and it should read, "(c) Subject to the criteria in (b) of this section,..."

Do you anticipate committee hearings on CS HB 211 (L&C) this session, or before the next session? If so, I would appreciate advance notice in order to schedule an appearance and to notify others.

Sincerely,

Donald R. Dent, PE

A M E N D M E N T

OFFERED IN THE HOUSE:

By: Judiciary

To: CS HOUSE BILL No. 211 (I&C)

SENATE BILL No. _____

PAGE: 1

LINE: 29

Delete: the second (c).

Replace with (b)

A M E N D M E N T

OFFERED IN THE HOUSE:

By: Judiciary

To: CS HOUSE BILL No. 211 (I&C)

SENATE BILL No. _____

PAGE: 2

LINE: 22

Delete: AS 37.98.080

Replace with AS 37.05.230



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

April 27, 1983

House Judiciary Committee
Pouch V
Juneau, Alaska 99811

File: Legislature - 1983 - House Bill 211
(Prohibition on Competitive Bidding
for Engineering, Architectural and
Surveying Services)

Ladies and Gentlemen:

Committee substitute for HB 211 (L & C) would prohibit municipalities from discussing with engineers, architects and surveyors the cost of their services prior to selection of the person or firm to do the work. In addition, it would require the municipality to select the person or firm "best qualified to perform the desired work" based on considerations of competence and qualifications.

If adopted, this Bill would have the effect of requiring municipalities (and the State of Alaska) to use the larger and more prestigious architectural and engineering consulting firms. These are the same firms which, because of their prestige are able to command a higher fee. When a municipality seeks the professional services of an engineer for a simple engineering job that can be done by anyone with a license, it will still be required to select the person or firm best qualified. This will only insure that our projects cost more as we will be hiring more expensive talent than is required to accomplish the job.

The idea that professionals, whether they be physicians, lawyers, or engineers, should not be permitted to compete with each other, particularly on price, has been thoroughly discredited in recent years. Even the United States Supreme Court in National Society of Professional Engineers v. U. S., 98 S.Ct. 1355 (1978) rejected out of hand the idea that this scheme was necessary to assure public safety or to avoid engineers submitting deceptively low bids. The municipality and the state are both charged with protecting the public health, safety and welfare. The legislature should permit municipalities to determine for themselves, in each case, how best to protect the public health, safety and welfare when it selects engineering and architectural professionals. Indeed, one should be very suspicious when the industry itself proposes that its contracting procedures be regulated for public safety, especially when the proposed regulation would have the effect of raising the price of those services and limiting the number of firms and persons that could provide those services to the state and municipalities. Not only is the Bill unjustified as a matter of public policy, it will probably create unnecessary work for attorneys. For lucrative

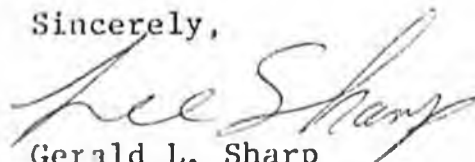
House Judiciary Comm ttee
Re: HB 211
April 27, 1983
Page Two

contracts, there are likely to be challenges of determinations by the state and municipality as to which firm is the "best qualified." In addition, once the "best qualified" has been selected, there are likely to be challenges of what is a "fair and reasonable price" for the work. This will probably be rather difficult to prove because the municipality is not permitted to inquire what others would charge for the work in the process of selecting the firm or person. It appears that the municipality and the state will merely be at the mercy of the "best qualified" architectural and engineering firms in the state.

The spector of liability both for inadequate or unsafe design work hangs over every architect, engineer and surveyor when he provides professional services. This probably provides more incentive to do safe and adequate work than the amount of compensation being received or the method by which that compensation is determined. In addition, it would seem that if there isn't, there should be a canon of ethics for such professionals that requires them to produce designs which are safe and adequate. Also, it would seem that the licensing process (which is controlled by the profession) should be structured to insure that only those who are competent are licensed. Problems of adequate performance should be solved by the profession at the licensing level, not at the contracting level.

We urge you not to pass this Bill out of committee.

Sincerely,



Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor and Assembly
Manager

CONSULTING ENGINEERS
COUNCIL OF ALASKA



3812 SPENARD ROAD
ANCHORAGE, ALASKA 99503
(907) 277-5605

April 26, 1983

Mr. Charlie Bussell, Chairman
House Judiciary Committee
House of Representatives
State of Alaska
Pouch "V"
Juneau, AK 99811

Subject: House Bill 211

Dear Mr. Chairman:

You have before you House Bill 211 which has passed from Labor and Commerce Committee after considerable testimony and deliberation. The bill was altered measurably from its original version, and then realtered back to a form which is similar in nature to the original bill. The bill, as now represented, is acceptable to us with one recommended alteration. It is our suggestion that under Section 1., Paragraph C., Line 2 on Page 2, that the words "is not required" be deleted and the words "may be established" be added.

Twenty-one states have currently adopted laws calling for the selection of architect/engineers based on qualifications, and another twenty either prohibit or exempt architect/engineers from general bidding requirements.

We believe that architectural and engineering services should be obtained through a selection process that ascertains the qualifications and capabilities of interested A/E's to design public works projects. Fair and reasonable fees should be established by negotiation after selection and discussion of scope of work. It is not in the best interest of the public and, in some cases, public safety to obtain these services by price proposals or competitive bidding.

The procurement of professional services provided by members of the learned professions has traditionally been considered apart from technical and other tradespeople. The competitive bidding concept, which may work well for bidding work of the trades, cannot function properly for securing professional services. The concept does not provide appropriate consumer safeguards.

PRESIDENT
VICE PRESIDENT
SECRETARY
TREASURER

W E Steig CREWS MACINNES & HOFFMAN/VITRO
C W Tryck TRYCK NYMAN & GAYES
A R Jacobs ANDERSEN-BJORNSTAD-KANE-JACOBS
S E Clark ARCTIC ENVIRONMENTAL ENGINEERS

Mr. Charlie Bussell, Chairman

April 26, 1983

Page 2

Rather, it encourages poor use of public funds, since the importance of "value received" is subjugated to "money spent." The risk of making any selection on the basis of a lowest common denominator when the stakes are the highest, as they are here in Alaska, seems to us to be just converse to the results that must be achieved when considering in projects design in Alaska.

Many of the benefits of A/E services must be measured against final construction and operating costs of the facility or structure. Costs that are not clearly determined until after the A/E services have been completed. Injecting price in an initial selection may lower the A/E fee and time spent, but it will also most likely lower the quality of the final product, since price competition can inhibit the ability of the A/E to provide full cost saving services due to inadequate compensation for innovative and thorough work. It may even cause more talented A/E firms not to offer their services, thus lowering the overall quality of the services available to the agency. Thus, the public is not well served.

We believe the process of competitive selection for architect/engineer firms in the State of Alaska makes even more sense than the same considerations in any of the other 49 states. As you are all aware, our state has more unique and diverse needs than any of the other 49. Alaska has many varied climatological zones and sensitive environmental factors that must be considered during the design of any project. The environmental problems are significant enough and are further complicated by the committee hearings, committee review, agency reviews, maintenance considerations, operation costs, maintenance complexities, and in many of the bush areas, a lack of qualified maintenance personnel. In order for these problems to be met effectively, the only rational method from which to make a selection of an A/E firm is by addressing the qualifications of the responding firms and selecting the highest ranked firm on the basis of those qualifications. Only then, based on the quality and experience of the selected A/E firm, can the project design objective be effectively met and the public resources most effectively protected.

We believe that House Bill 211 provides for those measures and protection, insuring that the public need, through the use of competitive selection, will be most successfully met. I urge your positive consideration of House Bill 211.

Respectfully Submitted,

Walter E. Steige, P.E.
CECA President

WES/wlf

HOUSE LABOR & COMMERCE
STANDING COMMITTEE MEETING
RE: HOUSE BILL NO. 211
March 18, 1983

TAPE #38 (Side A)

Number 003 Chairman Furnace: Today is 3/18/83. The present time is 8:50. The House Labor and Commerce is now in session. The legislation for consideration this morning is House Bill 211 and that's related to contracts for architectural, engineering and land surveying services and providing for an effective date. Let the record show that those members present are: Representative Wendte, Koponen, Ringstad, Cowdery and Chairman Furnace. Is Representative Uehling out of town?

Number 015 The reply is that he's in Anchorage today.

Number 017 Chairman Furnace: The purpose of the meeting this morning is to hold the initial hearing on House Bill 211. I understand that there is a number of persons to be heard. And I'd like for at this time ... let's see the list ... Jeff?

Number 022 Jeff Barry: Yes, Sir?

Chairman Furnace: Do you have the list of persons to be heard?

Jeff Barry: I'm getting it.

Number 027 Chairman Furnace: Okay, now let's see now. Okay, why don't you given me the first couple of names. Representative Bussell did you want to address this issue?

Number 028 Representative Bussell: No. Thank you, Mr. Chairman, no I don't. I'm here as an observer only. Thank you.

Number 030 Chairman Furnace: Thank you. ... The first person to be heard this morning is Mr. Walter Steige.

Number 046 Walter Steige: Steige.

Chairman Furnace: You want to come before us then? State your last your last name and for the record would you represent.

Number 050 Walter Steige: My name is Walt Steige. The last name is spelled S T E I G E. I represent the Consulting Engineers Council of Alaska. We are the persons most notably responsible for bill being considered today and as it is our thrust that prompted its introduction. I have beside me, and you may or may not have, the general copies of the testimony I have prepared for today and those of you that do not have copies of this document, and I understand some of you may, I would like to see that you do have a copy.

- Number 064 There is discussion on the copies of Mr. Walter Steige's prepared testimony.
- Number 068 Walter Steige: It's not my intent to review word-for-word from this document perhaps but I do want to highlight some of the principal areas that I mentioned here. In representing Consulting Engineers Council of Alaska I should tell you that that group currently represents 32 engineering firms within the State of Alaska and within those 32 firms approximately 500 employees. The bill we are considering today as introduced, House Bill 211, is referred to by many as Mini-Brooks Bill and that support that we're asking, and we represent for this particular bill as introduced, does not only comes from ourselves but the Alaska Chapter of the American Institute of Architects and other selected professionals who you may have heard from by way of telegram, telephone calls, letters, and so on. The bill today has reference to architects, engineering and land surveying; you will notice that in the amended draft for Section 1 that you will have perhaps seen, or will see this morning, the provision for land surveying has been removed from the place of that revision so that it only speaks to architectural and engineering services. In the definition of architect, engineering and land service taken from the Federal Brooks Bill that that action is defined in the last page of this amended version. And it's our intention only that the surveying be considered as a part of the design services that an architect or engineer might otherwise provide. So it's not spoken to directly and it's only our desire that that incidental services cover those portions of land surveying that fall within the general design requirements of the professional when he is performing his work.
- Number 113 There is discussion on the amendment.
- Number 127 Walter Steige: In the general sense for your background at this time 21 states have adopted laws calling for the selection of architects/engineers based on qualifications, and another 20 either prohibit or exempt architects/engineers from general bidding requirements. The thrust of this particular act is to select engineering and architectural services from the basis of qualification and not dollars, and we'll discuss that a little bit further. The remaining states, with the exception of Maryland, leave the selection procedure up to methods developed by various agencies within the states and the predominance of which makes selection by qualifications. The one state, Maryland, which has adopted bidding which makes price a basis for selection in that state that procedure is not proving to be overwhelming satisfactory. Of course, the score is not totally in yet; it's only been in operation in Maryland for about 6 years now, 6 to 7 years, but in any event it is not proving to be from their perspective the best way to proceed. Architectural engineering services we believe should be obtained through a selection process that highlights qualifications and capabilities as the number one priority. I think many of you

are probably familiar with but I'll review that architects and engineers are professionals from what's termed 'the learned profession' and to practice in this State the individual must be licensed through written examination, reviewed by their peers, in other words the Board of Registration, they must have minimum background of experience in the direction of qualified practitioners. Consequently, the members of these professions exercise judgments and make decisions only after thorough assessment, analysis, calculation, research and investigation of the problems. One of the areas, and I should point out and maybe you've already noticed in this material I've handed you, I have some attachments to that which you might find interesting reading which gives some view what others have done and some perspective from other areas on this particular problem we're addressing today. I want to add that the contracting authority, purchasing agent, individual owner, cannot in our opinion, without prior discussions of intended scope of work with an experienced architect or engineer, establish in detail the efforts that the professional must expend to achieve the required results in a project. The competitive bidding for professional services does not provide consumers safe guards. We believe it encourages poor use of public funds since the importance of the value received is subjugated to monies spent. You will notice in this particular attachment I've included an article written by a gentlemen, Mr. Charles Avara, who represented Baltimore City in the Maryland Legislature, and you might find his comments rather interesting. One of the comments that he makes, which I would like to share with you, which he says and I'm going to quote this: is inheriting AE services and not generally for other types of services is the extent to which quality can effect the ultimate efficiency, effecting the economy of the facility or structure. Consider the cost of the design portion of the project compared to the overall project costs. The report by the U.S. General Accounting Office states that design costs represent a very small portion, probably less than 1% of the cost that will be incurred over the life of a building. And I think I'm going to add that that's very key to this issue today, when they say the 'life of a building', in Alaska that's means the loss that goes into operation and that you're all aware of operating our facilities because of the high cost in this State are very germane to the issue. He also notes that the decision made during the expenditure of this, less than 1% determines pretty nearly all costs that follow. And, of course, we believe that's very true, more so in Alaska probably than any of the other states. We believe that that, of course, that price is definitely a factor in the cost in the competitive negotiation process, and by the time the number one rank firm reaches the negotiation table, and that's the thrust of this bill that you're looking at today, that selection by the person, the firm, that you're considering his ability to perform his qualifications being the foremost major of his ability to perform. So that by the time that first rank firm reaches the negotiation table with the representative agency that firm, as

well as the agency, can collectively define this scope of the project being requested. And, of course, at the end of that process then the selected firm has examined all the requirements that have, that he's been able to identify, and that then can provide a basis for which a fee can be determined, until that appropriate scope of work is accomplished with the agency and with the client there's no practical way that that price can really enter the picture until that process has been achieved with the client. The process in the bill says that whoever the agency is can if they're not successful in dealing with the first firm in terms of arriving at a fair and equitable cost, first ranked firm, then they can break off negotiations and go to the second firm, and then the third firm. And we believe that that in itself provides the sufficient competitive nature to see that fair and reasonable costs are achieved through this process. I would like to summarize, particularly at this point, that we believe the process of competitive selection for architect/engineer firms in the State of Alaska makes even more sense than the same considerations in any of the other 49 states. As you are aware, our State has more unique and diverse needs than any of the other 49. Alaska has many varied climatological zones, sensitive environmental factors, that must be considered during the design of any project. Environmental problems are further complicated by the problems of dealing with the many codes and regulations, we have budget constraints, and we have many, many, many hearings and processes which we use, we have to address life safety issues, multiple use, life cycle costs, alternate energy uses, operational costs, maintenance complexities. And, of course, maintenances, the maintenances, maintenance excuse me, and the ability to deal with those problems in many of the areas outside the main cities and metropolitan areas are a real concern to everyone in Alaska. And just that issue in itself as it is coupled with the operating costs is a major consideration why low dollar is the consideration for the selection of a firm just cannot work. In order then for these problems we believe to be met effectively, the only rational method from which to make the selection of a AE firm is by addressing the qualifications of the responding firms and selecting the highest rank firm on the basis of those qualifications. Only then, based on the quality and experience of the selected AE firm, can the project design objectively, effectively, meet and the public resources most effectively protected. We believe that House Bill 211, and as it's perhaps enhanced by the section marked 'a', would provide and insure that the public need is effectively meet through the competitive selection process utilizing the qualifications as a base, we believe that the State and the public can be satisfactorily protected. And I want to urge your positive consideration of House Bill 211. I want to add that it is our intent where the definition of state appears in this bill and that definition has been defined and it is defined the last page of the amended material called 'a', which it says in this section state includes political subdivisions of the state and agencies of the state and its

political subdivisions, to make sure that we all understand that statement is intended as far as we're concerned to mean municipalities, cities, boroughs, school districts, and REAAs, as well as appropriate state agencies. Thank you very much for your time.

Number 292 Chairman Furnace: Thank you, Mr. Steige. Let the record show that Representative Hugh Malone is present at this time. Two persons acknowledged to be, have some questions. Let me remind the committee, too, we'll have approximately 35 or 40 minutes, there are five persons to be heard this morning, we will want most of all to get those testimonies taken so ... Representative Cowdery and Ringstad.

Number 298 Representative Cowdery: Thank you, Mr. Chairman. Mr. Steige?

Number 299 Walter Steige: Steige. Yes?

Number 300 Representative Cowdery: In many cases in the recent past, I know being in the contracting business with their present help aid, economic climate that we've all been fortunate to experience has been many disputes between contractors and homeowners and architects and engineers. And I've been in this trade for over 30 years, and it seems to be just recently, or in the last 5 years, much more legal action has been required for settlement for disputes and interpretation of design or specifications. I know in one particular case, a school project, that the school project had something like a two million dollar legal case hanging over that project in addition to the original cost of the project. The question is do you think that the reason for maybe this, is it your belief the reason for this that the present system is not adequately designed to cover the administration and qualifications of the architects, engineers and people ... What do you think is the cause of this situation is?

Number 320 Walter Steige: I think principally the process, there's nothing wrong with the process and that the current process is pretty much follows the practices that we're advocating now. One of the problems, and that maybe highlighted by your example, is that we are seeing, at least the professional group is seeing, a greater than ever before thrust on accountability and I think, but within that accountability which has been somewhat brought back to us because of the lack of economic soundness in the South '48 and the competitive nature, but that's been imposed on the contractors in Alaska perhaps to be more sensitive to the problems that come up on any project. We're not, no one is perfect, and none of the projects that is ever bid or designed is without problems. But in trying to address this accountability we have found in the professional area that we are expected now to virtually do our work without error and there are those who are looking for every area to drive their wedge in and put responsibility on someone. We found ourselves as being refocused against the professional

community more than it has ever occurred before. But to address your question, I don't think the processes that we've been working under from before are wrong, I think there will always be bad experiences even with the best process. The processes that are traditional that this bill addresses however, have generally been followed throughout the country ever since the use of professional services have been used. And for the most part, by far the majority, they've been proven to be a very successful way to bring a project to final completion but that isn't to say that it works 100%.

Number 354 Chairman Furnace: Additional questions from Representative Cowdery? Representative Ringstad?

Representative Ringstad: I'll pass this time.

Chairman Furnace: Representative Koponen?

Number 355 Representative Koponen: Thank you. The alternative version which was handed in version 'a' excludes a registered land surveyor. I know that they have a method to arriving at a solution yet, but ...

Number 359 Walter Steige: It's my understanding that that there's been some problems with addressing the land surveying issue and in that draft it was purposely omitted so that there wouldn't be a controversy of professional nature of the survey work as it might be contrast with construction surveying which it falls out of the professional aspect which we are discussing today. The intent is that the surveying aspect, as they are required by the design process, and in fact that that could be construed to include all other services in the design process, perhaps even soil testing, that falls under the definition of incidental services that are necessary during the design process. And you will note that on the last page of that document is that definition which though not for architectural and engineering but it references incidental services. And we believe that it is satisfactory to work surveying, soil testing, perhaps other miscellaneous services, that are required within that incidental services definition without referencing that by name.

Number 377 Chairman Furnace: Representative Wendte?

Number 378 Representative Wendte: Should this legislation be adopted, and I am assume you are concerned for the members of your organization, how does the Alaska preference, is out the window then?

Number 381 Walter Steige: Well.

Number 382 Representative Wendte: I mean I hate to see this legislation used as bringing in a bunch of firms from outside.

Number 383 Walter Steige: Well, that particular issue in your 'a' version has been addressed. And if I can find the particular paragraph,

this version gives a basic outline of some evaluation procedures and limits to be used with the bill and on paragraph 'h', which is on Page 5, where it discusses how responses will be evaluated, one of those evaluation criteria states: points shall be awarded for being a qualified Alaskan firm. And that provides a vehicle to recognize Alaska preference in this draft.

Number 395 Representative Wendte: Okay, but the other existing situation that we're, or at least in the bid situation, refers specific with apparent legal with the same emphasis, or hopefully even greater emphasis, be placed by this? Or has this been research? Or did you prepare this? Or ...

Number 400 Chairman Furnace: Yes, we did. The recommendation did come from staff and as to working with Mr. Steige and other parties, we felt this was a better alternative to the original bill.

Number 403 Representative Wendte: Well, my concern is obviously is that we don't dilute the intent of that Alaska preference. It's, you know, very well established in the bidding process.

Number 406 Walter Steige: ... Our group has sometimes mixed emotions. If you were to take a vote from our group for whether or not that aspect is helpful or not necessarily to our needs in terms of looking at firms coming in from the South '48, which is a mad rush now in last couple of years because they see the golden apples on the trees up here and there's none down there and they've been trying to pluck some of our fruit so to speak. The emphasis on qualifications, in many cases from a professional's opinion, the qualifications exist here and those firms who don't deal with Alaskan conditions on a day-to-day basis just don't have the qualifications in a general sense as those who have been dealing with the problems day-in and day-out. So, I think in a practical nature we believe when you just look at qualifications, the firms here in Alaska are those which have and possess the greatest ability to solve the problems that we face up here, and the ones down south, outside as we use the term, may create more than they solve, but there are instances when specific technical expertise must come from outside, but 99% of it does remain in the State of Alaska.

Number 423 Representative Wendte: I assume it's that Alaska experience in this aspect of a project in creating estimates whether it's on the Tyee Projects or anywhere else, it's absolutely crucial in terms of planning for projects. That Alaskan experience is there ...

Number 428 Walter Steige: Well, the Alaskan experience comes into play in a lot of various estimates just as being one. Estimating is difficult at best and certainly understanding the conditions is one that estimating is necessary for those individuals in the estimating business. The problems which are more difficult to solve go far beyond estimating and that is solving the design

problems is caused by the environmental conditions that we must design under in Alaska. And the perspective of a firm in Washington or Oregon or even Northern Minnesota do not solve the problems that we have, it is really the different situation and those firms that don't deal with it day-in and day-out in many cases miss the subtle points that those working with those same problems day-to-day to here do not miss.

Number 440 Chairman Furnace: Additional questions Representative Wendte?

Representative Wendte: No, Mr. Chairman.

Number 441 Chairman Furnace: Thank you, Mr. Steige. We will go to the next person then. I would recommend to the committee at this time, let's just take the balance of the testimony, there are four other persons and I want to make sure we get those on the record ... We do have a floor session at 10:00 today. The next person is Wally DeBoff. Sir, again if you would state your name, spell the last name and who you represent for the record.

Number 446 Wally DeBoff: My name is Wallace DeBoff. My last name is spelled D E capital B O F F, and I will be very brief. I represent the Board of Engineers, Architects and Land Surveyors. And in my brief I will say that the Board of Engineers, Architects and Land Surveyors believe that the best process for obtaining any professional architect, engineer or land surveyor is through the process of selection and negotiation. And basically that's all I have, and most of things that Walt stated, you know mentioned, was something probably the Board is most agreeable to.

Number 454 Chairman Furnace: Thank you, Sir, for your testimony. The next person is Vernon Akin.

Vernon Akin: Akin. Right.

Number 456 Chairman Furnace: Again, Sir, if you will state your name.

Number 457 Vernon Akin: I'm Vernon Akin. The last name is spelled A K I N. I'm a mechanical engineer here in Juneau; been registered in the State for 28 years. I guess I'm also today going to represent the Alaska Society of Professional Engineers, being as the President did not get in from Anchorage. All right. I'm in favor of this bill; passage of the bill. The present system is selective; it's not the cons on this bill are saying well we want to bid it to make it competitive or we want to make it fair for everyone. It is fair for everyone as Mr. Steige said. The selection process, anyone can come in for selection, any firm that is qualified or wants to can come in for selection for a job. That is, we get down by the owner, or this case mostly state or municipal governments, it's we get down to where we get two or three primary people, the one that they feel is the most qualified. Then the owner goes to the

one that they think is the most qualified and tries to negotiate with him, fine if they find that they can come to an agreement on the scope of the work and what they want, and the last thing, of course, is price that they came to because you have to set the scope for the work first and what is required, what is desired in the building. If they can't do that they go to number two if they can't come to an agreement. So the owner has his selection of who he wants. All right. The bidding process, now, if you put it out for bids whoever gets the lowest bid on it is usually the one that has to do it because if you're a governmental agency if you don't pick the lowest bid you have to have a very good excuse as to why not you've picked. The, okay, the owner, the main reason or the main concern of the owner is to get what he wants at a reasonable price. Now, most of these jobs, most of the buildings, the owner doesn't know what he wants because he's not an expert in that field, he's not qualified. There have been clients that have come to an architect and said I want a building, I want it, I have so much money, I want it roughly so many square feet, but as for the layout of the building and what is in it and the quality or the type of mechanical system or the type of lights, he knows nothing about that that's why he comes to the expert for it, the owner or the architect on it or the design team. So, he doesn't know what he wants. So, if you put it out for bids there's no way you can pin down to the last nut and bolt what quality you're going to get. You have to depend upon the judgment of the architect or the design team and his expertise as to what is best suited for this particular occasion. And so, if you put it out for bids, which is what this bill is trying to prohibit, you're going, the designer is if he doesn't get low, if he doesn't come in low, he's not going to get the job. So what the bidding process does is let's get the price way down as low as we can on here, in other words it might be an incompetent person or someone that doesn't know what he is doing but if he bids low on it or if he figures you're going to get a 'cheapy' job, he's going to get the bid and you're stuck with it; the owner's stuck with it. As Mr. Steige said, the cost of the design is, he said 1%, there have been other figures up to ranging 5 to 6% is what the cost of the design is; only cost. Now, you've all heard of life cycle cost in here a few years back, couple years back, there was a big push in the State on going to life cycle costing, which means how much is that building going to cost you over the total length of the building, and it's very minimal, the design portion is way down in the 1 to 5%. So, but yet all the push has been on these buildings to get the design costs down, yet well I beg your pardon, the design cost is probably 1%; the construction costs now, the cost of the construction of the building and life cycle costing runs I've heard about 7 to 8% that's the construction cost. So the actual cost of the building is a very small percentage of the total cost of that, the operating costs of that building for the life of it. So you're talking about a very minimum percentage of the total cost of what it's going to cost to the owner. Most people

don't realize what is involved in designing a building and as to the quality, the different things you can have in a building, different innovations. So, I would like to offer analogy of something that you can all relate to as a house. Let's say you as the owner are going to build a house. Now, at the present time you'd probably look around and find an architect that you liked to build that house; you would go to him and talk to him and tell him well I want this, I want that; you'd work together on the plans and try to get what you want in there in the certain price range, but there are a lot of things that you don't know you have to leave that to that architect as for the quality of the construction, the mechanical system, let's say the heating system, the plumbing system, the quality of fixtures, things like that, you have to rely on his judgment on that because you're not the expert on it. But anyway, you can pick the architect you want and you tell him what you want. Now, let's assume that you had to bid that, you were like a public entity and you had to bid that job, you could tell him all this but if then you, actually you'd have to have a program or in order to get what you actually want you'd have to write down every nut and bolt down there when you put it out to bids and say this is what I want in my house. Otherwise, if you didn't do that and low bidder comes in on it, let's say he is someone some contractor, I mean some architect, that you don't know anything about, you have no confidence in him maybe you've even had heard bad things about him, but nevertheless if you put it out for bid you're going to have to accept him and you're stuck with it whether you like him or not whether you want the product, the quality of product he turns out, you're stuck with it. You can't, an entity can't hardly backoff and take second low bid without as I said without a very good excuse. There's anything about it. Let's say that you get the low bidder on a job to design it. Now, naturally he is going to have to cut his costs to meet his bid; it's all based on dollar value. So, you have a very good chance of the drawings and the specifications that he turns out are going to be minimal. In other words, he can't spend, he can't give you pay an 'a' rated job for a class 'c' price on it in bidding anything. So, your drawings, your specifications, could be very vague and then if, as gentlemen sit over, you get into legal problems and you have change orders and by the time you end up you have paid more than you if you'd had gone to a person that you trusted, relied on, had a good reputation, had it designed for a certain agreed amount. So it can run into a lot of problems there; you can't pin down everything in a job. And the house now is more is very much more simple than a complicated building let's say a hospital, a school or something like that, there are innovations that you can design into that building that's going to cut down your life cycle cost in price on there; you could put in heat recovery systems if it's applicable; you can change your ventilation around, I'm talking mechanical now of course; you can change your ventilation around whether you use full outside air or mixed outside air. Now, it's cheaper probably to design a full outside air system,

very much simpler, but it's very expensive to operate. It costs the owner for now to 40 years down the line, it costs him a lot of money. So, it is just to us, to me, it doesn't make sense that you're bid anything. When the contractor bids a product or bids the specification he has it down in black and white supposedly; he has the plans well drawn out, detailed, he has the specifications are drawn out down to the general equipment, the actual installation you can't cover that, but you can cover what quality the materials you get in that job. There are clients, as I said in previous, they come they don't know what they want, they say build me a building, this much size, I have so much money to spend. So, there's no way you can pin down that design to the last nut and bolt. You can pin it down when the contractor on designed documents, when the contractor bids on it, so it's a different ball game altogether. Another typical example I might say is on this bidding, let's say you wanted a portrait done of yourself. Can you imagine trying to put that out for bid for someone to paint an oil painting of you? If you put out for bid, you know, if you're going to, you know you're going to get just what you pay for and maybe not that much. I think that's about all I have now.

Number 599 Chairman Furnace: Thank you sir, we appreciate your testimony this morning. The next person to be heard is Jon Scribner.

Number 604 Jon Scribner: Mr. Chairman, my name is Jon Scribner. I'm Acting Deputy Commissioner for the Southeast Region for the Department of Transportation and Public Facilities. I'm probably going to be the least popular guy here today. On this particular bill I haven't had a chance to review that draft that they have been circulating ... I have a copy of it, but I have not yet had an opportunity to do it ... From the testimony I can tell you that the Department that I represent shares very much the concerns about competitive bidding and about having people involved with the process that maybe aren't familiar with the way the consultants do their business. And from the testimony I was pleased. I think one good step has been taken to take out the land surveyors because that was one of our concerns, and so that seems to be a positive step toward resolving some of the concerns we have. I don't have some good answers at this point but I do have some concerns and I'll just share them with you briefly. I guess our primary concern is the fact that this bill it restricts the process entirely to just the qualifications and the capabilities of the firm. It doesn't allow any other possibilities to be used in the selection process. For example, if the scope is known and I would suggest that there are times when public agencies can have the capability to properly define the scope, there are times when that's not occurring but there are times when it does occur, and in those cases it would seem to us that there should be the flexibility to consider other factors in the selection process. We've heard about price as being as, it's kind of an either or situation, either you're competitive bidding, and I think we all disagree with that concept, or you're not competitive

bidding. And I guess what I would suggest in behalf of the Department is that there may be something in between or to balance off the quality of the job that you're dealing versus the cost or effort that goes into it. And this is a hard concept to sell but that's the way we feel. At this point the bill does not allow cost in any manner whatsoever to enter into it or even not just talking about cost, maybe cost is not something we need to consider maybe it's just the percent of effort that goes into various parts of the job. If we were able to have that I think it would make the bill more something that we could better live with.

Number 641 Chairman Furnace: Would you expand upon that by what you mean by percent of effort.

Number 642 Jon Scribner: Okay, what I mean is in a particular, maybe it's a harbor project, and as part of that harbor project we have to go out and do some, we're going need large rocks to provide for the breakwater, for example. And so part of this scope of work would say that we have to analyze the soils to find proper rock. So there you're going to have to analyze soils and make some recommendations there, then you're going to have to design the breakwater. And so you're going to as the designer, you're going to have to say how much effort am I going to spend in determining where there's proper sized rock available. And so as you're reviewing the proposals that come in you may find that one consultant says well I'm going to go out there and just do one test hole that's what I have when you start negotiating with them you may only have one test hole, that's where his efforts going to be and the rest of the efforts going to be in the designing of the breakwater. Another consultant may come in and you find that he's going to put, he's going, really concerned about his legal liabilities and so he's going to be darn sure that he knows about that material out there where that rock is, and so he's going to go out and drill 200 holes and maybe that's a over, too much of a split, but to get the point across, 200 holes. So what we find is then all of our costs are going into to try to find the good rock source rather than the design of the facility ... (END OF TAPE)

TAPE#38 (Side B)

Number 000 Jon Scribner: So that's what I'm trying to ... We really don't think, we're not as concerned at all about this, interested in trying to create a competitive bidding atmosphere. We really think that there can and should be a better balance. We're concerned about if there is no price or no restrictions on the effort type of thing that we can and have often found ourselves in position of having I want to, probably not a very good term to use but a gold-plated design, where there was no, it was of high quality of the very best design that was provided, you know, so there was no question that that was the most qualified and capable person designing that facility, but we really don't have the funds to support that type of facility on capital expenditures. And so we're suggesting that, you know,

if we can include price or some other mechanism to get a balance to say yes that is the best but we don't have the funds to support that either through the capital expenditures or the life cycle cost of the facility. Some balancing mechanism to insert in there. And now, another point that the consultants bring up is that during negotiation is the time that we should get at our price. Say, you know, select them on quality and capabilities and then during the negotiation if you don't like the person's price go on to the next person. In practice from my experience with it in our Department I wonder an awful a lot of pressure to get these projects out quickly. We spend a awful lot of time negotiating with the selecting consultants. It takes us a minimum of two months for large consulting contracts to select those people. Two months is, can mean a whole season lost, and we have a tremendous amount of pressure from you all and the public to get these projects out on the street. So at two months time we've got our three consultants laid out and we start negotiating with that top consultant; what we're pretty certain we're going to with that consultant even if his price is not what we like. We really don't have the time to drop back down and start the ball going again with a new consultant, now that is often the case. Now sometimes, you know, it gets to the point where we do in fact go through that process. We simply can't live with the price or the way the negotiation is going and we do drop down to the next person but it causes further delays and those are the things that we have to wrestle with. And so that's one of the problems that we see with that and why we would again suggest that there be some kind of balancing mechanism. And unfortunately I can't suggest to you specifically what it is. I would hope that we could continue to meet with the consultants on this and try to arrive at some accommodations in it.

Number 068 Chairman Furnace: Thank you, Mr. Scribner. We have two other persons and time is running fast, so let's take those testimonies. Mr. Charlie Tryck.

Number 073 Charles Tryck: Mr. Chairman, my name is Charles Tryck, T R Y C K. I'm a backup for the Walt Steige and the Consulting Engineers Organization; also speaking on behalf of myself and our engineering firm which is in the business in Alaska for over 30 years. We have worked with all agencies of government, federal, local and state, so on, and all divisions I think of the federal government. This bill is patterned after the Mini-Brooks Bill under which the federal government procures its A and E services. They have some of the problems that Mr. Scribner has outlined which seem to exist very well within the frame work of their legislative authorization. One way they overcome the problem is recited, is their staff will prepare their own fair cost estimate for the project which delineates the scope of work which they expect to see done in various aspects of the project. Then when they select their most preferred consultant, you go in with your fair cost estimate of the work, they have their fair cost estimate of the work

itemized by man-hours and man-days depending on the size of the project, and you try to reach a meeting of the minds on what level of effort should go into what phases of the work. This seems to work out very well. If you have a wide divergents in opinion of what the work should consist of and you can't reach an accommodation on what should be done, you just thank each other and go your way and they go and talk to the next person. One other thing that I think that should be mentioned is that our engineering organizations had monitored A and E projects where price consideration is a factor in the bid process, and it is a bid process, and where the price consideration is submitted at the time the engineer's qualifications is submitted; it usually is the deciding factor of who gets the work which doesn't give you necessarily the people that you should have doing the project. I can go on and on on many things but I don't think that I can add much to what's been said. I think other than to say that we support the work, I mean support the project that it needs work. Thank you.

Number 128 Chairman Furnace: Thank you, Sir, for your testimony. The last person is Brian Emerich.

Brian Emerich: Emerich.

Chairman Furnace: Again, Sir, if you'd spell your last name and state who you represent.

Number 133 Brian Emerich: My name is Brian Emerich. E M E R I C H. I represent the American Institute of Architects, the Alaska Chapter. We support this effort in passing this bill. Some of the points that I would like to mention, I would like to address a couple that were brought up earlier as against this bill. It's the talk about the problem of directing a professional as to which way he should do his services, do tests holes over here or pour money into the design of the building, etc. One of the reasons and one of the intents of hiring a professional is to have his direction to tell you what you should, where you should go. If you know and you have a positive direction that you want them to take that can be included in the scope of services. And a professional can elect to either take that job or not take that job if he feels it's going to jeopardize the project. This is one of the aspects of a professional. Another part is the attitude of picking, afraid to pick a consultant or architect or a mechanical engineer because he's going to get gold-plated design and they can't afford to budget. One of the responsibilities and requirement of hiring a professional is there is a direction usually given to that person to keep the project within a specific budget. And that is one of the things that can happen and one of the qualifications that professional represents himself on, has projects that have come within budget, they've been within the scope of services, they've been delivered on time. The instance of part of the problem always seems to be around is the competitiveness to get the best price and that's

part of a serious problem that government agencies always face is to try to protect the public's interest so that they're not both getting 'ripped off'. Well, one of the things that's competitive here is you look at the price of a building like Vern Akin stated earlier, about the value of the building and the cost of the design stage is very minimal, the cost of the construction becomes more substantial, and the cost of operation becomes astronomical over a period of time, and Alaska is now facing that very serious problem with the cost of buildings or hiring a professional that understands that and knows that. The price difference you may pay for somebody is hard to determine one factor or another one. You can't always tell when you're hiring somebody whether you are going to get the longest range, best project over the life cycle. However, one of the things you are selecting a professional on is his past history and his past history reflects buildings that have been built and that are continually operating and the clients are happy with. The problem with competitive bidding and one of the things that the strongest competitive bid requirement, for instance in this State, is the construction bid, and by law they have to take the lowest bid unless there are some very, very strong reason why they can't take the lowest bid on a construction contract. Well, the purpose of that is obvious, but what happens is these professionals that you are hiring are designing those projects to get that lowest bid. And one of the problems the State has faced notoriously is if you have a bad project that goes out, you get a contractor that under bids it, and you have a series of change orders, a project can all of a sudden go from one million to two million dollars because the project wasn't properly designed. And what did you say, maybe 5,000, maybe 10,000, maybe even 100,000 dollars on the design fees? And you're giving a project that's not qualified and there is no real recourse for the State other than through the legal acts of putting that individual out of business, taking away his insurance to disqualify that bidder the next time he comes around to do a similar project just right down the street if he's licensed to do business in the State, and it's very difficult to take away a license from a professional like this. You're going to end up with the same, that same individual, and the same problems repeating itself. One of the statements was made earlier of in going after the lowest price and just accepting that as part of the criteria to hire a professional firm. It was stated earlier, and I want to repeat it, that when you put a price on any kind of a service within a state agency, a state government, you are just about bound and locked into that price. And even if they write-in the intent that the price is only to be a guideline, we feel that that guideline is going to be used as the number one choice to do the work. And we don't feel that's quite the way it should be. There was one last statement as to the, earlier, when you do bid, when you go to competitive or when you to ask for professional services, and you cannot negotiate a contract with the first profession you can go down the list until you get is the absolute lowest price of all the consultants, and one of the

things that you'll be faced with and you'll see it is that the amount of services that you require will continue to go down with the price of what you're getting. And I think that the quality of work in the profession and the end results will follow that same line, you will start losing the level. And I think that the intent of government here is on competitiveness or the spirit of a capitalistic society is to keep competitiveness alive. Maybe we should start and consider quality as a competitive aspect which it is and not just the price alone. Thank you.

Number 245 Chairman Furnace: Good. Thank you, Sir, for your testimony. Unfortunately because of the time we do have a floor session starting at 10:00. We'll have to conclude the meeting at this time.

Number 251 The meeting is adjourned at this time.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE MEETING
RE: HOUSE BILL NO. 211
March 21, 1983

TAPE #39 (Side A)

Recording
Number 003

Chairman Furnace: The date is 3/21/83. The present time is 8:53, or somewhere in there. Those members present are: Representatives Koponen, Ringstad, Cowdery and Chairman Furnace. We do have quorum. We'll have some persons to be heard. Just stand at ease for a second. Let me get my file. The meeting this morning is to continue work on the bill. You may note that we have what I call exhibit a that I handed out the other day and it was recommended new language in lieu of the language in the original bill. We have a couple of persons to be heard. Mr. Akin, you spoke the other day, is this a continuation or is it a different?

Number 024 Vernon Akin: It's regarding the amendment 'a' which we did not have a chance to read.

Number 025 Chairman Furnace: I see. Okay.

Number 026 Vernon Akin: It was passed out during the meeting last time.

Number 027 Chairman Furnace: All right, Sir. If you'd like to address the committee at this time we'll take your testimony.

Vernon Akin: Thank you.

Number 029 Chairman Furnace: We'll take your testimony. For the record if you'd state ...

Number 030 Vernon Akin: Right. My name is Vernon Akin. The last name is spelled A K I N. I'm an engineer, have an engineering firm here. I'm also speaking in behalf of the Alaska Society of Professional Engineers; a group of about 305 engineers in the State of Alaska. At the last meeting we received this amendment 'a' which was passed out I believe after the when the meeting started we did not have a chance to look at it or study it. After having a chance to study it I would like to comment on it a little bit. The original bill was mainly, the original bill I submitted, House Bill 211, was to prohibit the bidding of fees, engineering fees. The amendment the way I get it read it essentially throws this out the window. If you want to look on Page, let's see what is it, 2, no Page 1, this section of the chapter applies to contracts for architects and engineering services provided the State unless the total amount of the contract does not exceed 25 thousand dollars. Now, what that says to me is that if you have a contract from under 25 thousand

dollars you can bid it and that is not the intent of the original bill. The bill was to prohibit all fees from being bid and that's the subject of which I spoke at the last meeting. If you're going to bid anything over 25 well let's face it most of the contracts, the small contracts, are under 25 thousand dollars fee so that would mean that there would be very few that would be prohibited from bidding. There was another item in here. This bill was rewritten it looks like strictly for DOTPF because it refers in here to the commissioner; it pins down that you advertise it so many days, you would do this, you were, if the commissioner says that you can do this fine then you can deviate from it. The original bill was for multi-agency, use for the use of the State, for the use of the borough, for the use of city. If you're going to write a bill which pins it down and talks about commissioner I think you're going to have trouble forcing onto a borough or a city. It should be, the bill should be written in a general nature to say you do this, you do that, as far as the advertising of a bill whether it's three times, five times; if it's a borough public works they should be able to set how many times they want or at least within limits, not pin it down to the exact amount or how they would like to conduct their interviews and things like that, whether it'd be three primaries by that I mean they reduce it down to three or whatever amount they want. So I think the bill should be written generally. If the DOTPF passes specifics they could put it in their policies, they could enter other details in their policies. The other part of it seems to be all right except that I think that you have lost the true sense of the original bill by some of these items that they've put in this amendment. I think that's all I have.

- Number 119 Chairman Furnace: Thank you, Sir. Representative Cowdery, then Representative Ringstad.
- Number 120 Representative Cowdery: Yes, thank you, Mr. Chairman. Just this point of information on normal contracts, like small contracts or large ones, there's normally a fee, a negotiated fee or determined by some way of means, of charges for the design work and architectural work, but many times there's some the architectural firm they administer the contract. Now that is a separate, that's not what we're talking about?
- Number 129 Vernon Akin: No.
- Representative Cowdery: The total fee? Is that ...
- Number 130 Vernon Akin: If they're going to administrate the contract, contract administration, that is it could be done as extra services in the contract or they could lump it together however the owner wants it.

- Number 135 Representative Cowdery: But this is not addressed this possibility. I mean getting back to your 25 thousand dollar fee ...
- Vernon Akin: Yes.
- Number 137 Representative Cowdery: Sometimes the administration of the contract can be a large ...
- Number 138 Vernon Akin: Oh, yes. Yes. You know, yes, that is very true ...
- Number 140 Representative Cowdery: ... percentage. So this is the point I was making. I don't know if this addressed in this bill of, you stated earlier you was against this not to exceed 25 thousand.
- Number 143 Vernon Akin: Correct.
- Representative Cowdery: And so ...
- Number 144 Vernon Akin: Because the only time or most the time on the bill, the contract administration in our particular phase of buildings, that usually only happens on the very large building but even at that contract administration again is, should not bid it should be negotiated on that. Now, we have a large, I have, I'm a member I mean a consultant on a large job here in Juneau, and it's contract administration; it's on a time and expense basis not to exceed, all the inspections and all the contract administration is the time and expense basis. So that's the way it is normally done. Contract administration on a job is a very, it's actually better if they can use it on a time and expense because a lot of times you're many trips involved or other expenses. So it can be done either way on jobs; either a lump sum or ...
- Number 169 Representative Cowdery: I was just wondering if this was addressed in this amendment or should it be?
- Number 171 Vernon Akin: Should it be as far as contract administration? I don't think it should be because the whole what we're trying to do is get a bid coming out, a job put out on a negotiated basis. Now, this particular job I was talking about, it was a negotiated basis for a lump sum but the contract administration was under the extra services part of the contract. So I think that it could be handled under, it could either be negotiated at the time at that time or it could be extra services.
- Number 185 Chairman Furnace: Representative Ringstad?
- Number 186 Representative Ringstad: Thank you, Mr. Chairman. I question here basically on the same point as the 25

thousand. The total amount of contract does not exceed 25 thousand. Are you saying that a lot of your contracts to, all your contracts are a total of 25 thousand dollars for the services or the fees you was talking about? Is the 25 thousand?

Number 194 Vernon Akin: 25 thousand the way I read it that's the amount of the contract to the AE, architect engineer.

Number 196 Representative Ringstad: So, basically let me run ...

Number 197 Vernon Akin: It says for architectural and engineering services.

Number 198 Representative Ringstad: So if I, so the State wants it to put up this building they'll come to you and offer you a contract of 12 thousand dollars to design this building. The contract even though the building, it's a million dollar building, the contract to you is 12 thousand.

Number 203 Vernon Akin: Right.

Representative Ringstad: That what you're saying ...

Vernon Akin: That's what I'm saying and that's would be what they're talking about here the 25 thousand.

Number 205 Chairman Furnace: Representative Uehling.

Number 206 Representative Uehling: Thank you, Mr. Chairman. Just to sort of follow up along those lines. So your main objection would be the 25 thousand dollar restriction put in there then from what you're telling ...

Number 208 Vernon Akin: My main objection is that as I've pointed out Friday, there should be no bidding of architectural and engineering services. Architectural and engineering services are and aren't the same as an artist. There are no two engineers or architects that will accomplish the purpose the same way. It's their, you're buying their services, their expertise to do that work and there will be no two the same; so it's not like a contractor where everything is tied down and you build it this way, that way, that way and the plan is ... It's an art; it's an awful lot like an artist painting a picture, no two do it the same. And so this is what I am saying.

Number 220 Chairman Furnace: ... Additional questions from the committee? I have a couple of questions to Mr. Akin.

Vernon Akin: Yes.

Chairman Furnace: You mention the work of the, speaking of the commissioner, you may recall under the original bill that it's stated here that notwithstanding the provision of

39.36.98.040, the State shall select person or firm for the performance of architectural, engineering and land surveying services, so you're speaking of the State in the amendment, we're still speaking of the State and the commissioner. And I'd ask you is the person of the State that you'd normally be dealing with, so I think the commissioner is probably proper. On Page 4 there are two mentionings of the commissioner and it does not apply, let's see the contract agency demonstrates that there is a single source of expertise or knowledge required of that one person, firm clearly performs, and that it indicates here that the commissioner has the responsibility to make that determination which appears to be proper at that stage there ... Under 2, the commissioner may make a written determination that the public necessity will not permit delays incident to the proceeding of the work required by this chapter and it appears that the mentioning of commissioner does not hinder what you're proposing to do. It's supportive language as opposed to not supportive. Do you read it that way?

- Number 248 Vernon Akin: The apprehension I have is the fact that that the borough is, boroughs and cities are going to say that this is not does not apply to them and because it's specifically written for the State agency. And if we could reword it some way so we could, in better language. We do not have commissioner in the definitions in the back.
- Number 256 Chairman Furnace: I know. I know, I just noticed that. There's a definition of commissioner.
- Number 258 There is discussion regarding the definition.
- Number 262 Chairman Furnace: I believe commissioner is probably already defined in the statute. Commissioner means the commissioner of administration except that contracts entered into by commissioner of transportation and public facilities. It seems to me that the commissioner of transportation and public facilities, I don't understand it ...
- Number 266 Vernon Akin: That, I don't think that applies then.
- Number 267 Chairman Furnace: Okay, point's well taken. As we walk through this, we'll look, address that.
- Number 268 Vernon Akin: I realize that down the line there will be a lot of changes, but we would wish that you'd keep this in mind as going back to the original concept of no bidding on anything as far as our services, architectural and engineering services.
- Number 272 Chairman Furnace: Mr. Akin, while you're with us, I propose a couple of things today with the committee, is to walk through the original bill and then look at the draft substitute language. But there's other questions I think we may

get into and I'm not sure we'll be able to conclude that today. So I would like to perhaps enter that for the committee members you have a packet of information, some can perhaps make reference to a suit by the United States, some of the Department of Justice, outlining concern of the non-competitive, non-bidding policy. I'm reading through the information I understand that the Attorney General, on at least two occasions, have asked that the Board rescind its regulation having, what is it, to do with the non-competitive and the non-bid factor. How do you respond? Or how would you as an engineer respond to that and address the suit, the Federal suit?

Number 290 Vernon Akin: Are you referring ...

Number 291 Chairman Furnace: I'm referring to Rule 36.233 which provides that each architectural, engineering and land survey shall seek professional employment on the basis of qualifications, etc., etc. And that has been I guess challenged by ...

Number 295 Vernon Akin: DOJ.

Chairman Furnace: ... attorney.

Vernon Akin: Right. It's been challenged by DOJ based on some different suits that have happened there in various states. They had Supreme Court hearing, NSEP, of course, were rejected on this. According to the information I have received this rejection was essentially on a technicality or it wasn't on the main basic subject. In answer to your question, I would say I am very, we are very much in favor of leaving that clause, that restriction in. Right now it's under rules and regulations on that statute. There is a proposed bill, I think that is one that you are eluding to, that takes it out of there and puts it in a statute; and if they want that they would try to get that statute through the Legislature which under the, as I understand it, the Attorney General's Office said that if they would take it out of the regulation and put it in the statute it would mute the suit, the DOJ suit. And I believe this is one of the subjects that they wanted to discuss at this meeting. So is this not inflated to bring up at this meeting by talking on the proposed bill?

Number 318 Chairman Furnace: Yes. Well, in fact, let me just read, to address the question again. Just my brief reading of the packet here tells me that the Department of Justice is concerned with the restraining phrase that that particular statement, that particular rule in your, I guess, administrative procedure is a restraining phrase, and on how do you, Sir, the thing we're trying to do here is address the concern or whatever; I hope you realize that. We're aggressively moving forward on to do that. But where