ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2570 HLC HB 258 - HB 304

2570

Friday, April 8

HB 26 An Act establishing the business refinancing and expansion loan program in the Alaska Industrial Development Authority; and providing for an effective date.

** HB 308 An Act relating to insurance

** Indicates notice of first public hearing on a new bill.

Introduced: 3/25/83
Referred: Labor & Commerce
and Finance

FUTURE REVENUES
KENAI GAS PRODUCTION

1. COAL PRODUCTION
2. MINING
3. GAS PRODUCTION

IN THE HOUSE BY HAYES AND SZYMANSKI

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a special investment tax credit; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that

(1) there exist areas of the state south of the Arctic Circle in which the factors of established population centers, established infrastructure, access to ice-free ports, and substantial uncommitted reserves of natural gas combine to provide an optimum basis for gas processing development for an export market;

(2) development of gas processing facilities in the areas will minimize adverse population and environmental impacts on the other areas of the state;

(3) development of gas processing facilities in the areas will promote full and stable employment, promote the creation of export markets for the natural energy resources of the state, and promote the long-term development of other natural resources in the state;

(4) it is in the statewide public interest, and is declared to be a public purpose, to promote the prosperity and general welfare of all citizens of the state by stimulating the development of gas processing facilities in such areas;

(5) it is further in the statewide public interest, and is declared to be a public purpose, to promote the exploration, drilling of wells, development, and mining of minerals and other natural deposits

(other than oil and gas) in the state, to assist the state by diversifying its economy, to make it less dependent on oil and gas, provide increased employment opportunities and provide an incentive for investment in the state; and

(6) the establishment of a special investment tax credit is necessary in order to promote and accomplish the objectives listed in (1) - (5) of this section.

* Sec. 2. AS 43.20.021(d) is amended to read:

(d) Where a credit allowed under the Internal Revenue Code is also allowed in computing Alaska income tax, it is limited to 18 percent for corporations of the amount of credit determined for federal income tax purposes which is attributable to Alaska. This limitation shall not apply to the credits allowed by AS 43.20.036(j) and (k).

* Sec. 3. AS 43.20.036 is amended by adding new subsections to read:

(b) For purposes of calculating income tax payable under this chapter the taxpayer may apply as a credit against a tax liability 100 percent of the investment credit allowed as to federal taxes under Internal Revenue Code Section 38 (26 U.S.C. 38 P.L. 87-834) on the full amount of qualified investment put into use south of the Arctic Circle in the state for each taxable year for gas processing facilities; for the purposes of this paragraph, "gas processing facilities" means plants and facilities for processing any product, other than crude oil, of an oil or gas well, including but not limited to liquefied natural gas, methanol and urea processing plants and facilities, excluding any pipelines from oil and gas wells to any plants and facilities. The amount of credit allowed under this subsection shall not be subject to the limitations imposed by (b) of this section, but any credit which is allowed under this subsection shall not also be

allowed under (b) of this section. No credit shall be allowed under this subsection for any investment credit which is allowed as to federal taxes for leased property by reason of section 168(f)(8) P.L. 97-34 of the Internal Revenue Code (26 U.S.C. 168(f)(8) P.L. 97-34).

(k) For purposes of calculating income tax payable under this chapter the taxpayer may apply as a credit against a tax liability 100 percent of the investment credit allowed as to federal taxes under Internal Revenue Code Section 38 (26 U.S.C. 38 P.L. 87-834) on the full amount of qualified investment put into use south of the Arctic Circle in the state for each taxable year for exploration, drilling of wells, development, or mining of the natural deposits listed in Section 613(b) of the Internal Revenue Code (26 U.S.C. 613(b))(P.L. 89-809 and P.L. 88-571); for the purpose of this subsection, "mining" has the meaning given in Section 613(c)(2) of the Internal Revenue Code (26 U.S.C. 613(c)(2) P.L. 85-866). The amount of credit allowed under this subsection shall not be subject to the limitations imposed by (b) of this section, but any credit which is allowed under this subsection shall not also be allowed under (b) of this section. Credit shall not be allowed under this subsection for any investment credit which is allowed as to federal taxes for leased property by reason of Section 168(f)(8) of the Internal Revenue Code (26 U.S.C. 168(f)(8) P.L. 97-34).

* Sec. 4. This Act applies to tax years beginning after December 31, 1983.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

CIRI COOK INLET REGION INC.

Inter - Office Memorandum

TO: Lance Anderson, Vice President, Finance

FROM: Steve Hillard, Vice President and General Counsel

Date: March 28, 1983

Subject: CONSTITUTIONALITY OF GEOGRAPHIC CLASSIFICATION IN INVESTMENT TAX CREDIT BILL

You have asked for a review of the constitutionality of a geographic distinction contained in an bill drafted by CIRI and introduced in the Alaska State Legislature. The legislation will grant certain investment tax credits to those gas processors located south of the Arctic Circle. The question presented is whether this type of classification, based on geography, violates the United States or Alaska Constitutions.

Based upon a review of pertinent federal and state authorities, it is my view that the proposed legislation does not violate the United States or Alaska Constitutions.

I. Federal Constitutional Issues

It is useful to note at the outset that there is one significant constitutional provision which does not appear to apply to the proposed tax credit. The United States Constitution provides that all taxes levied by Congress shall be uniform throughout the United States. U.S. Const. Art. 1, Section 8. The United States Supreme Court has consistently interpreted this requirement to mean geographic uniformity. Knowlton v. Moore, 178 U.S. 41 (1900); Steward v. Davis, 301 U.S. 494 (1938). Under this interpretation, distinctions among the states are impermissible. Thus, the United States District Court for the District of Wyoming has recently held that the Crude Oil Windfall Profits Tax Act of 1980 is unconstitutional because it exempts oil produced from north of the Arctic Circle. Ptasynski v. United States, 82-2 USTC Para. 9654 (D.C. Wyo. 1982). The court noted that although rational justifications for the exemption do exist, the exemption is specifically forbidden by the Constitution. In short, the court appeared to hold that geographic distinctions are per se unconstitutional. The United States Supreme Court recently has determined to review this distinction.

In light of these precedents, it would appear that if Congress were to enact the proposed bill, the bill would run a strong risk of being held unconstitutional. The federal uniformity provision, however, by its terms applies only to acts of Congress, not acts of the states. Generally it has been held, for example, that there is nothing in the United States Constitution which requires state taxation to be uniform. See Carmichael v. Southern Coal Co., 301 U.S. 495 (1937). Thus, the proposed legislation does not violate the uniformity clause of the United States Constitution.

It is also possible to assert that the legislation violates the Equal Protection Clause of the Fourteenth Amendment. It might be contended, in other words, that the proposed legislation impermissibly discriminates against gas processors

located north of the Arctic Circle. The United States Supreme Court, however, has consistently held that where state "taxation is concerned and no special right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." Lehnhauser v. Lake Shore Auto Parts, 410 U.S. 356 (1973); State Board of Tax Comm'rs of Indiana v. Jackson, 283 U.S. 527 (1931). The appropriate test to be applied to state taxation schemes is whether the state classification has a "rational basis" or whether it is "palpably arbitrary" or "capricious." Id. If "any state of facts reasonably can be conceived" to justify a classification, the Court will sustain it.

Applying the foregoing principles to the proposed legislation, it appears that the Supreme Court would uphold the classification. Although not in the context of a taxation case, the Supreme Court has specifically stated that the "Equal Protection Clause relates to equality between persons as such rather than between areas . . . . Territorial uniformity is not a constitutional requisite." Salsburg v. Maryland, 346 U.S. 545 (1954). In the tax area, the Court has upheld a state tax which provided for different tax rates based on the "gravity" of certain oil and which arguably discriminated between oil produced in Northern and Southern Louisiana. Ohio Oil Co. v. Conway, 228 U.S. 146 (1930). The Court held that the classification based on "gravity" was not unreasonable. Although not directly on point, since the case did not involve a specific geographic distinction, Conway does confirm that the Court will apply a relaxed standard of review to state taxation schemes and that all areas of a state need not have an equal tax burden.

A number of lower courts have specifically addressed state tax classifications based on geography. These courts have held that "distinctions based on geographical areas are not, in and of themselves, violative of the Fourteenth Amendment." Levy v. Parker, 346 F.Supp. 877 (E.D. La. 1972); McCarthy v. Jones, 449 F.Supp. 480 (S.D. Ala. 1973) (no "rational basis" for different tax rates for different counties); Weissinger v. Boswell, 330 F.Supp. 615 (M.D. Ala. 1979) (same). These courts have explained that a state "must demonstrate, if it wishes to establish different classes of property based on different geographical locations -- e.g., rural areas as opposed to urban areas -- that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy." Id.

The question thus remains whether the justification asserted for the geographic classification in this case -- to encourage the location of a certain industry in a certain region of the State -- is sufficient to sustain the classification. Although I have not found a case directly on point, the Supreme Court has suggested that tax classifications designed to create incentives for business to locate within a state are permissible. In Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959), the Court stated that a tax statute which "encourages the location within the state of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment." The same rationale would appear to apply equally well to the proposed legislation here, since it is designed to encourage location of a business in a particular part of the state.

II. Alaska Constitutional Issues

There are at least three potential issues under the Alaska Constitution. First, the legislation might violate an implied requirement of "equality and uniformity" of all state taxes. Second, the legislation might violate the Equal Protection Clause found in the Alaska Constitution, Article I, Section 1, which has been interpreted somewhat differently from the Equal Protection Clause of the Fourteenth Amendment. Third, the legislation might constitute a "local or special act" prohibited by Article II, Section 19 of the Alaska Constitution. Let me address the first two issues together, since they are interrelated.

It is necessary to begin with a bit of background. The vast majority of state constitutions embody some provisions for "uniform or equal" taxes. There is, however, no such provision in the Alaska Constitution. The general rule appears to be that in the absence of express provision in the state constitution, it is not essential that state tax statutes operate equally and uniformly. See generally 84 C.J.S. 2d. Taxation, Section 21 (discussing authorities). However, at least one court has held that the principle of uniformity in taxation applies even in the absence of an explicit constitutional provision. See, e.g., Commissioners of Sinking Fund of City of Louisville v. Ohio Valley Grocery Store Co., 240 S.W. 2d 56 (Ky.). Thus, there is at least some possibility that a court might imply a uniformity requirement in the Alaska Constitution.

This possibility is further complicated in the State of Alaska. Although the Constitution of the State of Alaska nowhere requires state taxes to be uniform, Section 9 of the Organic Act of Alaska, 48 U.S.C. Section 28, provides that "all taxes should be uniform upon the same class of subjects." Under the Organic Act, the courts have interpreted the requirement of uniformity to require geographic uniformity. In Hess v. Mullaney, 91 F.Supp. 139 (D.C. Alaska 1950), reversed on other grounds, 189 F.2d 417 (9th Cir. 1950), the court considered whether Alaska's first property tax violated the uniformity requirement of the Organic Act. The property tax levied a tax on all properties in the state, provided that if the property was located within an incorporated city, town or school district, that entity should assess and collect the tax. Plaintiff claimed that the tax was unlawful, since property would be taxed differently depending on where it was located. The District Court agreed, reasoning that classifications may not be based on geographical lines or mere location of the property.

This view was somewhat modified in a successor case, Hess v. Mullaney, 102 F. Supp. 430 (D.C. Alaska 1952), affirmed, 213 F.2d 635 (9th Cir. 1954). Although the court ultimately upheld the property tax, it acknowledged that "unquestionably, systematic geographical discriminations in the burdens of taxation have been held void." The court found, however, that "we assume that the uniformity clause of the Organic Act requires the same measure of uniformity or equality which is required by the Equal Protection Clause of the Fourteenth Amendment." The court held that under the "rational basis" test, it was reasonable for the legislature to have cities assess and collect taxes for property within their jurisdiction.

In light of the foregoing, a strong argument can be made that a separate and distinct "uniformity" requirement no longer exists in Alaska. First, the Alaska Constitution does not provide for uniformity. The Organic Act is a mere act of Congress, and, whatever its continuing effect in light of Alaska statehood, it

probably adds little to the provision of the Alaska Constitution. Second, even if the uniformity requirement of the Organic Act is still controlling, the Ninth Circuit in Hess v. Mullaney held that the Alaska uniformity requirement is no stricter than the equal protection requirement.

A recent case, State v. Reefer King Co., Inc., 559 P.2d 56 (Alas. 1976), support this view and is particularly relevant to this case. The case involved the constitutionality of a state tax which drew a distinction between "floating" and "shore-based" fish processors. Because the tax placed a higher tax rate on floating processors, the floating processors claimed that the statute created an illegal classification under the State equal protection clause. The Alaska Supreme Court rejected that contention. Although the classification could in one sense be deemed to be a "geographical" classification, the Court did not even mention the Hess v. Mullaney cases. Instead, the Court held that the classification should be tested against the State's equal protection analysis, which provides that a statutory classification must

> "be reasonable, not arbitrary, and must rest upon some ground of difference having fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced, shall be treated alike."

The Court held that the classification reflected a legislative judgment that shore-based processors make a more valuable contribution to the State's local economies than the floating processors. According to the Court, it is not arbitrary for the legislature to conclude that shore-based processors were to be preferred over floating processors, which distributed economic benefits over several locations. And, in important language for the present issue, the Court concluded that

> "The state may legitimately encourage, through tax incentives or exemptions, industries or types of industries which it considers desirable, and this method of encouragement does not deprive other taxpayers, who do not qualify for the benefit, of equal protection of the laws.

Two additional points should be made with respect to Reefer King. First, the case strongly supports the notion that the State of Alaska may make a classification in order to encourage businesses to locate in a particular area. A primary reason for CIRI's proposed legislation, of course, is to encourage gas processors to locate south of the Arctic Circle. Second, the equal protection test adopted by the Alaska Supreme Court is somewhat more demanding than the test used in interpreting the Equal Protection Clause of the Fourteenth Amendment. The Alaska test, for example, requires the classification to bear a "fair and substantial" relation to the purpose of the statute, rather than merely a "reasonable" relationship. More significantly, under the Alaska test, unlike the federal test, the courts will "no longer hypothesize facts which would otherwise sustain questionable litigation." Isakson v. Rickey, 550 P.2d 359 (1975). This means that in order to survive constitutional scrutiny, the proposed legislation must clearly articulate the purpose of the legislation and the rationale for the geographic classification. The rationale for the geographic classification is expressly contained in the investment tax credit bill.

There is one final issue. Article II, Section 19 of the Alaska Constitution provides that the "legislature shall pass no local or special act if a general act can be made applicable." In this case, it could be argued that the proposed legislation is a local or special act in that it favors a particular region of the State.

It is doubtful that the proposed legislation constitutes a local or special act. In Baucher v. Engstrom, 528 P.2d 456 (Alas. 1974), the Alaska Supreme Court stated that "legislation does not become local merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. A legislative act may affect only one of a few areas and yet relate to a matter of statewide concern or common interest." Accord, Abrams v. State, 534 P.2d 91 (Alas. 1975); State v. Lewis, 559 P.2d 630, cert denied, 432 U.S. 901 (1977) (upholding the land exchange between CIRI, the United States and Alaska). Thus, to the extent the proposed legislation is a matter of statewide concern, which we believe it is, the proposed legislation is permissible.

More significantly, the Alaska Supreme Court in State v. Lewis held that the test for determining what constitutes "local or special" acts is substantially the same for determining what violates the State equal protection clause. If the equal protection standard is satisfied, "the legislation will not be invalid because of incidental local or private advantages." Id. In terms of our case, then, the crucial issue is whether the proposed legislation violates the State standard of equal protection. If not, Article II, Section 19 will not pose a problem.

SCH:lw

HB 274

STATE OF ALASKA
FISCAL NOTE

Revision Date March , 1983

I. REQUEST

Bill/Resolution No.: HB 274
Title: Regulation of public utilities
Sponsor: Bettisworth
Requestor: Labor and Commerce

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Development
Program Category Affected: Protection
BRU, Program of Subprogram(s) Affected:
Alaska Public Utilities Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200						
300 IAL						
400 ES						
500						
600 STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Carolyn Guess, Chairman Phone: 273-2107
Division: Alaska Public Utilities Commission Date: 3/22/83

Approved by Commissioner: Richard A. Lyon Date: 3/22/83
Department: Commerce and Economic Development

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

HB 274: FISCAL NOTE ANALYSIS:

In the event that HB 274 is not enacted, $122,500 will be required in FY '84 to regulate the currently exempted cable television utilities.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

March 23, 1983

To: Representative Walt Furnace, Chairman
and all House Labor & Commerce Members

From: Jefferson B. Barry
Professional Aide

Re: Staff Analysis HB 274

BACKGROUND. In the late 1970's the FCC (Federal Communication Commission) started deregulating major portions of the communications industry. There existed the impending break-up of the Bell System, proposed Federal legislation changing the ground rules and policy in communications, and the advent of new technology making commercial cable television and other communication enterprises feasible on a large scale. In addition, a number of lawsuits were filed (nationally) which requested the Courts to clarify the regulatory powers of the State, Municipalities, cities, etc.; and, define the rights of the various regulated businesses. Final determination in a number of these cases is still pending.

Even though a uniform national policy had not been developed, one thing was clear. It was the intent of the Federal government to deregulate. In 1980, on an experimental basis, the State deregulated cable television. The deregulation was not all inclusive, but it was an attempt to conform to the deregulation policy. All indications are that the deregulation in Alaska has worked satisfactory.

EFFECT. HB 274 would make the economic regulation of cable television public utilities exempt from the Alaska Public Utilities Commission and local municipalities. To insure protection of the consumer, there is a provision that if 25 per cent of the subscribers feel their treatment is not satisfactory, they may petition, and will be granted, for regulation by APUC.

If the legislation, or similar legislation, is not passed the APUC will be required to hold hearings and establish rates for all of the cable television companies in the State. The current exemption expires on July 1, 1983 and it takes an affirmative action by the Legislature to continue the deregulation. This legislation would continue the deregulation.

Juneau, Alaska 99811

Dear Governor Sheffield:

We are pleased to transmit for your consideration the attached legislation that would make permanent and clarify the present statutory exemption of cable television (CATV) public utilities from economic regulation by the Alaska Public Utilities Commission.

The existing statutory exemption of CATV systems was enacted by the Legislature in 1980 and extends only through June 30, 1983; it was intended to be a three-year experimental deregulation program. As originally enacted, Ch. 136, SLA 1980, added subsection (i) to AS 42.05.711, but later was revised by the Revisor of Statutes as Sec. 13 of that chapter which reads:

> Cable television systems are exempt from the provisions of AS 42.05, other than the provisions of AS 42.05.221 - 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date, and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission.

The proposed legislation would permanently deregulate CATV services with respect to rates and charges for those services, the quality of that service, management practices and customer complaints, but would retain the Commission's authority with respect to the issuance of a certificate of public convenience and necessity to a CATV public utility (AS 42.05.221-42.05.281) under which the Commission determines if an applicant CATV company is fit, willing, and able to furnish CATV service and whether the public convenience and necessity requires that CATV service be provided to the proposed service area. (Under existing AS 42.05.321(b), CATV utilities also still are subject to Commission jurisdiction with respect to joint use and interconnection of utility facilities.)

The proposed bill also would delete the language from the existing CATV exemption which includes within the exemption those CATV systems operating in small Alaska communities if these communities are located on a "state road or marine highway". The effect of this provision has been to include within the ambit of the exemption every CATV system operating in the State except that in Barrow. Often it has been difficult to determine what constitutes a "state road," and many hours of Staff and Commission time have been consumed in making that determination. Instead the Commission proposes to simplify the exemption by substituting for that language, a provision which parallels the existing exception to economic deregulation contained in AS 42.05.711(e)(small electric and telephone utilities) and 42.05.711(i)(small garbage and refuse collection and disposal public utilities); namely, that if 25 percent or more of the subscribers to CATV service petition the Commission, CATV service in a given community would once again be subject to economic regulation. The Commission believes that this exception to deregulation responds to the concern of the CATV subscriber who wonders to whom the subscriber complains if he/she is dissatisfied with the service received and if resort to the CATV management does not produce a resolution of the complaint. Moreover, it furnishes a "safety valve" for CATV subscribers and a protection of them against a totally unsupervised monopoly which recent case law development in the application of anti-trust law to local governments suggests is a concern of the courts (e.g., the City of Boulder case) and is consistent with legislatively-established policy with respect to economically deregulated public utilities. Additionally, the Commission believes that this exception to permanent economic deregulation is protective of the public interest in that it recognizes that in the smaller communities in Alaska, CATV well may be the only entertainment option and also may function as an important communications medium for the community, whereas in the larger, urban areas there are indeed other entertainment/communications alternatives. As a practical matter, the 25 percent petition "trigger" would require substantial

In requesting your support for the proposed legislation and its presentation for consideration at the 1983 legislative session, the Commission believes that the absence of subscriber problems or concerns arising from the economic deregulation of CATV service in Alaska over the past two and one-half years, as well as the many entertainment/communications alternatives that now are competing in the market place for most Alaskans, are ample evidence that economic regulation by the Commission is indeed unnecessary. Additionally, continuing the present exempt status of CATV services, subject to the exception proposed above, will allow the Commission to devote its time and resources to those necessary utility services in which economic regulation is essential to protect the public interest.

If we can assist your office in responding to any questions concerning this proposed legislation, please contact me at your convenience.

Very truly yours,
ALASKA PUBLIC UTILITIES COMMISSION

Carolyn S. Guess, Chairman

Enclosure.

Alaska Cable Television Association

TESTIMONY OF CLARK KING

BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE

REGARDING HOUSE BILL 274.

Mr. Chairman, members of the Committee, my name is Clark King and I am Executive Director of the Alaska Cable Television Association. And I thank you for this opportunity to come before you today to testify on House Bill 274.

House Bill 274 provides the cable operators of the State of Alaska to proceed with economic deregulation that was afforded cable systems in Alaska by Chapter 136 SLA 1980.

I would like to provide the committee with some background regarding the bill. In 1979, Legislative Audit provided a report on the Alaska Public Utilities Commission. At that time the Legislative Auditor suggested that cable television be excluded from regulation by the Alaska Public Utilities Commission. The sunset legislation on the Public Utilities Commission (SB 577) included only a partial deregulation of the cable utility in the state. The Public Utilities Commission is still responsible for certification of any operator doing business in the state. It

is still the arbitrator of any conflicts between a utility and the cable operator wishing to attach its lines to poles. And still has control over who is issued a certificate of public convenience and need.

The 1980 Legislature did confer upon the cable operators of the state, the ability to establish and set their own rates and tariffs. In most cases the rate charged for cable service has not exceeded the inflation rate and, in fact, has resulted in expanded service.

A case in point would be the Juneau cable operation, BC Cable, who, at the time the act was passed, had a cable rate of $39.00 reduced to $36.00 per subscriber. In the same time period, BC Cable has offered additional channels to the public through the use of mid-band converters.

House Bill 274 extends the deregulation of the cable industry for an indefinite period of time. There is also a proviso in the bill that if 25% of the subscribers of a cable system are dissatisfied, they may petition the Public Utilities Commission for re-regulation. This proviso appears in AS 42.05, the Public Utilities Commission, on a number of occasions.

I might note at this time that cable is not just an entertainment medium that most people conceive it to be. The State of Alaska, Department of Revenue, subscribes to the Reuters News Service for

financial information. This gives the department instantaneous update on all major stock exchanges and commodity exchanges in handling the State's vast portfolio. After two years of operation the then deputy commissioner of Revenue stated that the instantaneous availability of information actually increased the State's revenues from their investment portfolio.

Another feature of cable is the ability to be used as fire detection and security alarm systems. Currently, a proposal is being drafted by the Bethel cable operator for a fire prevention network. It is interesting to note that Bethel has the highest per capita death rate due to fires in the United States. It is hoped that this system will drastically reduce that circumstance.

Cable is also used in communities to distribute the State's Learn Alaska Program to both homes and schools. It is also interesting to note that in those communities that are served by cable operators, most public buildings, including schools, libraries, etc., are all wired for cable, thus making it available to all members of the community. Several communities in the state are experimenting with a public access channel. Most notably would be Nome, where the citizens produce their own programming. The cable operator in Nome provides technical assistance and the free channel time, but has nothing to do with the content of the programming. This programming ranges from cultural shows to coverage of the local assembly meetings.

With the completion of the cable system in the Anchorage bowl, the Kenai-Soldotna area, and Mat-Su, over 90% of the homes in the State of Alaska will have cable service available to them.

With expanded programming and advanced technical services, Alaska will have greater access to one of the truly growing telecommunications services.

Again, on behalf of the Alaska Cable Television Association, I would like to stress our support for House Bill 274 and urge the committee to take favorable action.

HB 281

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.

TITLE PAGE ONLY HAS BEEN FILMED.

STATE OF ALASKA
DEPARTMENT OF LABOR

TITLE 23. LABOR

CHAPTER 05. -- CHAPTER 10.

DEPARTMENT OF LABOR

EMPLOYMENT PRACTICES & WORKING CONDITIONS

AS 23.05.010 - AS 23.05.340

AS 23.10.015 - AS 23.10.150 & AS 23.10.375 - AS 23.10.40(

July, 1981

WAGE & HOUR DIVISION PAMPHLET NO. 100

BILL SHEFFIELD
GOVERNOR

CJ

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

(3 DAYS OF TERMINATION SENT) VERBAL

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the payment of wages. This bill would make discretionary the imposition of the wage claim penalty under AS 23.05.140(d) against an employer who fails to pay wages to an employee within three days of the date of termination. In addition, the bill would strengthen the protection given an employee who has been offered a partial payment of a wage claim on the condition that he release the employer from paying the entire amount of wages claimed. The bill would void such a release which is given contingent on part payment of the wage claim.

The final provision of the bill would limit the application of the definitions in the federal Fair Labor Standards Act, 29 U.S.C. 203, to only those terms used in the Alaska Wage and Hour Act which are not defined by state law or regulation.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA
FISCAL NOTE

Revision Date March 10, 1983

I. REQUEST

Bill/Resolution No.: HB 281
Title: "...payment of wages..."
Sponsor: Rules Committee
Requestor: Rules Committee

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program of Subprogram(s) Affected:
Labor Standards and Safety Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: No fiscal impact.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Judy Knight, Special Assistant — Phone: 465-2700
Division: Commissioner's Office — Date: March 10, 1983
Approved by Commissioner: Jim Robison — Date: March 10, 1983
Department: Labor
LEG:A:11

Distribution:
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3/8/83

2801 DeBarr Road
Pouch 8-AH
Anchorage, Alaska
99508
907/276-1131

April 19, 1983

Mr. Ron Pavellas
Executive Director
Humana Hospital Alaska
2801 DeBarr Road
Anchorage, Alaska 99508

Humana Hospital Alaska

Dear Mr. Pavellas,

I am writing this letter, along with support of other hospital staff members, to stress the importance of re-establishing an 8/80 workweek at Humana Hospital Alaska. In order to meet the needs of our community, we naturally must be available 7 days a week, 24 hours a day, making a 40-hour workweek difficult to schedule. We are denied an 8/80 workweek because we are not a non-profit hospital.

Following are a list of reasons to support an 8/80 workweek:

(1) It would allow the possibility of 10 days on/4 days off.

(2) Long working stretches allow for 4 days off in a row.

(3) Part-time staff members could work extra days for their peers without the hospital having to pay overtime.

(4) During high census readings, a nurse manager would have a larger list to call from without having to pay overtime.

We feel that such a change would improve employee morale, and we totally support an 8/80 workweek.

Sincerely,

Cheryl Stanton RN

Cheryl Stanton, R.N.
Nursing Supervisor

CS/ng

Christine Hunter LPN
Christine Hiss RN.
Shannon Crayton U.S.
Linda Webster RN
Jude Williams RN
Ruth Burggraff RN

Valerie Fahlen RN.
Nursing Supervisor
Lorraine Michaud RN, BSN
Renee M. Pelowski RN
Mary S. Atwood RN
Susan Canada RN. BSN
Elizabeth Stanley RN
Linda Stephan RN
Barbara L Owen U.S.
Mary Jones RN
Cheryl Stanton RN

2801 DeBarr Road
Pouch 8-AH
Anchorage, Alaska
99508
907/276-1131

Humana Hospital Alaska

Mr. Ronald A. Pavellas
Executive Director
Humana Hospital Alaska
2801 DeBarr Road
Pouch 8-AH
Anchorage, Alaska 99508

Dear Ron,

I wish to stress the importance of obtaining a change in the legislation which would permit that overtime be calculated on an 8 (hours per day) and 80 (hours per pay period) instead of the 8 and 40 as currently exists.

Humana Hospital Alaska is currently denied the 8 and 80 because we do not have the status of "Non Profit" as the overtime law states.

This law limits us in the following ways:

(1) Requires that we split employees' days off (into some single days) in order to avoid unnecessary overtime.

(2) Hinders our flexibility in creating flexible scheduling which is generally helpful in attracting Registered Nurses.

(3) Creates an inability for us to allow our 11PM to 7AM employees several days off together without incurring substantial costs in overtime.

Any assistance in a change in this legislation would be appreciated, as it would permit more effective utilization of our nursing personnel.

Sincerely,

Patricia K Davis

Patricia K. Davis, R.N.
Associate Executive Director
for Nursing

PKD/ng

HB 282

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

NOTICE TO EMPLOYER
WHAT IS THE AVERAGE FINE TO EMPLOYER!

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to notices for occupational safety and health violations.

This bill would allow the Department of Labor to issue a notice, rather than a citation, to an employer for an occupational health and safety violation which is not serious, if the employer agrees to remedy the violation within a reasonable time. If the employer fails to remedy the violation, then a citation is issued in accordance with the procedures for serious violations.

The bill would accomplish several things. It would free occupational safety and health compliance officers from cumbersome administrative responsibilities which attend the issuance of citations, and thereby allow them to devote more time to inspections, while also saving clerical time. (Currently, inspectors can only inspect approximately eight percent of the state's work sites a year). The bill would also promote speedier correction of hazards, since much of the paperwork that must flow between employer and agency in the citation-issuance process would be eliminated. The department strongly urges passage of this bill, and it has the support of unions and employer organizations as well.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA
FISCAL NOTE

Revision Date March 10, 1983

I. REQUEST

Bill/Resolution No.: HB 282
Title: "...citations for occupational..."
Sponsor: Rules Committee
Requestor: Rules Committee

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program of Subprogram(s) Affected: Occupational Safety and Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: No fiscal impact.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Judy Knight, Special Assistant — Phone: 465-2700
Division: Commissioner's Office — Date: March 10, 1983

Approved by Commissioner: Jim Robison — Date: March 10, 1983
Department: Labor

LEG:A:10

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3/8/83

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

MEMORANDUM

February 8, 1984

To: John Cowdery, Chairman

From: Ken Johnson, Committee Aide

RE: HB 283 -- An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association.

This bill was drafted about two years ago by the National Association of Insurance Commissioners. The NAIC put together a number of so called "model acts" in order to help states bring insurance statutes and regulations up to date. These model acts were presented to all 50 states for fine tuning and legislative introduction. This is one of those bills. To date, 34 states have passed very similar legislation.

The bill of course would create the Alaska Life and Disability Association. Any company licensed to sell insurance in the state would be a member of this association. Each member would pay an assessment, not to exceed $150 per year, to cover the costs of administration and general expenses.

The purpose of the association is to guarantee the policy's of an insurer who has become impaired or insolvent. In the event an insurance company insolvency, the association would assume control of the company's policies and set into motion the action necessary to see policy holders do not lose any investment or benefit. For example, an impaired or insolvent company may get a loan from or its assets be sold by the association. There are limits set for the aggregate liability the association will assume.

The association has the power to borrow and loan money. Most all of the funds necessary for the associations transactions would come from assessments on its members. There is a formula which would be used to make these assessments, however, Ken Moore, Director of the Division of Insurance could better explain this formula. He would serve as director of this association.

A board of governors would be elected, by association members, to carry out the duties of the association. The director must approve the selection of each board member.

This is a general outline of a lengthy and detailed bill. The NAIC has deemed this legislation a "consumer protection bill" because of the insurance policy guarantees. It has passed, as I stated, in 34 states some which have created standing committees in their legislatures to deal with insurance matters.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 283
Title: Life Guaranty Association

Sponsor: Governor
Requestor: Labor & Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director
Division: Insurance
Phone: 465-2515
Date:

Approved by Commissioner: Richard A. Lyon
Agency: Commerce and Economic Development
Date: 2/1/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
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12/1/83

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February 10, 1984

Honorable John Cowdery
Chair, House Labor & Commerce Committee
Alaska StateLegislature
Pouch V
Juneau, AK 99811

Re: HB 283

Dear Representative Cowdery:

On behalf of the American Council of Life Insurance, this is to make a matter of record the support of that organization for HB 283.

May I also extend our thanks for your help in seeing to it that HB 373, the Valuation and Non-Forfeiture bill, was unanimously passed by the House of Representatives. That bill will mean real savings for Alaskans.

Best regards,

Michael T. Thomas

MTT/gmm

cc: Kenneth C. Moore
William L. Lincoln

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill establishing the Alaska Life and Disability Insurance Guaranty Association (the association). This bill is based on the Life and Health Insurance Guarantee Association Model Act proposed by the National Association of Insurance Commissioners in 1971, as amended in 1976.

The bill would provide a mechanism for paying claims on direct life insurance policies, disability insurance policies, and annuity contracts, which are outstanding against insolvent or impaired insurers. The bill would require that all insurers licensed to do business in Alaska be members of the association, and would provide for periodic assessments of the members of the association.

The Alaska Life and Disability Insurance Guaranty Association will provide protection for life and disability insurance similar to the protection provided under existing law for other kinds of direct insurance by the Alaska Insurance Guaranty Association Act (AS 21.80).

Sincerely,

Bill Sheffield
Governor

BRIEF SUMMARY: This bill provides a mechanism for paying claims on direct life insurance policies, disability insurance policies, and annuity contracts which are outstanding against insolvent or impaired (next page)
(Attach a more detailed explanation if you can.)

ESTIMATED FISCAL IMPACT: none

OTHER STATE AGENCIES CONSULTED/AFFECTED:

CONSTITUENT GROUPS:
Those opposed:

Those in favor:

Those yet to be contacted:

Has this or a substantially similar bill been introduced (and not passed) in the legislature in a previous session? Yes X No ____

If so, please state: Bill number SB 116 (1981)
Dept. of Law log no: J-77-064 - 081
(if it was a Governor's bill)

PREFERRED HOUSE OF INTRODUCTION: either

RATE THE BILL'S IMPORTANCE TO DEPARTMENT BY PRIORITY #: 4

DRAFT ATTACHED: Yes X No ____ Not finalized ____

COMMISSIONER'S SIGNATURE:

DATE: 1/10/83

insurers. The bill would require that all insurers licensed to do business in Alaska be members of the association, and would provide for periodic assessments of the members of the association.

This bill is based on the Life and Health Insurance Guaranty Association Model Act proposed by the National Association of Insurance Commissioners in 1971 as amended in 1976. The Alaska Life and Disability Insurance Association will provide protection for life and disability insurance similar to the protection provided under existing law for other kinds of direct insurance by the Alaska Insurance Guaranty Association Act.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Econ. Dev.	Insurance	HB 283	Governor

DEPARTMENT POSITION

In favor

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Kenneth C. Moore	2/7	Richard A. Lyon	

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None	All holders of life or disability insurance and annuity contracts.
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Not known	Not known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill will provide public protection that currently does not exist. Policyholders of life and disability policies issued in Alaska will have their policies guaranteed by all life and disability insurers doing business in this state. It also provides a mechanism to enhance the director's review of life or disability insurer solvency.

ANALYSIS OF BILL/PROGRAM EFFECTS

This proposal is based on the Life and Health Insurance Guarantee Asssociation Model Act of the National Association of Insurance Commissioners developed in 1971 and amended in 1976. The bill would provide a mechanism for paying claims on life, disability and annuity contracts on behalf of an impaired or insolvent insurer. Participation would be a condition to license in this state.

Alaska has previously had a domestic insolvency of a life insurance company. In June 1969, the Alaska Western Life Insurance Company was placed in receivership and was ultimately liquidated. The division managed some control through AS 21.78, but that chapter offers little protection for policyholders.

This bill is similar in concept to AS 21.80 which provides protection for property and casualty kinds of insurance.

AMENDMENTS PROPOSED

On page 7, line 20, change "health" to read "disability."

On page 7, line 27, insert "(a)" following "ASSESSMENTS."

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)

~~25.~~ WHAT OTHER STATES HAVE LIFE GUARANTY FUND ACTS?

While it has not been determined exactly how the provisions of these Acts would apply to the financial problems of NILIC and UNIVERSITY, the following 34 states and the Commonwealth of Puerto Rico have Life Guaranty Acts:

1. Alabama
2. Arizona
3. Connecticut
4. Delaware
5. Florida
6. Georgia
7. Hawaii
8. Idaho
9. Illinois
10. Indiana
11. Kansas
12. Kentucky
13. Maryland
14. Michigan
15. Minnesota
16. Montana
17. Nebraska
18. Nevada
19. New Hampshire
20. New Mexico
21. New York
22. North Carolina
23. North Dakota
24. Oklahoma
25. Oregon
26. Pennsylvania
27. South Carolina
28. Texas
29. Utah
30. Vermont
31. Virginia
32. Washington
33. West Virginia
34. Wisconsin

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 283
Title: Life Guaranty Association

Sponsor: Governor
Requestor: Labor & Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
Division: Insurance Date:

Approved by Commissioner: Richard A. Lyon Date: 2/7/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
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12/1/83

283

HB

~~Senate~~ Bill ~~No~~

Section by Section Commentary

Section 1. AS 21.21.050(7)

AS 21.21 is the chapter in the insurance code dealing with investments of insurance companies. .050 deals with limitations by kinds of investment to provide for diversity in the investment portfolio of an insurer. This change adds notes and other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) to the miscellaneous category of investments which are limited to 10% of assets.

Section 2. AS 21.21.250(c)

AS 21.21.250 defines miscellaneous investments and is changed by adding notes and other evidence of indebtedness of the ALDIGA.

Section 3.

Section 21.79.010. PURPOSE.

The basic purpose of this model act is to protect policyholders, insureds, beneficiaries, annuitants, payees and assignees against losses, both in terms of paying claims and continuing coverage, which might otherwise occur due to an impairment or insolvency of an insurer. Unlike the property and liability situations, life and annuity contracts in particular are long-term arrangements for security. An insured may be of impaired health or an advanced age so as to be unable to obtain new and equivalent coverage from other insurers. The payment of cash values alone does not adequately meet such needs. Thus, it is essential that coverage be continued. In like manner, an insured may be unable to obtain new health insurance or at least he may lose protection for prior illnesses.

Section 21.79.020. SCOPE.

This section outlines what the bill does and does not cover. Basically, it covers those policies of life, disability, and annuities written by insurers which have submitted to regulation in this State. Policies of nonadmitted insurers are not covered. The term "disability" also includes "accident and health," "sickness and accident" and more.

Subsection (b)(1) is directed toward variable policies and contracts. That portion of the contract where the risk is borne by the policyholder is excluded. However, the obligations of the insurer for mortality and expense guarantees are covered.

Subsection (b)(2) excludes deductibles from coverage.

Subsection (b)(3) exempts the reinsurance business of the impaired or insolvent insurer other than reinsurance for which assumption certificates are used.

Subsection (b)(4) excludes Blue Cross. The logic to this is that Blue Cross is a nonprofit health care provider. It markets prepaid health care through participant providers who in effect guarantee the delivery of the contracted service. The financial structure of Blue Cross is such that they cannot be expected to participate in insolvencies of profit making corporations.

Some additional limitations on the scope are found elsewhere in the act. For example, ALDIGA assumes no liability concerning policies of nonresidents issued by a foreign or alien insurer or for policies of residents issued by a foreign or alien insurer, if such insurer is domiciled in a state having a comparable act (See Section .060). These limitations are not found in the scope section, since it provides exclusion from the entire act and not just portions of it.

Section 21.79.030. CONSTRUCTION.

This section calls for liberal construction.

Section 21.79.040. CREATION OF THE ASSOCIATION.

Subsection (a) creates three accounts, for both administration and assessment purposes, the disability insurance account, the life insurance account, and the annuity account. These three categories of coverage are significantly different, so that persons protected by virtue of one account should not be required to pay for the protection afforded persons protected by the other accounts.

Supplementary contracts are covered under the account in which the basic policy is covered for purposes of assessment. For example, settlement options under a life insurance contract would be covered under the life insurance account.

Section 21.79.050. BOARD OF GOVERNORS.

Subsection (a) provides that the number and term of the members of the Board of Governors shall be determined in the plan of operation. To avoid problems in initially selecting the board, this section includes a provision for a start-up meeting, which shall be called by the Director of Insurance. To determine voting rights at the organizational meeting, each member insurer would have one vote. Thereafter the plan of operation will establish the voting procedures, bylaws, etc., governing the conduct of ALDIGA.

Section 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION.

Subsections (a)-(f) constitute the heart of this model act. These subsections detail the duties of the association by distinguishing: (1) between those insurers whose "impaired" status is attributable to a finding by the Director prior to an order of liquidation, and those whose "insolvent" is attributable to such orders; and, (2) between insolvent domestic insurers and insolvent foreign or alien insurers.

Prior to an order of liquidation, rehabilitation or conservation, ALDIGA has no liability. However, upon a finding by the Director that the insurer is impaired under (a), ALDIGA is authorized to guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer to assess member insurers the amounts necessary to effectuate this activity. ALDIGA would presumably do so in those situations where early assessments would prevent a more costly insolvency later, such as liquidation. ALDIGA, as a condition of its assistance, may negotiate any requirements or safeguards it deems necessary so long as they are approved by the Director and are accepted by the impaired insurer and do not impair the contractual obligations to the policyholders, insureds, and beneficiaries. In the absence of any court order, before any negotiations become final the impaired insurer's acceptance of the terms of ALDIGA is necessary. Through this approach, a mechanism is provided for early action by ALDIGA before the situation further deteriorates. The policyholder, insured, and beneficiaries are protected, claims are paid and coverages continued, for example, through rehabilitating the impaired insurers, or reinsuring the policies elsewhere. Furthermore, the statutory language is highly flexible as to what techniques the association may employ so as to be able to meet a variety of situations.

Under (b) and (c), if the insurer acquires its insolvency status as a result of a final order of liquidation, rehabilitation or conservation, the association shall, rather than may, guarantee, assume, reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer and to assure payment of contractual obligations.

It should be noted that the duties of ALDIGA vary with the kind of insurer. If it is a domestic insurer then all the covered policies must be continued and the contractual obligations met (See (b)). However, if the insolvent insurer is a foreign or alien insurer, contractual obligations which apply to residents of the State must be paid or continued if they are not covered by a similar law in such insurer's domiciliary jurisdiction. (See (c) and (d))

Subsection (d) avoids duplication of coverage by providing that the association shall have no liability for any covered policy of a foreign or alien insurer domiciled in the State having similar protection by statute or regulation. If every state adopts the model act, each state association would protect only covered policies of domestic insurers.

Subsections (e) and (f) relate to the imposition of policy and contract liens, moratoriums, etc. These are devices which have been used in the past in connection with the continuation of the insolvent insurers' coverage. Since, by definition, the assets of the insolvent insurer were not adequate to support its contractual obligations, liens were used to reduce his obligations to a level where the assets would be adequate. However, in the past there was no means to infuse additional funds where needed to make whole policyowners, insurers and beneficiaries. The purpose of the model act is to provide against losses due to insolvent insurers by prompt fulfillment of the insolvent insurer's contractual obligations. To the extent that liens and moratoriums are sanctioned, the model act retreats from this principle. Of course, in situations prior to a court order there may be some question whether a lien or moratorium could be legally imposed so as to impair the contractual obligations of the insurer even in the absence of the specific provisions of this act.

On the one hand, it can be argued that if liens or moratoriums cannot be used there will be a run on the assets of the impaired company. In the past this seems to have been true. However, unlike the past, the performance of the insurer's contractual obligations would be guaranteed under this act.

Also, the standard nonforfeiture laws provide that an insurer in its policies shall reserve the right to defer the payment of cash values for a period of six months after demand thereof with surrender of the policy. Similarly, it is common to require an insurer to reserve for a period of six months the right to defer the granting of any policy loan (other than to pay premiums). For these various reasons, the model act does not encourage use of these liens and moratoriums in ordinary situations.

On the other hand, in periods of severe liquidity problems and economic stress, perhaps of even catastrophic proportions, such devices may become essential. While the model bill concentrates on the protection of those to whom the impaired insurer has a contractual obligation, the impact of assessments on the policyholders of assessed companies is also an important consideration, such as the significant sales of depressed value assets in a tight money market. Consequently, Subsection (e) authorizes ALDIGA to cause to be imposed liens and moratoriums or other similar means:

1. If the court finds that the amounts assessable are less than what is needed, or that the economic or financial conditions as they affect member insureds are sufficiently adverse to render the use of such tools in the public interest; and,

2. The court approves the use of a specific lien, moratorium, etc.

This provides a highly flexible mechanism while, at the same time, it avoids impairing the contractual obligations of the impaired insurer as a routine manner under ordinary economic and financial conditions. The provision also recognizes that while contractual rights of policyowners may not constitutionally be impaired, when the insolvent insures obligation under the contract as assumed by another insurer, the policyowner has two options. The policyowner may accept the new contract with such liens or moratoriums as permitted by the court, or accepts such pro rata payment as is available from the State of the insolvent insurer.

Furthermore, to provide added flexibility in a temporary situation, such as a run on assets, Subsection (f) provides for temporary moratoriums or liens on payment of cash values and policy loans, but not on the payment of other benefits, with the court's approval.

Subsection (g) permits the Director to assume the duties of ALDIGA if they fail to exercise their authority under the act within a reasonable period of time.

Subsection (h) permits the Director to request ALDIGA member assistance with impaired or insolvent insurer issues.

Subsection (i), to enable ALDIGA to protect its interest and the best interests of the policyholders in the handling of an impairment or insolvency, provides that ALDIGA shall have standing to appear in a court with jurisdiction over an insolvent insurer and such standing will extend to any matters concerning the duties of ALDIGA.

Subsection (j) provides for assignment of rights of a beneficiary of benefits under this act. It also establishes subrogation rights for ALDIGA and provides that ALDIGA's right to assets of the insolvent insurer is the same as any other person entitled to benefits under this act.

Subsection (k) places a limit on the liability of ALDIGA as respects a single life.

Subsection (l) allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer and take legal action to avoid payment of improper claims.

Section 21.79.070. ASSESSMENTS.

Subsection (b) outlines different assessment methods for assessments needed to cover foreign or alien insurers and for assessments needed to cover domestic insurers. When a foreign or alien insurer is impaired or insolvent, the member insurers will be assessed on the basis of the premiums they write in the State. This corresponds to the association's liability which is limited to covered policies of residents when the policies are issued by a foreign or alien insurer. When a domestic

insurer is impaired or insolvent, the total amount to be assessed will be allocated to each state in which the impaired or insolvent insurer was authorized at any time to transact insurance in the proportion that the impaired or insolvent insurer premium income in each state for the last calendar year preceding the assessment in which it had premium income bears to its total premium income in such calendar year. The amount allocated to each state will then be assessed to the member insurers in the proportion that the member's premium income from such State for the calendar year preceding the assessment bears to all premium income of member insurers from that State in the calendar year preceding the assessment. Thus, in making the pro ration it is necessary to look to the premium income of the impaired or insolvent insurer in the last year it actually received such income, but in determining each company's assessment, the association would look to the last calendar year preceding the assessment. In any case, assessments would be made separately for each account and the amount assessed from each account will be in the proportion that the total premiums of the impaired or insolvent insurer bear to the premiums of the impaired or insolvent insurer from the kind of insurance in the account.

For example, if a total assessment of $100,000 is needed for the disability insurance account, and the domestic impaired or insolvent insurer received 50% of its premium from state X, then 50% of $100,000 or $50,000 will be allocated to state X. Member insurers receiving premium income from state X will then be assessed in proportion to their share of that state's market, as reflected in premium income. For example, if member insurers receive $30,000,000 in premium from state X and a certain member received $3,000,000 of that amount, then 3/30 of the $50,000 assessment will come from this company, that is, the company will be assessed $5,000 (3/30 = 1/10 and 1/10 of $50,000 is $5,000).

This assessment system should be relatively simple to administer. More importantly, it provides a base broad enough to meet fairly large demands on the association. Equally important, since it reflects the market share of each member in the state considered, it is an equitable method of apportioning the burden of the assessments.

The maximum assessment per year may be varied from State to State depending on the size of the base and the concentration of the business. The two percent maximum should produce an adequate amount, while at the same time, not impose an undue strain in any given year on the assessed companies and their policyholders. In order to prevent further financial difficulties caused by an assessment, Subsection (g) permits abatement of assessments when financial difficulties might result.

Subsection (h) provides some limitation on the amounts which can be assessed in any given year. If these limits are reached, to fulfill its responsibilities, ALDIGA is empowered to borrow funds which later can be repaid out of future assessments.

Subsection (j) provides that a member insurer may consider, in its premium rates and dividends scale, an amount reasonably necessary to meet its assessment obligations. This makes it clear that the cost can be ultimately passed on to the policyowners, that is, to persons who enjoy the protection provided by the act.

Subsection (k) provides that ALDIGA shall issue to assessed insurers certificates of contribution in the amount levied. The certificates may be carried by an insurer in its annual statement as an asset in such form, amount and period as may be approved by the Director. By permitting the company to carry these certificates as an asset, to the extent of their estimated value, the impact on member insurers will be lessened.

Section 21.79.080. PLAN OF OPERATION.

The NAIC has adopted a model plan of operation which is available in our office should you wish to have a copy of same. It is anticipated that ALDIGA, upon passage of this act, would substantially adopt the provisions contained in this model plan of operation.

Section 21.79.090. POWERS AND DUTIES OF THE DIRECTOR.

Subsection (b) requires that the Director give notice of an impairment to the impaired insurer, and hence to its stockholders, and serve a demand that impairment be made good. If the company and stockholders fail to raise the necessary funds, this will be a factor bearing upon the stockholders' ownership rights under Section 110(d).

Subsection (d) provides that the Director shall be appointed liquidator or rehabilitator of a domestic insurer and conservator of a foreign or alien insurer being liquidated or rehabilitated. Requiring the Insurance Director to be the receiver, it is necessary to obtain the benefits of a "reciprocal" state under the Uniform Insurers Liquidation Act, which Alaska adopted in 1966. See AS 21.78.020, .030, .130-.200 and .230(2)-(13).

Proceedings for the liquidation, rehabilitation, or conservation of insurers present several difficulties which the Uniform Insurer's Liquidation Act seeks to solve. Briefly, the difficulties have two sources. First, in some states the liquidator, rehabilitator or ancillary receiver may be a person unfamiliar with insurance regulation. Inefficient administration of the proceedings may result.

Second, the laws of more than one state may be applied to the proceedings particularly regarding ownership of assets and preferences for payment. The result is confusion and inequity in the collection and distribution of the assets. The Uniform Insurers Liquidation Act meets the first source of problems by designating the insurance Director as the receiver of a domestic insurer or the ancillary receiver of a foreign

insurer. To solve the problem of multiple laws and marshalling of assets, the Uniform Act gives the receiver title to the assets. The ancillary receiver is then required to forward all assets to the receiver. The Uniform Act also details laws under which preferences and the distribution of assets will be determined.

In drafting this model guarantee bill, the NAIC made particular effort to the extent possible, to avoid disrupting State liquidation and rehabilitation of laws.

Section 21.79.100. PREVENTION OF INSOLVENCIES.

This section basically establishes a dialogue between the Director and ALDIGA, concerning impairment and insolvency issues. It also enables ALDIGA to cause an examination of a suspect insurer, which is the primary tool in determining financial status.

Section 21.79.110. MISCELLANEOUS PROVISIONS.

Subsection (b) requires that the records be kept of the negotiations and actions by the association. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of the rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by a court of competent jurisdiction.

Since this act imposes obligation upon the association to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage. Subsection (c) is designed to accomplish this purpose.

Subsection (d), in conjunction with Section .090(b), is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the association. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this act. The court is empowered to modify and distribute the ownership rights of impaired insurers in an order to do equity as between the interested parties.

Subsection (e) is designed to recapture excessive dividend payments to affiliates that exercised control over the insolvent insurer. The NAIC Model Holding Company Regulatory Act which has been adopted in Alaska, in large measure, prevents improper distribution of dividends by an insurer to its holding company, since extraordinary dividends are subject to the prior approval of the Director, and ordinary dividends are required to be reported to the Director. If, however, dividends are

paid under circumstances that the insurer should have recently known that such payment could reasonably be expected to affect its ability to perform its contractual obligation to its policyholders, the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

Section 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.

This section enables the Director to examine ALDIGA. ALDIGA must also provide an annual report.

Section 21.79.130. TAX EXEMPTIONS.

ALDIGA is tax exempt except for real property taxes. ALDIGA is not a profit making organization, rather, it is a guarantee mechanism thus its tax exempt status.

Section 21.79.140. IMMUNITY.

ALDIGA will be engaged in some very sensitive issues when performing its duties under this act. The immunity provides protection while performing these duties.

Section 21.79.150. STAY OF PROCEEDINGS.

See Section 5.

Section 21.79.900. DEFINITIONS.

This act covers "insolvent insurers" which are difined to include an insolvent insurer under an order of liquidation issued by a court of competent jurisdiction. An "impaired insurer" is an insurer deemed by the Director to be unable, or potentially unable, to fulfill its contractual obligations.

This model bill enables an association to become involved to the actual court order as noted in Section .060. The finding by the Director that an insurer is impaired, even though not subject to a court proceeding, serves as a triggering mechanism enabling the association to function.

Subsection 10 defines "resident" for the purposes of determining on whose behalf the association may become liable under Section .060, if a foreign or alien insurer becomes insolvent.

Section 4. Section 21.36.035. PROHIBITED ADVERTISEMENT IN INSURANCE SALES.

This section makes it a prohibited unfair trade practice for any person to make use, in any manner, of the protection afforded by this act to aid him in the sale of insurance. This would extend to a person with

an interest in a policy who uses the presence of ALDIGA to support the value of the policy as collateral in a loan transaction, which action would be prohibited. The legitimate function of advertising the existence of the act by the guarantee association and the Director, conduct which would be particularly desirable in notifying policyholders of a company found to be insolvent, or by insurers in public service institutional advertisements, would be permitted. Enforcement and penalties for violation of the section are found in the Unfair Trade Practices Act (AS 21.36).

Section 5. AMENDING CIVIL RULE 62(c).

Section 21.79.150 provides for an automatic stay of 60 days in actions involving the liquidation, rehabilitation or conservation of an insolvent insurer.

HB

304

A RESOLUTION BY THE 3RD ANNUAL
YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE

Bethel, Alaska
November 3, 4, 5, 1982

RESOLUTION NO. 82-13

A RESOLUTION REQUESTING THE 1983 ALASKA STATE LEGISLATURE TO PASS THE NECESSARY LEGISLATION TO ALLOW MUNICIPALITIES TO FORCE ACCOUNT CAPITAL PROJECTS AND NOT BE OBLIGATED TO PAY "LITTLE DAVIS-BACON" WAGES.

WHEREAS, municipalities have the local expertise in their own citizenry to construct and complete most public works projects; and

WHEREAS, municipalities are now receiving funding to construct roads and cities are executing these projects successfully through planning and force accounting; and

WHEREAS, the Little Davis-Bacon Act wages are prohibitive as far as local hire and successful project completion,

BE IT RESOLVED BY THE YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE: To support legislation that would allow municipalities to force account local projects using local wage scales as a standard, which allows much needed employment for the local citizenry, rather than using Little Davis-Bacon Act wages which drastically depress local hire.

PASSED and APPROVED by the Third Annual YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE THIS 5th day of November, 1982.

John Guinn - President

E. Colleen Hickman
Recording Secretary

cc: Greg Capito
Village Safe Water Program

Robert W. Ward, Commissioner
Department of Transportation &
Public Facilities

Norman Gorsuch
Attorney General
Department of Law

James Souby, Director
Division of Policy Development and Planning

Representative Al Adams, Chairman
House Finance Committee

Lisa Rudd, Commissioner
Department of Administration

Ron Lehr, Director
Division of Management and Budget

MEMORANDUM State of Alaska

TO: Donald R. Wilson
Supervisor
Wage & Hour Administration
Department of Labor

DATE: October 5, 1982

FILE NO: 166-261-83

TELEPHONE NO: 276-3550

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: Robert W. Landau
Robert W. Landau
Assistant Attorney General

SUBJECT: Applicability of AS 36 to Construction Projects Administered the Community of Cantwell, Inc.

You have requested our opinion as to whether the public contract requirements of AS 36 would apply to the proposed construction of a fire station and community water facility in Cantwell, Alaska. Our conclusion is that AS 36 applies to the proposed construction projects.

Cantwell is a rural community having no organized governing or legislative body. In 1981, several persons residing in the Cantwell area incorporated under AS 10.20 as a nonprofit corporation known as the "Community of Cantwell, Inc." One of the apparent purposes of such incorporation was to provide a vehicle for the receipt and administration of state grant monies for the improvement of public services and the construction of public facilities in the area.

Under the authority of AS 37.05.315 (Unincorporated Community Grants) and chapter 101, SLA 1982, the Department of Community and Regional Affairs proposes to grant up to $160,000 to the Community of Cantwell, Inc. for the express purpose of constructing a fire station and purchasing fire protection equipment for the Cantwell community. Under the proposed grant agreement, the Community of Cantwell, Inc. is regarded as "the contractor" for the performance of the project, subject to the specific terms itemized in the contract. One of those terms requires the contractor to perform the project in compliance with all applicable laws and regulations. The grant contract, however, does not contain any express language concerning the applicability of AS 36 or the requirement that employees working on public works projects be paid prevailing wages.

In addition to the fire station project, the Community of Cantwell, Inc. may also receive grant monies from the Department of Environmental Conservation under AS 46.07.010-.080 (Village Safe Water Act) for the purpose of building a public water well and a plumbing and holding tank. Additional grant funds have also been requested for the construction of a solid waste disposal system. It is

our understanding that the nonprofit corporation plans to administer and supervise these various projects, either by directly hiring persons to perform the construction work or by entering into appropriate construction subcontracts.

AS 36.05.010 requires contractors or subcontractors on public construction or public works projects to pay the prevailing rate of wages to employees working on such projects. AS 36.95.010(3) defines "public construction" and "public works" as

> ...the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161.

AS 36.05.070 further requires that contracts for public construction specifically include certain provisions concerning the payment of prevailing wages to employees on the project.

In a recent opinion, the Alaska Supreme Court adopted an expansive view of the concept of "public construction" under AS 36. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). The court declared that the fundamental purpose of Alaska's "Little Davis-Bacon Act" (AS 36.05) is to assure that employees engaged in public construction receive at least the prevailing wage. The focus of the Act is to the benefit of employees, not the contracting principals. 644 P.2d at 232.

In accordance with the broad interpretation of AS 36 adopted by our supreme court in Sitka, we believe that any employee who performs work on the construction or repair of a public facility that is funded with state grant monies is entitled to receive prevailing wages, regardless how the project is structured or what entity actually administers the grant funds. We note that federal regulations under the Davis-Bacon Act (40 U.S.C. § 276a) have adopted a similar broad view of "public work" as consisting of any construction work which is carried on directly by authority of, or with funds of, a federal agency to serve the interest of the general public, regardless of whether title to the project is in the federal agency or some other entity. 29 C.F.R. § 5.2(h) (1981). Accordingly, we conclude that

whenever state grant monies are transferred to a non-governmental entity, i.e., a non-profit corporation, for the express purpose of constructing public facilities within the state, the prevailing wage provisions of AS 36 apply and should be contained in the appropriate grant documents.

RWL:jg

cc: Patrick Poland, Dept. of Community & Regional Affairs
Tim Bergin, Dept. of Environmental Conservation
Community of Cantwell, Inc.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 11, 1983

Honorable Albert P. Adams
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Application of Little Davis-Bacon Act (AS 36.05) to designated grants
Our file: 366-267-83

Dear Representative Adams:

You have requested our opinion whether construction contracts made by non-governmental entities which are financed by state-funded grants are subject to the provisions of the Little Davis-Bacon Act (AS 36.05) regarding payment of prevailing wages to employees working on public construction. You cite examples of grants made for a day care center, a "human services complex," and a public works facility. These grants were made by appropriations in which the grantees were specifically designated. In each case the grantee is a private non-profit corporation.

The grants to which you refer are commonly known as designated grants and are governed by the provisions of AS 37.05.316 (Grants to Named Recipients). Another category of designated grant which is used to construct capital improvements in unincorporated communities is an Unincorporated Community Grant under AS 37.05.317. Because an unincorporated community is not a legal entity and therefore lacks the capacity to receive and administer a grant of public funds, AS 37.05.317(2) authorizes the Department of Community and Regional Affairs to make the grant to a private non-profit corporation or federally recognized tribal council which is representative of the unincorporated community. We recently expressed our view that construction contracted out by such an organization for an unincorporated community with grant funds provided by the state under AS 37.05.317 is subject to the provisions of the Little Davis-Bacon Act. 1982 Inf. Op.

Att'y Gen. (October 5) 1/ A third category of grants, Grants to Municipalities under AS 37.05.315, provides state funds for a variety of local projects and activities directly to established political subdivisions of the state. The requirements of Little Davis-Bacon clearly apply to construction projects contracted out under those grants.

You now ask whether construction contracted out by non-governmental entities with grants made under AS 37.05.316 are also subject to that Act. We conclude that the answer to your question will depend upon the nature of the particular project being carried out by the grantee. If the project or improvement involves the undertaking or provision of traditional government facilities, services, or activities it is covered by the Act, despite the non-governmental status of the entity contracting out the work. However, if the work contracted out is not like that traditionally carried out or provided by government, it is not covered by Little Davis-Bacon. In order to define the line between those projects covered by the Act and those which are not, we recommend the adoption by the Department of Labor of regulations setting out the standards applicable to determining whether projects undertaken by affected grantees will be considered as covered or non-covered. By adopting regulations the department will put those entities on notice of their potential obligations under the Act and help assure uniform and consistent determinations of coverage or non-coverage. Our reasoning follows.

The fundamental requirement of the Little Davis-Bacon Act is set out in AS 36.05.010 which provides, in pertinent part, as follows:

> Sec. 36.05.010. WAGE RATES ON PUBLIC CONSTRUCTION. A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing wages for work of a similar nature in the region in which the work is done.

1/ We note that our October 5, 1982 opinion incorrectly referred to grants made under AS 37.05.315, which deals with grants to organized municipalities. This was obviously a typographical error as the problem which it addressed involved an Unincorporated Community Grant, which is covered by AS 37.05.317.

"Public construction" is defined in AS 36.95.010(3) as follows:

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

The answer to your question essentially revolves around whether work carried out with public funds by a designated grantee is "public construction" within the meaning and purpose of the Little Davis-Bacon Act. This is a question which has yet to be addressed by the Alaska courts and, while we believe the courts would follow the analysis which we apply here, we obviously cannot guarantee that our view will ultimately be adopted by them. 2/

In 1982, the Alaska Supreme Court adopted an expansive view of the concept of "public construction" under Little Davis-Bacon. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). In the Sitka decision, the court expressly stated that "[t]he fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage." It went on to emphasize that "[t]he focus of the act, quite clearly, is to the benefit of the employees, not the contracting principals." Sitka, 644 P2d at 232.

2/ It is particularly important to keep in mind that our view may or may not be adopted by the courts where, as here, the statutes with which we deal create certain rights and obligations on non-governmental third parties (e.g., contractors and workers) which, unlike state agencies, are not bound to adhere to the advice of the Attorney General. That precise situation arose in City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982) where the Alaska Supreme Court expressly rejected an earlier written determination by the Attorney General's Office that the Act did not apply to the facts of that case.

In deciding that the contract at issue in Sitka was subject to Little Davis-Bacon, the Supreme Court expressly rejected the argument that it was not covered because it was not in the form of a traditional construction contract. The City of Sitka had argued that the contract should be viewed in isolation as a timber sale contract, unconnected with the contract for the construction of a dam, even though the timber to be sold and cleared under that contract was to be removed in order to make the site suitable for construction of the dam. The court refused to follow Sitka's argument, however, saying that to do so "unduly exalts form over substance." Sitka, 644 P2d at 232.

Similarly, we believe that the court would reject the application of rigid tests which would only inquire whether a particular project was owned by a governmental entity or whether the project was being carried out under contract with a governmental entity. 3/ Certainly, in most situations it is to be anticipated that a "public work" will be owned by a governmental entity. However, nothing in Little Davis-Bacon expressly requires governmental ownership of the project. While ownership may often be indicative of the "public" nature of a particular project, we do not believe it is necessarily determinative. Similarly, the Act is not limited to projects under contract with the state or a political subdivision. In fact, the statute, at AS 36.95.010(3) expressly defines "public construction" as projects under contract for the state or a political subdivision, indicating that the legislature clearly had in mind application of a broader test for Little Davis-Bacon coverage than a simple mechanical inquiry into the status of the contracting entity.

3/ A rigid application of strict rules for determining whether a project is "public construction" could afford the opportunity to circumvent or evade Little Davis-Bacon simply by funding construction of projects such as roads, fire halls, police stations, or school buildings through designated grants. We do not believe our Supreme Court would permit such a result. "'While the ingenuity of man is apparently limitless, the court has held with unvarying regularity that one may not do by indirection what is forbidden directly.'" Sheldon Jackson College v. State, 599 P.2d 127, 132 (Alaska 1979), quoting Wolman v. Essex, 342 F.Supp. 399, 415 (S.O. Ohio 1972).

As in the Sitka case, the test to be applied in determining whether a particular project is "public construction" subject to the provisions of the Act is a functional one which inquires into the nature of the project under contract and its relationship to the purposes of Little Davis-Bacon. We believe that test is one which looks, among other things, to the nature of the project itself to determine whether it is the kind of project or activity which is traditionally undertaken by government. If it is, and if public monies are utilized, the Act applies, irrespective of questions of "ownership" and contractor status.

We arrive at our conclusion based both on our reading of the Sitka case and because of the similar approach taken by the U.S. Department of Labor in applying the federal Davis-Bacon Act (40 U.S.C. § 276a, et seq.). The definition of "public building" or "public work" for purposes of the federal Act is set out at 29 CFR § 5.2(h) and provides, in pertinent part, as follows:

> (h) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

The Alaska Supreme Court expressly stated in Sitka that, because Little Davis-Bacon is modeled after the federal Act and because the federal regulations implementing that Act were adopted before AS 36.95.010(3) defining "public construction" became law in 1972, it "will look to the federal regulations construing Davis-Bacon for assistance in interpreting Little Davis-Bacon." Sitka at 231, n.8.

The test which we have stated, while relatively simple to set out, may prove difficult to apply to some kinds of projects. Obviously, some projects such as roads, airports, sewers, municipal buildings and school buildings are traditionally governmental in nature. Others, such as construction of women's shelters, day care centers, and animal shelters, while serving a "public purpose", 4/ have probably not traditionally been con-

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4/ Of course, any expenditure of state funds, whether through a governmental entity or a private organization must be made for a "public purpose." Article IX, sec. 6, Alaska Constitution.

structed by government. However, there will undoubtedly remain a "gray area" of projects which cannot be readily characterized as either governmental or non-governmental like health care facilities and power generation and distribution facilities. These kinds of projects are sometimes provided by government, sometimes by private entities, and sometimes by both in the very same community. In order to clarify the gray area and provide a basis for entities who receive designated grants and who may therefore be subject to Little Davis-Bacon to determine whether their project is subject to the requirements of the Act, we recommend to the Department of Labor, by copy of this letter to Commissioner Robison, that it adopt regulations setting out the kinds of tests or factors which it will apply in enforcing the Act. 5/ By doing so, that department will assure that designated grantees have notice of their potential obligations under Little Davis-Bacon and that determinations made by it are uniformly and consistently applied.

If you have any further questions regarding the scope of Little Davis-Bacon, please let us know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Jim Robison
Commissioner
Department of Labor

5/ The Alaska Supreme Court expressly acknowledged Labor's authority, under AS 36.05.030, to determine whether a contract is subject to Little Davis-Bacon in Sitka at 229. The kinds of factors which might be applied could include, among others, ultimate ownership of the facility, who the intended operator and/or user will be, and who will bear the costs of operating and maintaining the facility.

72256 NL TDA NOME AK 72 03-02 332P AST

PMS REP JACK FULLER

JUNEAU AK 0154

DEAR JACK:

1tr. Thanks for telegram — What's the status of getting funding from the city-

MAR 2 PM 3 35

DUE TO HAVING TO PAY DAVIS-BACON WAGES, PERFORMANCE BONDING AND ARCHITECT FEES WE NEED A MINIMUM OF DLRS75,000 TO 100,000 IN ADDITIONAL MONEY TO COMPLETE THE NOME RECEIVING HOME/GROUP HOME. IF NECESSARY, I CAN MAKE A TRIP TO JUNEAU WITH DOCUMENTATION FOR THE NEED. PLEASE ADVISE. SINCERELY,

BILL WEBB FOR BOARD OF DIRECTORS, NOME RECEIVING HOME
IVAN WIDOM, DENIS CAMBION, CHUCK FAGERSTROM, NOREEN DALY,
ESTHER (KOBUK) CRAFT, AND DARLENE ISABELL

Rep. John G. (Jack) Fuller
c.c. Ivan Widom

HOME
P.O. BOX 689
NOME, ALASKA 99762
(907) 443-2968

WHILE IN JUN
POUCH V
JUNEAU, ALASKA
(907) 465-37
465-3764 46

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 15, 1983

BILL ANALYSIS

RE: HB 304

SPONSOR: Representative Herrmann

Program Effects of the Bill

This bill would exempt communities with a population of 5000 or less from the provisions of AS. 36.

Comments

It is the position of this Department that the provisions of AS. 36 currently discourage local hire in rural communities

The requirement that prevailing wages be paid discourages "on the job training" of local labor and encourages importation of outside labor.

If this bill were to pass we feel it would, at least, remove one road block in the path of increasing local employment through state construction grants.

Mark Lewis, Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 304
Title: Wage Rates on Public Construction
Sponsor: Representative Herrmann
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Community & REgional Affa
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected: Local Government Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Sponsor did not specify.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Doug Griffin Phone: 465-4707
Division: Local Government Assistance Date: 4/15/83

Approved by Commissioner: Date: 4/15/83
Department: Community & Regional Affairs

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)

MEMORANDUM State of Alaska

TO: Norman Gorsuch
Attorney General
Department of Law

DATE: March 2, 1983

FILE NO:

TELEPHONE NO:

FROM: Richard A. Neve'
Commissioner
Department of Environmental
Conservation

SUBJECT: Title 36

In October 1982, the Attorney General's office wrote an opinion (your file 166-261-83) stating that the provisions of AS 36 (concerning public contract requirements), applied to all public construction projects. On November 8, 1982, this Department requested clarification on the attendant issue of whether a non-profit entity is a political subdivision of the State (see attachment) and subject to the provisions of Title 36.

Most of our Village Safe Water projects are constructed by non-profit entities. These groups use local labor and have used the prevailing pay scale in a particular community. As you can see, if we are required to build facilities using a statewide scale versus a local or area-wide scale, fewer facilities will be constructed. I offer this observation only to point out the importance of receiving your opinion. I have also attached a resolution by the Yukon-Kuskokwim Delta Mayor's Conference on their view of the issue.

Given the importance of this issue to our Department's Village Safe Water Program and its potential impact on rural Alaskan villages, we would appreciate a response to our November 8, 1982, request for clarification of this matter.

Attachment

cc: Gary Hayden
Greg Capito

[illegible] Cook

BRISTOL BAY NATIVE ASSOCIATION

P.O. BOX 189

DILLINGHAM, ALASKA 99576
by Executive Committee

TITLE 36, Public Contracts
Laborers' & Mechanics'
Minimum Rates of Pay

Resolution No. 83 - 16

WHEREAS, village governments are employers of village residents in their own respective villages; and

WHEREAS, village governments have their own pay scales which have worked successfully in their own respective villages; and

WHEREAS, village funding is very limited; and

WHEREAS, villages receive State monies for village projects; and

WHEREAS, wages for these projects are mandated by Title 36; and

WHEREAS, this mandate can greatly restrict the successful completion of these village projects; and

WHEREAS, this mandate further interferes with the successful completion of other villages projects; and

WHEREAS, this mandate also upsets the future village economy; and

WHEREAS, Representative Herrmann has introduced HB 304 which will solve this problem with Title 36 if enacted into law by the State Legislature.

NOW THEREFORE BE IT RESOLVED, that the Executive Committee of BBNA fully supports the passage of HB 304 and ureges the Legislature and the Governor to act accordingly on HB 304.

SIGNED: _____
PRESIDENT

CERTIFICATION:

I, the undersiigned secretary of said Association, do hereby certify that the Executive Committee is composed of ten (10) members, of whom 7 were present at a meeting this 19 day of April, 1983, and that the foregoing resolution was adopted by the affirmative vote of 7 members.

SIGNED: _____
SECRETARY

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P. O. BOX 197 . DILLINGHAM, ALASKA 99576 .. AREA CODE (907) 842-5251

January 19, 1983

Senator Bob Mulcahy
Pouch V
Juneau, Alaska 99811

Dear Senator:

The last session of the legislature included a legislative appropriation to Nushagak Electric Co-operative in the amount of $539,000 to expand the Dillingham waste heat system from the power house to various public entities and to pick up some costs remaining over the first phase of the project.

Funds for the first phase of the project were administered by the Alaska Power Authority. However, the Dept. of Community and Regional Affairs was assigned the responsibility for administering the $539,000.

We have encountered some serious problems however in getting these funds released. The Dept. of Community and Regional Affairs have requested that Nushagak Electric Co-operative sign a "contract" before they will release funds. Normally there would be no problem here except that this department states that we must pay the "prevailing wage rates" as defined by Title 36 (Alaska's little Davis Bacon Act) of the contract. The problem with these wage rates is that they are highly inflationary and are established with the purpose of utilizing union crews. We have no unions in Dillingham; we had, in fact, planned on extending the waste heat system with our own personnel. Unfortunately, the wage and fringe benefit program mandated by the State would completely upset our own wage and salary plan as well as those presently utilized in the community.

With this in mind we asked our attorneys to research this matter which they did in writing to Ms. Sue Perry-Piper at the Dept. of Community & Regional Affairs office in Anchorage. Repeated contacts with her have produced very little in the way of results. She states that her hands are tied and that the decision whether or not to grant NEC an exemption rests with Mr. Patrick Poland who is apparently supposed to get an opinion from the attorney general's office. Our efforts to contact Mr. Poland to date have been fruitless. I have been

Senator Mulcahy
Pouch V
Juneau, AK 99811

January 19, 1983

advised this date that he is in Juneau - I called Juneau and his office there says he is in Anchorage.

Senator, I believe there may be several problems associated with this situation. First of all, Title 26 is probably bad law and was initiated primarily by special interest groups who gave little thought to the effect it may have on small rural communities unless, of course, the intention was to force small communities to employ Anchorage union contractors. Secondly, this provision completely destroys inititive to efficiently perform tasks for the public good - it reduces the ability of this Co-operative to complete the job for which the funds were initially intended. Third, the responsiveness of the Dept. of Community and Regional Affairs has in my opinion been lacking.

I don't know what you can do about my first two complaints above, but would sure appreciate your efforts in getting Mr. Poland to communicate with us.

As a matter of interest, I am enclosing a copy of our attorney's interpretation of the application of Title 36 to Nushagak Electric Co-operative.

Your consideration of this matter would be deeply appreciated.

Yours very truly,

David F Bouker

DAVID F. BOUKER
Manager

Encls Poland "Pat" Amick - Telephone

DFB:ka

KOLIGANEK VILLAGE COUNCIL
KOLIGANEK, ALASKA 99576 - VILLAGE TELEPHONE (907) 596-8001

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V
Juneau, Alaska 99633

April 21, 1983

Dear Adelheid;

This letter is in regards to Title #36. Koliganek requested has ~~requested~~ and received legislative appropriations based on our own wage scale. Community & Regional affairs has thrown us a curve, by insisting on adherance to title #36, which we are unable to comply with, and will make it impossible to implement our construction projects. Some of our reasons for being opposed to title #36 include, but are not limited to the following:

1. In the sense of public and state-wide fiscal responsibility we find #36 inflationary.
2. Construction in remote locations such as Koliganek, is by virtue of it's site, much more costly in freight and administration. These costs have to be offset someplace or a project cannot be implemented.
3. Koliganek, as our record will prove us out, can really stretch a dollar, and get the most for our legislative dollar. #36 is a goverment mandate to waste.
4. Isolated small communities like Koliganek, have a much stronger sense of community resonsibility & togetherness than larger urban communities on the road system. Hence we are willing to work together for the good of the community a smaller wages, in order to have a project that the community can benifit from.
5. If the contractors we are forced to seek out, are required to pay title #36, than they will choose to bring in outside union workforces, thereby continuing the unemployment of the local workforce, and in turn, the local work forces dependance on the State's Department of Public Assistance.

6. We in Koliganek would not presume to mandate wage & hour legislation for Anchorage, Fairbanks, or Juneau, therefore we feel threatened by the highhanded way in which Koliganek is told it must structure it's pay scale.
7. LSR&T of the DOT, can pay lower wages in order to have a local project, than so should the local entity also be able to pay lower wages to have a project.
8. Last but not least, just about everyone is crying to control inflation, and reduce goverment spending. Koliganek is more than willing to do just that, should the State legislature than dictate otherwise?

Hopefully you will make copies of this letter and provide them to the committe members, or possibly even non-committee members who may be unsure or opposed to repeal of title #36, or of more flexibility of it.

Keep up the good work, we all appreciate what you are doing.

Sincerely Yours,

C.T. Seidl

C.T. Seidl
Village Administrator

MSG 83-00004534 PRTY 1 03/30/83 15:53:24 ORIG: LI00 IN= 0004 OUT= 0093
FROM: DOROTHY AND MASSA IN DILLINGHAM TO: JUNEAU
TARGET: LJHL SUBJ: POM MESSAGE

TO: REPRESENTATIVE HERRMANN

FROM: DAVE BOUKER, NUSHAGAK ELECTRIC, DILLINGHAM, ALASKA 99576

SUBJECT: HB304

VERY PLEASED WITH YOUR INTRODUCTION OF HB304. WE WILL BE HAVING 2 BOARD OF DIRECTOR MEMBERS OF NUSHAGAK ELECTRIC IN JUNEAU NEXT WEEK. WE'LL WATCH FOR PROGRESS AND MOVEMENT ON HB304.

THANKS FOR YOUR FINE HELP.

**********EOM

MSG 83-00012365 PRTY 1 04/26/83 16:49:08 ORIG: LI00 IN= 0006 OUT= 0125
FROM: ANNA MAY, DILLINGHAM TO: JUNEAU INFORMATION
TARGET: LJHL SUBJ: POM

TO: REPRESENTATIVE ADELHEID HERRMANN
SENATOR JOHN SACKETT
POUCH V, JUNEAU, ALASKA 99811

FROM: CITY OF CLARKS POINT, CLARKS POINT, ALASKA 99569

SUBJECT: HB 304 AND SSSB 172

WE ARE IN FULL SUPPORT OF HB304, "THE LITTLE DAVIS BACON ACT".
WE ALSO FULLY SUPPORT SENATOR SACKETTS BILL, SSSB172, AND WE HOPE THAT
THEY WILL GET THESE BILLS PASSED.

POM SENT BY ANNA MAY SORENSEN, DILLINGHAM LIO
OMNI NO. 12365.

STATEMENT OF ALASKA NATIVE BROTHERHOOD, ROBERT WILLARD, EXECUTIVE VICE PRESIDENT, RE: TITLE 36 - ALASKA STATUTES.

The Alaska Legislature has before it Senate Bill No. 172 and House Bill No. 378, "An Act relating to wage rates on public construction," or the so-called "Little Davis-Bacon Act."

The Alaska Native Brotherhood is the recipient of a State appropriation in the amount of one million dollars ($1 Million) to construct a Juneau Pilot Project - Community Building. Upon notification that the Governor would sign the appropriation measure into law, the ANB immediately proceeded with development planning. In this process encounter came to Title 36 of the Alaska Statutes namely the Little Davis-Bacon Act. (hereinafter Davis-Bacon).

If the ANB Project were to fall under the interpolation and application of Davis-Bacon, it goes without question that the costs would increase by 25 - 30%. A value engineering report by qualified consultants have confirmed this reality.

In our opinion, and that of our consultants, if strict application of Davis-Bacon had been applied, this project would not have been feasible, because of the escalated costs.

It should be made clear that the Alaska Native Brotherhood, or its affiliates, is not opposed to unions -- or organized labor. There are some union or contractor practices which we are not in total agreement, but in the overall sense , the ANB is not necessarily averse to unions.

Upon reflection of the ANB project, and that of some projects which have been administered by the Tlingit and Haida Regional Housing Authority over the past ten years, it can be shown that full application of the Little Davis-Bacon Act resulted in increased construction costs

and created artificial costs of labor, thus decreasing the number of housing units that could have been built. Tlingit and Haida administrators estimate that by virtue of full application of the Davis-Bacon Act 23 - 27% more housing units could have been built. That equivalates to approximately one hundred and fifty (150) more families that could have had homes. The imposition of Davis-Bacon interpolated and applied to the rural areas have resulted in the creation of artificial costs of labor.

It is not the intent of the ANB to move towards the minimum wage. It is our concern that the "prevailing wage" as set by the Department of Labor in the populated areas and, as applied to the adjacent rural proximity of that urban center may not be reflective of the fair market value of labor and skilled services in the broad spectrum of enterprise in Alaska.

Moreover, this reality may be influenced by special interest groups such as unions and/or organized general contracto and artificial influences such as labor-related requirements imposed by this legislation.

The Alaska Native Brotherhood, and its affiliates, urge passage of Senate Bill 172 and House Bill 378 thereby repealing Alaska Statutes 36.05.

Signed: Robert Willard

Robert Willard
Executive Vice President
Alaska Native Brotherhood
318 W. Willoughby Avenue
Juneau, Alaska 99801

BUS: (907) 586-2049
586-3301

Bristol Bay Borough
BOX 189 • NAKNEK, ALASKA 99633

JIM D. CLARK
MAYOR

TELEPHONE
(907) 246-4224

April 25, 1983

Representative Adelheid Herrmann
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann:

I support House Bill 304 exempting communities with a population of less than 5,000 from the Davis-Bacon Act.

Small communities with limited financial resources find it difficult to compete in the labor market, and the wage scales in some cases are much higher than the prevailing scale of the small communities.

Sincerely,

Jim D. Clark
Mayor

bjt

CITY OF AKUTAN

P.O. Box 557
Dutch Harbor, Ak. 99692
Phone (907) 698-2228

Anchorage Office
308 G Street, Suite 311
Anchorage, Ak. 99501
Phone. (907) 279-9245

April 28,1983

Representative Walt Furnace, Chairman
House Labor and Management Committee
Pouch V
Juneau, Ak 99811

Dear Representative Furnace:

It has come to our attention that the House Labor and Management Committee will be holding a public hearing next Monday on House Bill 304 which deals with wage rates for publicly funded construction projects. We are not on the teleconference network, and so will not be able to testify at that time. However, we are interested in the bill, and wish to indicate support for it.

AS 36.05 as presently written is a problem for us. We usually administer directly, relatively small projects, but they are over the $2,000 now exempted by statute. These projects are not usually of the scope to be attractive to outside bidders, because they are under $100,000 in value. When the cost of the project goes over that amount it goes out to bid and an outside contractor builds the project. The contractor brings his own crew with him so that he can get the job done in the shortest possible time and at the lowest possible cost to him. This takes the local labor force out of the running for the construction jobs. As you well know, unemployment in rural Alaska is very high, and employment on these projects would help to alleviate the problem.

The money that is made on the projects, through the ordering of materials and wages paid, goes out of the community which generated it, except for the money paid locally for crew room and board. Sometimes the contractors bring in trailers for the crew, and the community does not even get that income.

We bring this up because the argument is often made that capital improvement projects in rural areas stimulate the local employment picture.

On projects between $2,000 and $100,000 which we carry out ourselves, AS 36.05 requirements often make it necessary for us to scale back the scope of the project because of the high costs. These projects are construction of relatively small, under 1000 square foot, buildings, or renovation of existing facilities. There is no local lumber yard so freight costs have to be added to all materials costs.

We have a city salary schedule which was adopted by the City Council. This schedule is considerably lower than the little Davis-Bacon wage scale, but reflects what the leaders of the community feel is adequate compensation for work done, and is commensurate with what people can earn working for fish processors, the only other possible employer.

When we have to add freight costs for materials and Davis-Bacon wage provisions to the cost of a project, we find that we have to reduce the number of people we can hire, and cut back in as many other ways as we can think of, to stay within our budget.

Local people are often willing to work for less than Davis-Bacon for several reasons. It beats not working at all, and they are willing to make a contribution to the community welfare in reduced compensation, but they do not feel they can volunteer outright. They also know that the city is able to spread the money available for wages more widely through the community. Helping each other out is still important to the people of Akutan.

We used to think that Davis-Bacon and the little Davis-Bacon Acts would be helpful to us, but as projects have been carried out under these acts, costs of projects have escalated and village people, once again, ahve been left out of the process.

We support passage of HB 304. We appreciate your consideration of these views on the issue.

Sincerely,

Nancy Gross

Nancy Gross
City Administrator

cc: Mayor Jacob Stepetin
Representative Adelheid Herrmann
Senator Bob Mulcahy
Members of the House Labor and Management Committee

BRISTOL BAY AREA HEALTH CORPORATION

P.O. Box 10235
DILLINGHAM, ALASKA 99576

PHONE: (907) 842-5201

April 28, 1983

Representative Adelheid Herrmann
Pouch V
House of Representatives
Juneau, AK 99811

Dear Representative Herrmann:

Bristol Bay Area Health Corporation in the steps of Bristol Bay Native Association supports the passage of HB 304 as it relates to Title 36, Public Contracts, Laborers' and Mechanics' rates of pay.

Thank you

Sincerely,

Robert J. Clark
Executive Director

RJC:ksm

"HISTORICAL OVERVIEW OF THE DAVIS-BACON AND RELATED ACTS"

The Davis-Bacon Act is one of the oldest American labor laws and was the first federal law enacted to regulate the wages of non-government workers. Like most early federal labor laws, the Act was preceded by various state statutes. Kansas, for example, had enacted the first prevailing wage law for state construction projects in 1898. Federal congressional hearings were held as early as 1898 although legislation did not result until 1931. Today, all but 10 states have enacted prevailing wage laws governing state construction projects.

The principal impetus for government regulation of wages for workers employed on public construction projects was the economic and social conditions of the 1930's. During the Depression, the national conscience was aroused by the effect of widespread unemployment on the wages of workers. While the competition for limited markets forced employers to cut labor costs, the scarcity of work created an oversupply of labor that resulted in low wage rates. The absence of job opportunities further increased public reliance upon federal construction as a source of employment at a time when the federal government was required to award its contracts to the lowest bidder. This requirement prevented federal contracting agencies from dictating that successful bidders pay their employees wages comparable to those paid for similar labor in private industry in the same area as the government projects under construction. Some successful bidders took advantage of this situation by "selfishly import[ing] labor from distant localities and...exploit[ing] this labor at wages far below local wage rates." Local workmen were unable to compete with migratory laborers, and qualified local contractors found it impossible to compete with outside contractors who based their estimates for labor costs upon the low wages paid to imported laborers.

The Davis-Bacon Act, enacted on March 3, 1931, was designed to curtail such unscrupulous practices among government contractors during a decade in which public works were on an upswing and economists and politicians were particularly wary of depressed labor markets. The Act was also designed to prohibit wage differentials from becoming a major competitive advantage in bidding on government construction contracts, thereby insuring that the economic power of government as an employer would not contribute to a further depression of local markets. To accomplish these goals, the federal Act required government contractors to pay their "laborers and mechanics" the prevailing private industry wage rates.

The compulsory nature of the Act's prevailing wage rate provision was emphasized throughout the 1931 congressional debates in Davis-Bacon Legislation. Because the Act mandated that under all covered contracts the contractor pay the prevailing wage rate, the only variable was the exact rate to be paid. In the event of a dispute concerning the applicable wage rate, the government contracting officer was to attempt to adjust the rate in accordance with the character of the work performed and the locality in which it was performed. If the contracting officer could not resolve the dispute, the matter was then to be referred to the Secretary of Labor for a conclusive determination.

In the 50 years since the enactment of the federal Davis-Bacon Act, a series of executive orders and congressional amendments have generally broadened its scope and strengthened its impact. Additionally, more than 80 other federal laws relating to prevailing wages have been passed during this period, covering a wide range of federal projects and activities. The amendments to the DavisBacon Act as well as the variety of federal legislation requiring prevailing wages to be paid serve to indicate the continuing concern of Congress to preserve prevailing wage standards for government contract work.

In Alaska, legislation requiring the payment of prevailing wages on public construction work has also been in effect since 1931. The original Alaska prevailing wage laws were passed by the territorial legislature on an emergency basis, presumably in direct response to the passage of the federal Davis-Bacon Act by the U.S. Congress two months earlier. The Alaska version was introduced as Senate Bill 69 by Senator Loden of Nome and was swiftly enacted into law effective April 29, 1931 (SLA 1931, ch. 69). Unfortunately there appears to be no written record or any legislative debate or committee hearings on the proposed Alaska legislation. The prevailing wage provisions were later included in the 1933 and 1949 compilations of Alaska law and, upon statehood, were carried over into state law and are now codified at AS 36.05.010-.110. In the years since the enactment of the original prevailing wage laws in Alaska there have been periodic amendments which further define the scope of the Little Davis-Bacon Act and establish enforcement procedures, largely in response to similar changes in federal law.

In addition to the legislative history, both federal and Alaska courts have had occasion to interpret the basic purposes and policies underlying prevailing wage legislation. In a leading federal case, the U.S. Supreme Court recognized the important wage protection purpose of the Davis-Bacon Act: "The language of the Act and its legislative history plainly show that it was not enacted to benefit contractors, but rather to protect their employees from substandard earnings by fixing a floor under wages on Government projects." U.S. v. Binghamton Construction Co., 347 U.S. 171, 177 (1953). The Alaska Supreme Court has quoted this language in at least two separate cases involving Alaska's Little Davis-Bacon Act, noting that the Alaska statutory scheme is closely patterned after the federal Act. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227, 231-33 (Alaska 1982); Fowler v. City of Anchorage, 583 P.2d 817, 821-22 (Alaska 1978). In reviewing the policies underlying the Little Davis Bacon Act, the Alaska Supreme Court has further stated: "The fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage. The focus of the Act, quite clearly, is to the benefit of the employees, not the contracting principals." City and Borough of Sitka, supra, at 232. From these judicial statements, it is apparent that both the federal and state prevailing wage laws have as their primary objective the protection of local workers on government projects by establishing a required minimum wage in accordance with that prevailing in the area where the work is done. Both the legislative history and judicial interpretation of prevailing wage legislation strongly suggest that this primary objective is as fundamental and vital today as it was in 1931 when the legislation was first enacted.

PWL-t1
F-40

BUILDERS SPECIAL REPORT

DAVIS-BACON WORKS— FOR MINORITIES

One of the most calculated and cynical arguments which opponents have leveled against the Davis-Bacon Act is that it hinders minority employment opportunities. The fact is that the Davis-Bacon Act poses no barrier to minorities, either to those who have already achieved journeymen status or to those seeking training in construction skills. *The Davis-Bacon Act has an effect on minority hiring, and it's all good.*

Union-busters who try to convince blacks, hispanics, women and others that wage cutting means more work for them are liars. And their record proves it.

Official government statistics show that minority participation in union programs is almost *double* the participation rate in nonunion programs. In 1978, 21 percent of all apprentices in union programs were minority workers, as compared to only 11.7 percent minority participation in nonunion programs. Union sponsored programs account for more than 90 percent of all minority graduates from registered apprenticeship programs.

The simple fact is that throughout the sixties and seventies minorities have successfully sought entry into the construction industry for one reason—the promise of a fair standard of living and skilled productive work. The major impact of increased minority participation in construction industry training programs will be fully realized in the 1980's.

It's ironic that the Associated Builders and Contractors, the U.S. Chamber of Commerce, and the rest of the far-our right-wing crowd are trying to make minority workers the patsies for a round of vicious wage cutting, at a time when they are just entering the building trades in significant numbers.

See other side

Opponents of prevailing wage laws like to claim that their calls for repeal are partially motivated by a desire to help minorities, but leaders of women's and minority organizations feel very differently about this issue:

". . . For years we have had to contend with the situation in which a Navajo carpenter working side by side with a non-Navajo carpenter received substantially less wages for the same work. **Davis-Bacon** prevents that from happening on federally-funded projects."

The Navajo Nation
(Statement of Tribal
Chairman Peter MacDonald)

"Women are beginning to gain entry into the construction trades in ever increasing numbers. Many of these women are now the principal breadwinners in their families. As women learn the skils which in the past have entitled men to decent wages, it would be inexcusable if legislation such as the **Davis-Bacon Act** was weakened."

Mildred Jeffrey
National Women's Political
Caucus

"Whereas the **Davis-Bacon Act** protects construction workers from exploitation by requiring that prevailing wages be paid to employees working on federally financed construction projects; and

Whereas, through the efforts of the NAACP, the labor movement and other interested parties, blacks are at long last gaining employment in the construction trades; . . .

Be it resolved that the NAACP goes on record against any effort to repeal the Act and deny workers in the construction industry a fair wage."

National Association for the Advancement of Colored People
(Resolution of 70th Annual
Convention)

"We understand that a bill has been introduced to repeal the **Davis-Bacon Act.** As a member of a community that has long suffered the injustices and inequities of low wages . . . we urge you and appeal to you that you may work to defeat this attempt."

Mexican-American Unity Council

#095

Special Report

Connecting the Job Site with the Congress

THE BUILDERS

BUILDING & CONSTRUCTION TRADES DEPT. AFL-CIO ORGD. FEB. 10, 1908

Room 603-815 16th St. N.W., Washington, D.C. 20006 (202) 347-1461

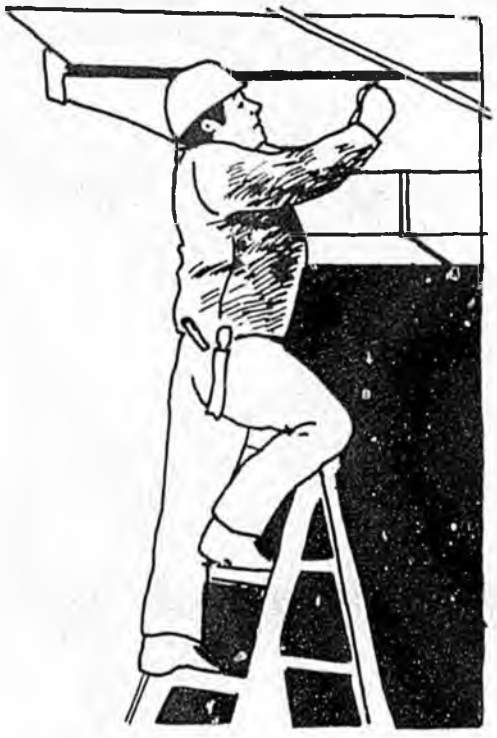
Fiction and Fact STRAIGHT TALK ABOUT DAVIS-BACON

FICTION: Repeal of Davis-Bacon will save taxpayers money.

FACT: A major reason for passage of the Davis-Bacon Act was to save taxpayers from the huge waste of funds caused by contractors who made low bids in the expectation that they could manipulate wages. These contractors were doing such shoddy work, and so many of them were failing to fulfill contract terms, that federal agencies had to go to a great deal of extra expense to finish the jobs.

FICTION: Davis-Bacon forces construction costs up by setting prevailing wages at top union rates.

FACT: About half the time, the U.S. Department of Labor sets prevailing wage rates at non-union levels. Moreover, a 1978 study by the Massachusetts Institute of Technology and the National Association of Homebuilders points out that higher wages result in higher productivity rates.



FICTION: *Application of prevailing wage rates under Davis-Bacon is inflationary.*

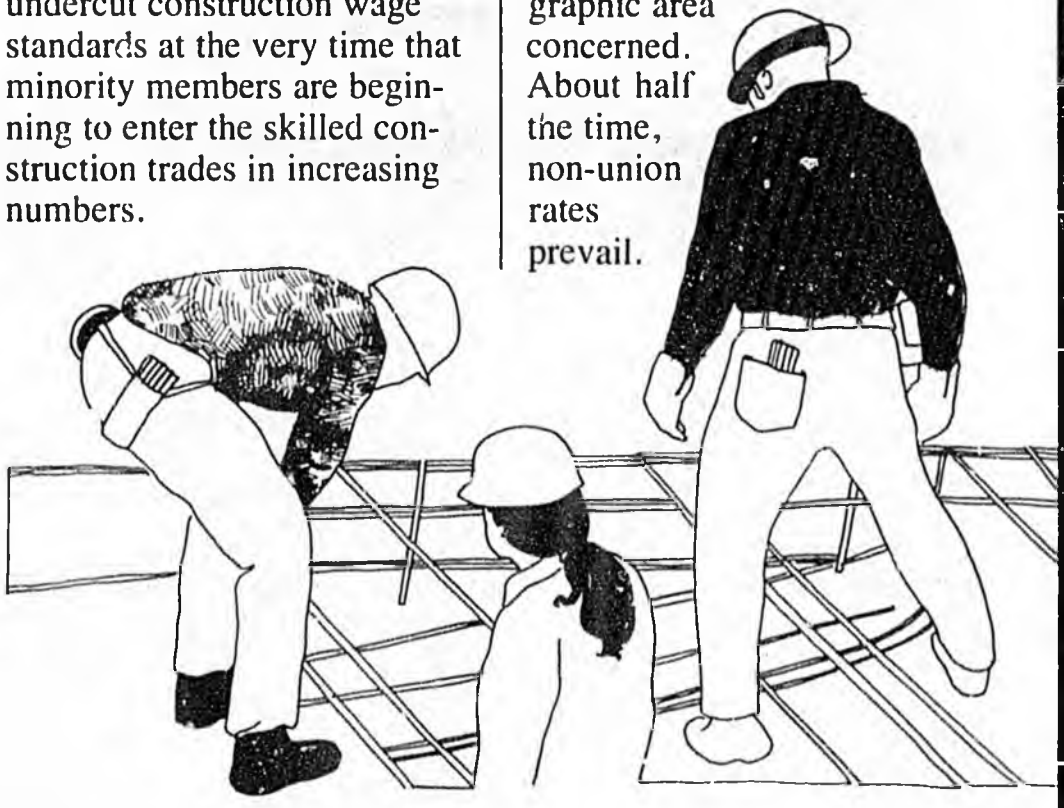
FACT: The President's Council on Wage and Price Stability found, in a recent study, that the Labor Department's wage determinations are usually a little below the collectively bargained wage rates in the area. Government figures show that, for several years, construction industry productivity has been rising faster than all-industry productivity while construction industry wage increases have been lower than all-industry wage increases.

FICTION: *Use of union wage rates under Davis-Bacon retards the entry of minorities into construction trades.*

FACT: Union-sponsored apprentice programs included more than twice as many minority participants as non-union programs. Moreover, the union-busters want to undercut construction wage standards at the very time that minority members are beginning to enter the skilled construction trades in increasing numbers.

FICTION: *The Department of Labor sets artificially high wage rates on Davis-Bacon projects, using high union rates in places where most construction is done by non-union labor.*

FACT: Wage rates are set by reference to those paid on similar projects in the geographic area concerned. About half the time, non-union rates prevail.



FICTION: *Davis-Bacon record-keeping requirements add to the cost of public works.*

FACT: Records required by contractors on Davis-Bacon projects are almost all things that a contractor would do anyway. Keeping payroll records, for instance, is a normal good business practice.