

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672
2618 SLC SB 171 - SB 172 (FILE 1)

SENATE LABOR AND COMMERCE

STANDING COMMITTEE

March 24, 1983

1:35 p.m.

Members Present: Sen. Dick Eliason, Chair
Sen. Bob Mulcahy
Sen. Pat Rodey

Members Absent: Sen. John Sackett*
Sen. Don Bennett

*Sen. Sackett arrived three minutes after the meeting was called to order.

COMMITTEE CALENDAR

SB 171

"An Act relating to compensation of state officials and employees."

SB 66

"An Act relating to insurance."

HB 224 (efd. added)

"An Act relating to the board of nursing; and providing for an effective date."

CSHB 218(Finance)

"An Act relating to the Board of Marine Pilots; and providing for an effective date."

WITNESS REGISTER

(SB 171)

Senator John Sackett

Pouch V

Juneau, Alaska 99811

465-3753

Position statement: Prime sponsor of SB 171; provided supportive testimony.

Cherie Shelley, Alaska Public Employees Association

340 N. Franklin St.

Juneau, Alaska 99801

586-2334

Position statement: Suggested clarification of language of bill to alleviate conflict with PERA.

(SB 66)

Don Koch, Division of Insurance, (DCED)

Pouch D

Juneau, Alaska 99811

465-2577

Position statement: Department of Commerce and Economic Development thinks it seems "a fair bill". Don Koch provided section-by-section explanation of proposed committee substitute.

Mike Thomas, American Insurance Association

Box 1211

Juneau, Alaska 99802

586-3340

Position statement: Proposed CS responds to most concerns; outlined remaining problem areas.

Dave Hutchens, Alaska Rural Electrification Cooperative Association

237 Fireweed, #301

Anchorage, Alaska 99503

Position statement: Draft (of CS) a product of compromises, would like to see Section 5 amended.

(HB 224)

Sammye Rink, President, Board of Nursing

c/o Occupational Licensing, (DCED)

Pouch D

Juneau, Alaska 99811

Position statement: Spoke in support of continuation of Board of Nursing and HB 224.

PREVIOUS ACTION

(Senate Labor and Commerce Only)

SB 66: Please refer to Senate Labor and Commerce minutes for Feb. 10, 1983.

ACTION NARRATIVE

Tape #14

Number 008

Senator Eliason, Chair, called the meeting to order at 1:35 with members Sen. Mulcahy and Sen. Rodey in attendance. He outlined the agenda and the committee took up Senate Bill 171, concerning compensation of state officials.

Number 040

Senator Eliason asked that the record reflect the presence of Senator Sackett.

Number 054

Senator Eliason explained that, due to a technical error, SB 171 had been printed incorrectly, and lacking the last section. The corrected version of the bill has been made available and is before the committee. Senator Eliason summarized the intent of SB 171 and invited Senator Sackett, prime sponsor of SB 171, to further explain the measure. Senator Sackett stated that he introduced the bill as a result of a number of things which occurred this year. He said that a number of state salaries have passed the \$100,000 figure. At some point there must be a "reduction in amounts and total services...it is my feeling that a lid has to be put on it." Senator Sackett stated that it seemed that the most obvious limitation should be the salary of the chief executive officer (Governor). He cited information before the committee which listed the State positions (in all branches of government and the University of Alaska) for which salaries exceed that of the Governor.

Number 100

Sen. Eliason noted that a fiscal note accompanied SB 171. Sen. Sackett explained that this was attributable to the last section of the bill, which provides for conducting an annual cost of living survey. Sen. Sackett noted that what he is trying to do in other legislation is to put all state programs under a single system with reference to a cost of living differential to be considered in establishing pay ranges. SB 171 is consistent with that goal.

Number 170

Sen. Rodey and Sen. Sackett discussed application of SB 171 to highly paid, technical tradespersons and professionals employed by the state.

Number 220

Sen. Sackett concluded his remarks by noting that allowances had to be made for such employees, however the bill addresses the positions in which an employee has a \$95,000-\$100,000/year salary, plus auto. plus expense accounts bringing it up to as much as \$120,000, and a lid has to be put on it.

Number 255

Cherie Shelley, representing the Alaska Public Employees' Association, stated that the language of SB 171 is contrary to PERA (Public Employment Relations Act) which provides that employees may bargain for all conditions of employment. APEA represents probably fewer than 12 people who would be affected by the bill, most of whom live in the Bush, (e.g. Nome has 9 step cost of living differential, and employee has longevity increase) and some of whom receive overtime. The bill is not clear on whether provisions would apply to overtime, or just base monthly salary. She asked that the measure identify what constitutes a base salary. She noted that University employees are not in classified service, and suggested that the bill could state that it does not apply to classified employees (represented by APEA). With respect to the Cost of Living differential, Cherie Shelley stated that APEA contracts follow what is in statutes set forth by legislature.

Number 362

Sen. Rodey asked Cherie Shelley how accurate the Bureau of Labor statistics were for this purpose, to which she responded that they were pretty accurate and done more than once a year.

Number 376

Sen. Rodey moved that the bill be passed from committee with individual recommendations. There being no objections, it was so moved.

Number 390

Senate Bill 66, relating to insurance, was taken up for consideration.

Sen. Eliason reviewed committee action on SB 66 at the Labor and Commerce hearing February 10, 1983, when testimony had been received from several parties. The committee had asked that certain members of these factions work together to resolve disagreements and develop language for a proposed committee substitute. The proposed committee substitute was taken up at this March 24 meeting.

Number 398

Don Koch, from the Division of Insurance, produced a letter from Commissioner Dick Lyon giving the Department's (Commerce and Economic Development) position on SB 66 and outlining the changes they wished to see incorporated in the substitute measure. The proposed CS continues the regulation of insurers (group self-insurers) in the insurance code, and applies the requirements for formation of an insurer to a group of municipalities. The requirements that would apply to municipalities, as well as public utilities, have been eased. (The Department's changes were incorporated in the proposed CS.) They believe "that this is a reasonable stance which provides adequate public protection for claimants and policyholders." Don Koch said that he was not sure everybody was happy with it, but that it seems a fair bill. He then walked committee members through a section-by-section analysis of the proposed committee substitute.

Number 444

Don Koch's sectional analysis touched on the following points:

Section 1: Removes reciprocal insurers from assigned risk pool.

Section 2: Aimed at municipalities; reduces financial requirements by permitting the use of a bond in lieu of cash surplus and by reducing the amount of operational surplus necessary.

Section 3: Reduces the number of entities required to form a reciprocal insurer.

Section 4: Defines "municipality" (not defined in Insurance Code).

Section 5: The subject of controversy---Amends statute to except from the definition of "member insurer" the reciprocal insurers formed by municipalities and public utilities. Exempts certain reciprocals from the Guaranty Association.

Number 600

Mike Thomas, representing the American Insurance Association, testified on SB 66, and presented a letter from the law firm of Monagle, Eastaugh, and Bradley on behalf of AIA; the letter contained a statement of policy on proposals of this type (which create new entities which are self-insurers). He stated that many questions which arose during the Feb. 10 hearing are handled by the proposed substitute. The following are not: AIA feels that by exempting reciprocals from the "assigned risk" pool, commercial insurers are bearing the burden of this "residual market mechanism", in addition to losing the part of the market which makes up the new reciprocals. AIA also disagrees with the portion of the proposed CSSB 66 which provides that some reciprocals are exempt from the Guaranty Association (Section 5); perhaps a separate solvency mechanism for self-insureds and proposed municipal reciprocals should be considered. AIA also feels that with respect to formation of a reciprocal, 10 entities should be a minimum requirement, rather than the two proposed in the CS.

Number 744

Dave Hutchens, representing the Alaska Rural Electrification Cooperative Association, provided testimony on SB 66, stating that the draft CS is a product of compromises. He went through the bill providing a sectional commentary, dwelling primarily on Section 5: he stated that he had not been aware of the provisions proposed in Section 5 concerning public utilities, and would like to see the language amended to address remaining concerns. He would most of all like to see the bill move from committee.

Number 800

Committee members acknowledged Dave Hutchens concerns with the bill, and agreed to have the CS redrafted to reflect accomodation of those concerns. The new section excepts reciprocal insurers formed by municipalities or public utilities from the definition of "insolvent insurer" in AS 21.80.180.

There was no further discussion of SB 66. The redrafted CS would be ready for committee action at the next meeting.

Number 820

The next item on the agenda was HB 224, providing for the extension of the operation of the Board of Nursing, which is up for "sunset" review. Sammie Rink, President of the Board of Nursing, provided brief testimony, indicating that the Board had attempted to reach goals and objectives suggested by the Legislative Budget and Audit Committee in an audit released four years ago, and had succeeded in almost every area. The goals which they failed to reach, cited in the recent audit, were not accomplished due to lack of funds, specifically, \$16,000 they needed for a survey in order to complete their regulations.

Sen. Mulcahy moved that HB 224 be passed from committee with individual recommendations. There being no objections, it was so moved.

The committee took up HB 218, providing for the extension of the Board of Marine Pilots. The Committee had already heard testimony on this matter when SB 145 came before the committee for consideration on March 10. Harry Treager, from the Division of Occupation Licensing, had expressed a willingness) to testify further if the committee members wished.

Sen. Rodey moved that HB 218 be passed from committee with individual recommendations. There being no objections, it was so moved.

Sen. Eliason adjourned the meeting.

UNIVERSITY OF ALASKA
 FY1983 BUDGETED SALARIES FOR
 SELECTED ADMINISTRATORS AND FACULTY

Re SB-171

SOURCE: UA REPORT BD 327

ADMINISTRATORS

NAME	POSITION	BUDGETED SALARY
BARTON	PRESIDENT	✓ 96,740 ^{+ HOUSE}
CARTER	EXECUTIVE VICE PRESIDENT	✓ 94,437
GLENN	ASSOCIATE VICE PRESIDENT	90,699
DHINGRA	ASSOCIATE VICE PRESIDENT	✓ 83,328
WEST	VICE PRESIDENT ACADEMIC AFFAIRS	✓ 94,437
CLARK	ASST VICE PRESIDENT COMPUTING	68,518
O'ROURKE	CHANCELLOR - VAF	✓ 87,113 ^{+ HOUSE}
BENNET	VICE CHANCELLOR - VAF	✓ 79,124
OUTCALT	CHANCELLOR - UAA	✓ 85,817 ⁺⁷²⁰⁰
BROWNELL	VICE CHANCELLOR - ACADEMIC AFF - UAA	75,533
PICCARD	VICE CHANCELLOR - STUDENT SVCS UAA	71,334
VAUGHN	VICE CHANCELLOR - FISCL AFFAIRS UAA	74,343
PARADISE	CHANCELLOR	✓ 92,880 ⁺⁷²⁰⁰
BETON	VICE CHANCELLOR ACAD. AFF. UAS	75,700
JONES	EXECUTIVE VICE CHANCELLOR - UAS	75,700
KEIM	VICE CHANCELLOR ADM. SVCS. UAS	68,500
MELICAN	CHANCELLOR CCEE	✓ 83,353 ⁺⁷²⁰⁰
BONETTI	VICE CHANCELLOR CCEE	66,085
BIEGERSTAFF	CHANCELLOR - ACC	✓ 91,384 ⁺⁷²⁰⁰

March '83

Salaries greater than the Governor's (\$6480/mo)

<u>Executive Branch</u>			\$/mc.	authority setting pay schedule	
Law:	Attorney V	FBKS	6,738	25 K + 4 steps	(39.27)
	Attorney V	KENAI	6,525	25 L + 2 steps	(39.27)
Rev:	Div. Director	JNU	6,522	26 M	(39.27)
	Ex. Director				
Ed:	Postsec. Ed.	JNU	6,509	match U of A Chanc	(ACPSE)
H & SS:	Med. Supt. API	ANCH	6,572	29 F + 5%	(H&SS Comm)
	P.H. Med. Spec.	ANCH	6,562	27 L	(Coll.Barg.)
	Reg. Health Off.	FBKS	7,051	26 K + 4 steps	(Coll.Barg.)
DoTPF:	High.Eng. Ch.	FBKS	6,791	25 K + 4 steps	(Coll.Barg.)

Judicial Branch

Supreme Court Justice	FBKS	7,387	30F+4 steps of 3.5%	(22.05.140)
Superior Court	FBKS	6,661	28E+4 steps of 3.5%	(22.10.190)
Superior Court	BETHEL	6,865	28E+5 steps of 3.5%	(22.10.190)
Superior Court	FBKS	6,661	28E+4 steps of 3.5%	(22.10.190)
Superior Court	KOTZ	6,865	28E+5 steps of 3.5%	(22.10.190)
Superior Court	FBKS	6,661	28E+4 steps of 3.5%	(22.10.190)
Superior Court	NOME	6,865	28E+5 steps of 3.5%	(22.10.190)
Superior Court	FBKS	6,661	28E+4 steps of 3.5%	(22.10.190)
Superior Court	BARROW	6,865	28E+5 steps of 3.5%	(22.10.190)

Legislative Branch

None

STATE
of ALASKA

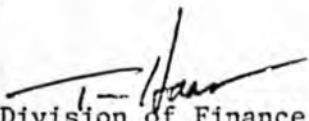
MEMORANDUM

TO: User

DATE: 3-11-83

FILE NO:

TELEPHONE NO.

FROM:  Division of FinanceSUBJECT: Projected Annual Earnings
Report

The Attached computer listing contains all salaried employees with projected earnings of over \$50,000.00. It should be rated that:

1. The projected earnings is based on the current salary of the employee projected for a 12 month period. The projection does not include overtime.
2. When comparing salaries, the location differential should be taken into consideration to make equivalent comparisons.
3. The listing does include employees who have left State service but will not be terminated until they have run out of Annual leave.

Salaries greater than Governor (\$6480/mo)

authority setting pay schedule

Executive Branch

- Law: Harry Davis, Attorney II, Fairbanks, \$6,738, 25K + 4 steps (39.27)
- Thomas Wardell, Attorney II, Kenai, \$6,525, 25L + 2 steps (39.27)
- Rev: Philip Wall, Div. Dir., Juneau, \$6,522, 26M (39.27)
- Ed: Kerry Reynolds, Ex Dir, Port. Sec., Juneau, \$6,509, match U of A Chancellor (Comm)
- H+SS: Harold ... Med Supt, API, Anch, \$6,572, 29F + 5% (Comm, H+SS)
- Robert Fr... P.H. Med. Spec, Anch, \$6,562, 27L (Coll. Bay)
- Paul Frick, Reg. Health Off, Fairbanks, \$6,705, 26K + 4 steps (Coll. Bay)
- T+PF: Andrew Zahar, Heigh. Eng. Ch, Fairbanks, \$6,791, 25K + 4 steps (Coll. Bay)

Judicial

- Supreme Ct: Jay Rahimovity, Fairbanks, \$7,387.20, 30F + 4 steps of 3.5% (22.05.190)
- Superior Ct: James Blain, Fairbanks, \$6,661.02, 28E + 4 steps of 3.5% (22.10.190)
- Christopher Cooke, Bethel, \$6,865.52, 28E + 6 steps of 3.5% (22.10.190)
- Jay Hodges, Fairbanks, \$6,661.02, 28E + 4 steps of 3.5% (22.10.190)
- Paul Jones, Kotzebue, \$6,865.52, 28E + 5 steps of 3.5% (22.10.190)
- Wieron Taylor, Fairbanks, \$6,661.02, 28E + 4 steps of 3.5% (22.10.190)
- Charles Tranby, Nome, \$6,865.52, 28E + 3 steps of 3.5% (22.10.190)
- Gerald Vanhoornissen, Fairbanks, \$6,661.02, 28E + 4 steps of 3.5% (22.10.190)
- ~~Dist. Ct~~: Michael Jeffery, Barrow, \$6,865.52, 28E + 5 steps of 3.5% (22.10.190)

Legislative - Non

University of Alaska - Not available to Executive Branch

By **TERRENCE A. MAY**

Rather than singling out the Alaska Student Loan Program as being fiscally irresponsible, which it is not, you should be looking at an entirely different question. What's wrong with the University of Alaska?

The salaries paid to the university's executive officers have gotten completely out of hand, so much so that one would think it is being run by professional athletes or television celebrities. After looking at what other top state officials earn, as well as university executive officers in the Lower 48, one cannot escape the obvious: the bloated bureaucracy of chancellors, vice chancellors, presidents and provosts at the University of Alaska is being compensated extravagantly; they are, in fact, earning more than what their jobs are really worth.

Well, it's bad enough that the state is now having to apply the brakes to government spending because of declining oil tax and royalty receipts. But even if the state was flush with money as we've been in years past, that's no excuse to pay exorbitant salaries to University of Alaska administrators. Unless something is done to bring their salaries more into line with reality, I don't think the University of Alaska should get another nickel out of the state treasury.

Sen. John Sackett is absolutely right in calling for a pay cap on the salaries earned by top state officials. He has introduced legislation in the Senate which would ensure that no state employee could earn more than Governor Sheffield who, as chief executive officer of Alaska, earns about \$77,000 a year. Sen. Sackett's staff dug up a list of the names and titles of university employees who earn more than the governor, and there were 25 altogether.

Take our own chancellor of UAJ, for example. He reportedly commands an annual salary of \$93,000, making him one of the university's highest-paid employees. But, that's not all. He also collects a \$7,200 housing allowance. Add the man's salary and housing allowance together and you can see he makes about \$100,000 a year. That's not too shabby, is it?

The faculty members he supervises pull down \$3,000 a month — more or less — depending on academic rank, tenure, etc. Why the discrepancy between what the chancellor earns and what a professor earns? Is it necessary? And, quite frankly, with a \$600 a month housing allowance, the UAJ chancellor is getting a perk that must put him in a class almost all by himself. How many of

us are so lucky as to get a housing allowance? Why does somebody who makes \$93,000 need one, anyway?

The UAJ chancellor is not only one of the highest paid civil servants in Alaska, he also is one of the most lucratively rewarded college presidents in the United States. He earns more than the chief executive officers of most of the nation's universities, including some of the most prestigious and largest ones. Yet, as a chancellor of UAJ and caretaker of Auke Lake, he has only a minute fraction of their authority, budget, responsibility and problems to deal with. Chancellor Paradise is in heaven, and he knows it. Why, with his salary, he makes the president of the University of Washington or any of the nine campuses of the University of California look like paupers, and we can only wonder why.

The UAJ chancellor's income is approximately the same as that earned last year by David Saxon, who recently retired as president of the University of California statewide system. Saxon probably left to come up to Alaska to preside over a community college somewhere. The job of being UC system president is a little different than our friend at UAJ. To earn the UAJ chancellor's wages, UC's president has to manage nine major universities with an enrollment of 139,000 and a budget of over \$1.1 billion.

If only college and university presidents around the country could find out what they're missing out by not working at the University of Alaska. No price to pay, no burden, is too great for us Alaskans to assume when it comes to funding the venerable and distinguished university. Why, just think, someday UAJ may even be accredited! Wouldn't that be wonderful!

Now, I know the chancellor himself, and his well-paid public relations people will say the salaries really aren't terribly inflated because, you see, Alaska's cost-of-living is so much higher than it

is elsewhere. Granted, it does cost more to live here in Juneau than in Seattle or Eugene; we get paid more for it. There's no denying that. But, in setting the UAJ chancellor's salary at \$90,000 or \$100,000 and hiring on a few assistants at \$75,000 or \$80,000, we're going to extremes.

If you selected a group of colleges similar to UAJ with respect to enrollment, budget, course and degree offerings, faculty and so on, and you found the average salary paid to their top officials, do you think it would come up to \$93,000 after adding a cost-of-living factor? Well, do you? No way!

According to the "Chronicle of Higher Education," March 2 edition, the median salary earned by the president of a four-year college nationwide was \$54,000 this year; and \$50,000 for the president of a two-year college. So, why is the chancellor of UAJ, deserving of an extra \$40,000 a year? Is it really necessary for us to dish out that kind of money to persuade somebody to take the job at UAJ?

UAJ has its place, but the price we are being asked to pay is way out of line. Let's tell these high-priced goldbricks to take a big cut in pay or move on to Saudi Arabia. We need to save dollars where we can, and invest them where they are most needed. More than anything else, UAJ needs additional full-time faculty, integrated instructional and administrative facilities and a better library.

If these things can be taken care of, accreditation will come. And don't listen to those university executives who keep saying accreditation depends on the state building \$13 million worth of dormitories. It simply isn't so.

Terrence A. May works for the state and is a 16-year resident of Alaska.

25 UA jobs top Sheffield's wage

Juneau Empire 3/16/83

Sackett blasts UA budget

By DEBBIE REINWAND ROSE
Empire Staff Reporter

About 25 University of Alaska employees earn more than the \$77,760 yearly salary paid to Gov. Bill Sheffield, but that may change if a bill by Sen. John Sackett, R-Ruby, passes the Legislature.

Introduction of the bill followed a week of testimony by UA officials concerning their proposed 1984 budget. One point of contention among lawmakers is the 13 percent operating budget increase the university is requesting.

At the hearings, Sackett bluntly told UA President Jay Barton and members of his staff that they must look "internally" for funding rather than continually expect hand-outs from the Legislature.

Under the bill, which is co-sponsored by 12 other legislators, a lid would be placed on all state salaries, making the governor's pay the highest amount an official could earn.

Currently, Barton is paid \$96,740 per year, and is provided with a house on the UA-Fairbanks campus. In comparison, the median salary in the U.S. for the chief executive of a college system is \$65,950, according to the March 2 Chronicle of Higher Education.

University employment statistics put together by Sackett aides Lee Stoops and Tom Bergstrom also show several researchers at the Fairbanks campus who earn more than \$78,000 per year.

Continued on Page 2

UA jobs ...

Continued from Page 1

Sackett hammered university representatives with questions about the average workload and what he called the "unusually high number of research personnel" employed at UA during the hearings.

Because of what appears to be a high 12-month salary paid to researchers, "there is a powerful incentive not to teach," said Bergstrom. In addition, most of the teaching professors at UA are employed on a 9-month basis.

As the Legislature and administration faces declining oil revenues as they plan their budgets, everyone must be willing to take some cuts, Sackett said.

When he introduced the bill, Sackett said he realized the state had to "pay wages that will attract and allow us to keep quality people," but added "things have gotten way out of hand.

"I really do not know of anyone who has ever left state service for lack of adequate pay ... but I do know that over 46,000 peo-

ple applied for work in the executive branch alone during the last year."

Despite discussion of possible legal snarls with the proposed salary cap, there appears to be no problem reducing salaries if this bill is enacted, Bergstrom said.

"The only people whose pay cannot be reduced are sitting judges," he said. All other positions exempt from collective bargaining can be reduced, he added.

Following is a list of UA administrators and their salaries:

- President Jay Barton, \$96,740 plus use of a house;
- George West, vice-president academic affairs, \$94,437;
- Sherman Carter, executive vice-president, \$94,437;
- Mike Paradise, chancellor UAJ, \$92,880, plus a \$7,200 housing allowance;
- Robert Glenn, associate vice-president, \$70,699;
- Ashik Dhingra, associate vice-president, \$83,328;
- Bill Clark, associate vice-president, computing, \$68,518;

- Pat O'Rourke, chancellor UAF, \$87,113, plus use of a house;
- F. Lawrence Bennet, vice-chancellor UAF, \$79,124;
- Frank Outcalt, chancellor UAA, \$85,817, plus a \$7,200 housing allowance;
- John Brownell, vice-chancellor UAA, \$75,533;
- Lee Piccard, vice-chancellor UAA, \$71,334;
- F.S. Vaughn, vice-chancellor UAA, \$74,343;
- Beverly Beaton, vice-chancellor UAJ, \$75,700;
- Russ Jones, executive vice-chancellor, UAJ, \$75,700;
- Harry Keim, vice-chancellor UAJ, \$68,500;
- George Melican, chancellor Community Colleges, Rural Education and Extension, (CCREE) \$83,353, plus a \$7,200 housing allowance;
- Gerry Bomotti, vice-chancellor CCREE, \$66,085;
- Ed Biggerstaff, chancellor, Anchorage Community College, \$91,384 plus a \$7,200 housing allowance.

Re: SB 171 - pay to state officials

Dale Beech (⁵⁰³378-3146) - Oregon

- ★ 65 employees make more than governor
 - 1/3 - 1/2 are employed in higher education
 - physicians - psychiatrists employed by state
 - 7 department heads

Will be sending info

⁹¹⁶⁻³²²⁻⁰³⁰⁰
Ron (⁹¹⁶322-2530) - California - Dave Kombies

- Gov salary set by statute - changed only after 4 yrs
- Approximately 60-70 state officials are over gov as are judges + higher education - 20 various campus heads over gov.

Computer print out can be available by writing to (+ paying bill)

John Harrington, Chief
Personnel / Pay Services Division
1900 Capital
Sacramento, Calif 95114

★ Senator Richardson - Calif - just introduced a bill to limit pay to 90% of gov.

Rick - Washington (206-754-1849) - will call back -

88 people are paid more than the governor. Approximately $\frac{2}{3}$ are employed by the university system.

There is currently some discussion in the legislature about reducing the salaries, but there has been no formal action.

Sunday Statesr

Salem, Oregon 3

7-4-82

July 4,

Oregon governor ranks 65th on state's payroll

Salary list on Page 6A.

By SUE HILL
Of the Statesman-Journal

Gov. Vic Atiyeh is top administrator in state government, but when it comes to drawing a paycheck, he ranks 65th among state administrators.

According to a new list of the top 125 administrators and elected officials prepared by the Statesman-Journal, doctors, educators and a handful of the governor's own top staff outrank him in pay.

Earning too little to make the top-125 list are four of the state's six constitutional officers, including Secretary of State Norma Paulus and State Treasurer Clay Myers.

The other two constitutional officers, the governor and the attorney general, placed on the list.

The highest paid woman in the

state, according to the list, is Betty Hawthorne, dean of home economics at Oregon State University. She earns \$56,500 a year, about \$4,000 more than the governor.

Four other women also outrank the governor in pay. They are Gerry Thompson, the governor's chief assistant; Dr. Carol Lindeman, dean of nursing at the Health Sciences University; Supreme Court Justice Betty Roberts; and Celeste Ulrich, dean of health, physical education and recreation at the University of Oregon.

About 50 doctors on the state payroll earn more than the governor, but only the 21 who hold administrative jobs show up on the list.

The list shows 35 administrators and deans in the state system of Higher Education earning more than Atiyeh.

Atiyeh's salary is \$52,094 a year.

That is nearly \$28,000 a year less than the top-paid state official, Dr. Leonard Laster, president of the Health Sciences University.

Of the top 125 wage earners, only eight are women.

Pay scales this year are skewed by a series of pay cuts that affected some, but not all, state employees.

The governor took a straight 6 percent pay cut July 1. Most of his top managers took a wage freeze on top of a 2 percent pay cut.

Administrators in the state system of Higher Education took a pay freeze.

Judges, whose salaries are protected by the state constitution, took no pay cut.

Some state managers, such as state Commerce Department Director Jane Huston and Public Utility Commissioner John Lobdell, returned to SALARIES, Page 6A.

Salaries . . .

Continued from Page 1A.

ceived 3 percent pay increases July 1 because their departments were unaffected by the state's recent budget crisis.

No central list of employee salaries exists in state government.

The list that follows was compiled from figures provided by Personnel Division, individual state agencies and individual college and university budget offices. There is no way to verify that it is complete.

The list includes salaries in Range 35 and above, taking in top-echelon state managers and elected officials earning \$48,288 or more.

Secretary of State Paulus, Treasurer Myers, Labor Commissioner Mary Wendy Roberts and schools

superintendent Verne Duncan — who all took 6 percent pay cuts — did not make the list because they earn just \$42,864.

The list also does not include about 37 doctors, four assistant attorneys general and an unknown number of college professors who earn more than \$48,288 a year but do not hold supervisory jobs.

The list also does not show side benefits that some state employees receive.

For example university presidents, the chancellor of higher education and the governor live in free state housing. The governor also receives a \$506-a-month expense allowance for entertaining.

1. Dr. Leonard Laster, president, Oregon Health Sciences University	\$79,944
2. Bud Davis, chancellor, Higher Education	\$75,000
3. Dr. Ransom Arthur, dean, OHSU School of Medicine	\$72,752
4. Dr. Donald Kassebaum, director, OHSU Hospital	\$70,104
5. Paul Olum, president, University of Oregon	\$65,052
6. Robert MacVicar, president, Oregon State University	\$65,052
7. Joseph Blumel, president, Portland State University	\$65,052
8. Dr. Joseph Treleaven, administrator, Mental Health Division	\$64,752
9. Dr. J.D. Bray, assistant administrator, Mental Health Division	\$64,752
10. Dr. William Brady, chief medical examiner, Health Division	\$64,752
11. Dr. Louis Terkla, dean, OSU School of Dentistry	\$64,712
12. Derrick Bell, dean, UO School of Law	\$63,324
13. Ernest Briskey, dean, OSU School of Agriculture	\$62,400
14. Thomas Suppherr, OSU dean of science	\$61,152
15. E. Edward W. Chan, dean, OSU School of Veterinary Medicine	\$60,840
16. Bill Lemman, vice president for administration, Higher Education	\$59,520
17. Dr. Victor Menasha, director, OHSU Crippled Childrens Division	\$59,112
18. Dr. Richard Rawlinson, clinical director, Dammasch State Hospital	\$58,728
19. Dr. George Suckow, clinical director, Oregon State Hospital	\$58,728
20. Dr. Prasanna Path, clinical director, Oregon State Hospital	\$58,728
21. Dr. Max Bader, state health officer, Health Division	\$58,728
22. Dr. Vic Holm, superintendent, Dammasch State Hospital	\$58,728
23. Dr. Al Baxter, superintendent, Eastern Oregon State Hospital	\$58,728
24. Dr. George Miller, medical chief, Fairview Training Center	\$58,728
25. Dr. John Grogins, chief, Office of Disease Monitoring & Control	\$58,728
26. Richard Hill, UO academic dean	\$58,704
27. James McGill, OHSU vice president for administration	\$58,692
28. Fred Fargess, dean, OSU School of Engineering	\$58,000
29. Ray Hawk, UO vice president	\$57,912
30. Robert Gilberts, dean, UO School of Education	\$57,739
31. Carl Stollenberg, dean, OSU School of Forestry	\$57,616
32. Earl Goddard, dean, OSU School of Business Technology	\$57,404
33. Betty Hawthorne, OSU dean of home economics	\$56,500
34. Lyle Calvin, OSU dean of graduate studies	\$56,400
35. John Lobdell, public utility commissioner	\$56,004
36. Fred Miller, director, Department of Transportation	\$56,004
37. Dr. Morris Crothers, Workers' Compensation medical director	\$56,004
38. Stan Long, deputy attorney general	\$55,920
39. Gerry Thompson, executive assistant to the governor	\$55,920
40. Dr. Larry Lewman, deputy medical examiner, Health Division	\$55,920
41. Dr. Ronald O'Helloran, deputy medical examiner, Health Division	\$55,920
42. Dr. Laurence Foster, program manager, Health Division	\$55,920
43. Dr. Rhesa Penn, community health chief, Health Division	\$55,920
44. George Keller, OSU dean of research	\$55,750
45. Theran Parsons, OSU vice president for administration	\$55,032
46. Ross Heath, OSU dean of oceanography	\$55,000
47. Dr. Carol Lindeman, dean, OHSU School of Nursing	\$54,615
48. Berkeley Lent, chief justice, Supreme Court	\$54,636
49. John Gruber, PSU vice president for academic affairs	\$54,600
50. James Todd, PSU vice president for finance & administration	\$54,500
51. Murrette Ride, dean, UO School of Music	\$53,528
52. Jack Hunderup, vice chancellor for facilities, Higher Education	\$53,216
53. Hans Linde, Supreme Court justice	\$53,304

54. Edwin Peterson, Supreme Court justice	\$53,304
55. Jacob Tanzer, Supreme Court justice	\$53,304
56. J.R. "Bob" Campbell, Supreme Court justice	\$53,304
57. Betty Roberts, Supreme Court justice	\$53,304
58. George Joseph, chief judge, Court of Appeals	\$53,304
59. Bob Smith, director, Executive Department	\$53,292
60. Leo Hegstrom, director, Department of Human Resources	\$53,292
61. Richard Ohvall, dean, OSU School of Pharmacy	\$53,250
62. James Reinmuth, dean, UO School of Business Administration	\$53,174
63. R.W. Chick, OSU vice president for student services	\$53,042
64. Celeste Ulrich, OU dean of health, P.E. & recreation	\$52,533
65. Vic Atiyeh, governor	\$52,087
66. William Richardson, Court of Appeals judge	\$52,056
67. John Buttler, Court of Appeals judge	\$52,056
68. W. Michael Gillette, Court of Appeals judge	\$52,056
69. Kurt Rossman, Court of Appeals judge	\$52,056
70. John Warden, Court of Appeals judge	\$52,056
71. Edward Warren, Court of Appeals judge	\$52,056
72. George Van Hoomissen, Court of Appeals judge	\$52,056
73. Thomas Young, Court of Appeals judge	\$52,056
74. Robert Thornton, Court of Appeals judge	\$52,000
75. Michael Maksud, OSU dean of Health and Physical Education	\$51,848
76. Clarethel Kahanani, academic vice chancellor, Higher Education	\$51,490
77. George Hoffman, PSU dean of social sciences	\$51,264
78. Gerald Leinwand, president, Western Oregon State College	\$51,264
79. Rodney Briggs, president, Eastern Oregon State College	\$51,264
80. Natalie Sicurn, president, Southern Oregon State College	\$51,264
81. Donald Parker, PSU dean of business administration	\$51,228
82. Dave Frohnmayer, attorney general	\$50,105
83. Staryl Austin, director, Department of Veterans Affairs	\$50,748
84. Lynn Frank, director, Department of Energy	\$50,748
85. H.S. Coulter, state highway engineer	\$50,748
86. Roy Green, director, Workers' Compensation Department	\$50,748
87. Kendall Barnes, chairman, Workers' Compensation Board	\$50,748
88. Ray Thorne, administrator, Employment Division	\$50,748
89. Jane Huston, administrator, Commerce Department	\$50,748
90. Robert Barr, dean, OSU School of Education	\$50,000
91. Bernard Ross, dean, PSU School of Social Work	\$49,871
92. Donald Leu, dean, PSU School of Education	\$49,820
93. Robert Berdahl, UO dean of arts & sciences	\$49,400
94. Davis Nicodemus, OSU dean of faculty	\$48,816
95. Judy Kuipers, OSU dean of undergraduate studies	\$48,750
96. Curt Simic, UO vice president for public services	\$48,694
97. Alfred Hanpson, delegate, Northwest Power Planning Council	\$48,288
98. Lenoy Hemmingsway, delegate, Northwest Power Planning Council	\$48,288
99. Jon Yunker, state budget director	\$48,288
100. Bob Watson, administrator, Corrections Division	\$48,288
101. Jim Russell, senior assistant to the governor	\$48,288
102. Bob Oliver, senior assistant to the governor	\$48,288
103. Jerry Brown, deputy director, Department of Human Resources	\$48,288
104. Darrell Ralls, director, Department of General Services	\$48,288
105. Daniel Ellis, chairman, Employment Relations Board	\$48,288
106. Robyn Godwin, director, Department of Revenue	\$48,288
107. William Young, director, Department of Environmental Quality	\$48,288
108. Keith Putman, administrator, Adult and Family Services Division	\$48,288
109. Gerard Appy, executive director, Oregon Public Broadcasting	\$48,288
110. Leonard Kunzman, director, Department of Agriculture	\$48,288
111. Mike Miller, state forester	\$48,288
112. James Ross, director, LCDC	\$48,288
113. Mike Reynolds, chief hearings officer, Land Use Board of Appeals	\$48,288
114. Karen Roach, administrator, Children's Services Division	\$48,288
115. Cuff Allison, assistant attorney general	\$48,288
116. Theodore deLooze, assistant attorney general	\$48,288
117. Walter Berry, assistant attorney general	\$48,288
118. William Hoischer, assistant attorney general	\$48,288
119. Peter Herman, assistant attorney general	\$48,288
120. John Reuling, assistant attorney general	\$48,288
121. Charles Pritchard, assistant attorney general	\$48,288
122. Jack Socolofsky, assistant attorney general	\$48,288
123. John McCulloch, assistant attorney general	\$48,288
124. Tom Clifford, legislative counsel	\$48,288
125. Rick Burke, legislative fiscal officer	\$48,288

COMPENSATION SURVEY
OF
ELECTED OFFICIALS

Prepared by
EXECUTIVE DEPARTMENT
PERSONNEL DIVISION

July 1982

State of Oregon

INTRODUCTION

This survey of elected officials studies the salary patterns of the following:

CURRENT AND END OF BIENNIUM SALARY

o Governor	\$52,097
o Secretary of State	42,882
o Treasurer	42,882
o Attorney General	50,109
o Superintendent of Public Instruction	42,882
o Labor & Industries Commissioner	42,882

The salaries of elected officials are set by statute, ORS 292.313.

This study is based on a typical compensation analysis, involving historical trends, comparison among the elected officials, comparisons with their counterparts in other states, and a consideration of the compensation system in use in the state for executives and management service employees. It should be noted that political and economic factors which have a strong impact on legislatively set salaries are not dealt with in this study. The study identifies salary relationship problems from a compensation perspective, and proposes possible solutions to rectify perceived problems.

HISTORICAL BACKGROUND

In 1969 the Secretary of State, Treasurer and Superintendent of Public Instruction were paid at 84% of the Governor's salary, the Attorney General was paid at 80.7% and the Labor Commissioner was paid at 75.4%. In July of 1972 the Attorney General's salary was increased to equal the Secretary of State's, Treasurer's, and Superintendent of Public Instruction's. In July, 1973, the Labor Commissioner's salary was raised to equal the others. This relationship continued for the next seven years. At the end of this time, these officials were paid 82.8% of the Governor's salary. The pattern of the same salaries for the elected officials was broken in January, 1981 when the salary of the Attorney General was increased almost 17% to 96% of the Governor's. This is the current relationship.

In recent legislative action (June, 1982) elected officials were given a 6% salary cut due to the state's fiscal crisis. Some management service employees were given a 2% cut, others had a 3% increase with the expectation of a 4% increase in April 1983. It is anticipated that salaries will revert to their former relationships in July 1983.

The following chart shows the percentage of salary adjustments provided to elected officials over the last thirteen years. Note that the pattern of salary adjustments has not been consistent among the elected officials and the management service employees.

SALARIES FOR ELECTED OFFICIALS AND STATE EMPLOYEES IN MANAGEMENT SERVICE
1970 THROUGH 1983.

PERCENTAGE OF INCREASE

	<u>State Management Service Employees</u>	<u>Governor</u>	<u>Sec'y of State Treasurer Supt. of Public Instruction</u>	<u>Attorney General</u>	<u>Commissioner of Labor & Industries</u>
7-70	4.5	0	0	0	0
7-71	5	1.75	2.08	6.5	4.65
7-72	4	1.72	2.04	2.04	2.22
7-73	6.2	8.5	6	6	15.22
7-74	4.89	9.4	9.4	9.4	9.4
5-75	13	0	0	0	0
7-76	11	0	0	0	0
7-77	5.	31.79	30.9	30.9	30.9
4-78	4	4	4	4	4
11-78	5	5	5	5	5
7-79	6*	6*	6*	6*	6*
7-80	6	6	6	6	6
1-81	0	0	0	16.85	0
4-81	3.8	3.8	3.8	3.8	3.8
8-81	5	0	0	0	0
1-82	3	0	0	0	0
7-82	-2**	-6	-6	-6	-6
TOTAL	84.3 ^o	71.96	6 ^o .22	90.49	81.19

The typical pattern for management service and all other state employes has been one of salary increases through the biennium. These incremental adjustments have not always been provided for elected official; they were not provided during this biennium.

Fringe Benefits

Elected officials (except judges) are eligible for retirement at the same rate offered legislators, police officers and fire fighters; 2% of the final average monthly salary times years of state service. The percentage factor for state employes generally is 1.67%. Elected officials are not required to participate in the retirement system. If they do participate, the state pays an additional 6% which is identified as the employe's share of the retirement cost. There is no salary adjustment if the official chooses not to participate.

The elected officials are covered by the management service health and medical insurance benefits.

*6% Public Employes Retirement System pick-up by the state. (Participation is optional for these elected officials.)

**The 2% salary decrease was applied to management service employes in agencies financed by General Funds. "Other Fund" agencies' employes received a 3% increase in July, 1982 and will receive a further 4% increase in April, 1983. The total percentage increase for this category from July 1970 through April 1983 will be 93.39.

COMPARISON WITH OTHER STATES

In the Personnel Division's general salary surveys, seven states are used as the basis of comparison. These states have been found to be similar to Oregon demographically and economically. The January, 1983, seven states' averages show the Governor's salary lagging the Superintendent of Public Instruction's salary lagging substantially; the Labor and Industries Commissioner paid about the same as appointed counterparts; and the Attorney General, Secretary of State and Treasurer receiving substantially more than their counterparts.

Additional salary information on officials in all states is included in attachment 1.

The following chart shows officials' salaries in the survey states, projected through June 1983.

<u>Survey States</u>	<u>Date of Change</u>	<u>Secretary of State</u>	<u>Secretary of State</u>	<u>Treasurer</u>	<u>Attorney General</u>	<u>Supt. of Public Instruction</u>	<u>Commissioner of Labor and Industries*</u>
Colorado	1/83	50,000 60,000	32,500	32,500	40,000	62,510	50,000
Idaho		40,000	28,000	28,000	35,000	28,000	35,000
Iowa		60,000	35,600	35,600	47,000	48,200	34,400
Kansas		45,000	27,500	27,000	40,000	58,044	47,184
Oklahoma		48,000	24,000	30,000	35,000	35,000	
	1/83	70,000	37,500	50,000	55,000	55,000	
Utah		52,000	35,500	35,500	41,000		36,937
Washington		63,000	31,000	37,200	47,100	42,800	54,000
<hr/>							
7 State ave. (1/83)		55,714	32,514	35,114	43,586	50,942	42,940
<hr/>							
National average**		\$55,382	\$38,427	\$39,874	\$46,284	\$46,961	
<hr/>							
Oregon		52,098	42,882	45,882	50,109	42,882	42,882
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*The Commissioner of Labor and Industries' counterpart is an appointed official in the states surveyed.

**Data furnished by state of South Dakota following a salary survey in late 1981.

INTERNAL COMPARISONS

Since the Governor is the chief executive officer of the state, it is reasonable to expect that he would be the state's highest salaried employe. This is not the case. Not only is his salary exceeded by a number of key medical officers and a variety of academic officials, some of his own appointees to state agencies and judges are higher salaried.

The salaries of the heads of state agencies (with the exception of those who are elected officials) have been set through the recommendation of the State Executive Salary and Compensation Committee (SESAC). This group relied on a factoring methodology which was designed to measure the responsibility and authority of each particular position.

Internal relationships among agency heads have been disrupted by the decision that salary reductions in the present fiscal crisis would apply only to certain agencies. (For the relationships which would have been in effect in April 1983 without the recent cuts, see attachment 2).

The following list offers a salary comparison among elected officials and a sampling of other key state employes. Higher Education positions have not been included. Note that some of the employes can expect a 4% salary increase on April 1, 1983.

<u>Position</u>	<u>Monthly Salary</u>	
	<u>July '82</u>	<u>April '83</u>
Chief Medical Investigator, Health Division	\$5396	
Superintendents, Dammasch State Hospital, Eastern Oregon State Hospital, et al.	4894	
Director, Department of Transportation; Public Utility Commissioner	4667	\$4853
Deputy Attorney General; Executive Assistant to the Governor	4661	
Chief Justice, Supreme Court	4553*	
Deputy Director, Department of Transportation	4445	4622
Justices of the Supreme Court; Chief Judge, Court of Appeals	4442*	
Directors, Department of Human Resources and the Executive Department	4441	
<u>GOVERNOR</u>	4341	

*Salaries for judges do not include the 6% retirement pick-up which is part of the Management Service Compensation Plan and which is available to the elected officials. This 6% for other than judges is in addition to the compensation amounts shown above.

<u>Position</u>	<u>Monthly Salary</u>	
	<u>July '82</u>	<u>April '83</u>
<u>GOVERNOR</u>	\$4341	
Judges, Court of Appeals	4338*	
Directors, Departments of Energy, Veterans Affairs, Workers Compensation; Chairman, Workers Compensation Board	4229	\$4398
<u>ATTORNEY GENERAL</u>	4176	
Circuit Court Judges	4030*	
Member, Workers Compensation Board	4028	4189
Directors, Departments of Revenue, General Services Commerce et al.; class of Attorney 5	4024	
Deputy State Treasurer; Real Estate Commissioner; Public Utility Hearings Director	3839	3932
Members, Employment Relations Board, Land Use Board of Appeals, Superintendent of State Penitentiary	3833	
Workers Compensation Hearings Referees	3688	3894
Director of Transportation, PUC	3656	3802
Adjutant General, Military Department; Administrator, OICC; Deputy Commissioner, Bureau of Labor; class of Attorney 4; Corporation Commissioner	3653	
<u>SECRETARY OF STATE, STATE TREASURER, SUPERINTENDENT OF PUBLIC INSTRUCTION, LABOR COMMISSIONER</u>	3573	
Senior Public Utility Hearings Examiner	3513	3709
Fire Marshal, Director of Administrative Service PUC; Assist. Director, Department of Energy	3480	3619

*Salaries for judges do not include the 6% retirement pick-up which is part of the Management Service Compensation Plan, and which is available to the elected officials. This 6% for other than judges is in addition to the compensation amounts shown above.

STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES*

State or other Jurisdiction	Governor	Secretary of State	Attorney General	Treasurer	Education (Chief School Officer)	Labor & Indus- trial Relations
Alabama.....	\$ 50,000	\$ 25,800	\$ 49,000	\$ 25,800	\$ 49,461	\$ 43,277
Alaska.....	74,196	...	57,500	...	57,500	64,452
Arizona.....	50,000	28,000	45,000	30,000	36,000	53,624
Arkansas.....	35,000	22,500	26,500	22,500	48,150	40,018
California.....	49,100	42,500	47,500	42,500	42,500	54,556
Colorado.....	50,000	32,500	40,000	32,500	62,519	50,000
Connecticut....	42,000	25,000	38,500	25,000	62,488	58,101
Delaware.....	35,000	41,900	37,000	24,000	64,500	37,300
Florida.....	65,000	55,500	55,500	55,500	48,981	47,250
Georgia.....	65,934	38,400	46,000	35,742	43,200	53,460
Hawaii.....	50,000	...	42,500	...	42,500	42,500
Idaho.....	40,000	28,000	35,000	28,000	28,000	38,126
Illinois.....	58,000	50,500	50,500	48,000	58,000	43,000
Indiana.....	48,000	34,000	39,000	34,000	34,000	32,084
Iowa.....	60,000	35,600	46,980	35,600	48,200	34,128
Kansas.....	45,000	27,500	40,000	27,500	58,045	36,420
Kentucky.....	50,000	43,229	43,229	43,229	43,229	41,500
Louisiana.....	73,400	55,712	60,169	55,712	60,169	50,812
Maine.....	35,000	25,000	36,637	25,000	39,479	25,230
Maryland.....	60,000	36,000	50,000	50,000	56,800	44,600
Massachusetts..	40,000	30,000	37,500	30,000	41,584	29,086
Michigan.....	70,000	60,000	60,000	58,400	58,400	53,500
Minnesota.....	66,500	36,000	56,000	36,000	45,000	40,000
Mississippi....	53,000	34,000	41,000	34,000	34,000	...
Missouri.....	55,000	42,500	45,000	42,500	51,780	40,000
Montana.....	43,360	28,685	39,555	26,175	34,120	43,000
Nebraska.....	40,000	32,000	39,500	32,000	48,000	33,983
Nevada.....	50,000	32,500	40,500	31,500	34,812	31,445
New Hampshire..	51,830	36,406	45,039	36,406	41,333	34,553
New Jersey.....	85,000	56,000	56,000	56,000	56,000	56,000

* From "The Book of the States, 1982-83, published by the Council of State Governments, Lexington, Kentucky, 1982

STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES*
(Cont'd)

State or other Jurisdiction	Governor	Secretary of State	Attorney General	Treasurer	Education (Chief School Officer)	Labor & Indus- trial Relations
New Mexico.....	\$ 60,000	\$ 38,500	\$ 44,000	\$ 38,500	\$ 50,000	\$ 35,328
New York.....	85,000	69,000	60,000	49,029	76,100	65,700
North Carolina.	57,864	47,918	53,966	47,918	53,966	47,918
North Dakota...	47,000	33,500	38,000	33,500	34,000	33,500
Ohio.....	50,000	50,000	50,000	50,000	53,500	43,000
Oklahoma.....	48,000	24,000	35,000	30,000	35,000	24,000
Oregon.....	55,423	45,619	53,308	45,619	45,619	45,619
Pennsylvania..	66,000	48,000	55,000	48,000	49,000	33,389
Rhode Island..	49,500	35,500	41,875	35,500	53,140	36,947
South Carolina	60,000	45,000	45,000	45,000	45,000	40,247
South Dakota..	46,750	31,749	39,749	31,749	36,005	27,750
Tennessee.....	68,226	51,504	73,015	51,504	51,510	46,526
Texas.....	78,700	52,800	56,200	56,200	55,000	38,600
Utah.....	48,000	...	36,500	33,500	60,281	44,955
Vermont.....	44,850	24,380	31,400	24,380	37,876	32,115
Virginia.....	75,000	29,200	45,000	53,000	59,500	40,200
Washington....	63,000	31,000	47,100	37,200	42,800	54,000
West Virginia.	60,000	36,000	42,000	39,000	56,200	31,500
Wisconsin.....	65,801	32,608	50,780	32,608	58,139	55,000
Wyoming.....	55,000	37,500	55,500	37,500	37,500	46,644

* From "The Book of the States, 1982-83, published by the Council of State Governments, Lexington, Kentucky, 1982

Chart showing salaries which would have been in effect April 1983 without the salary cuts imposed by the June 1982 Special Session of the legislature.

<u>Position</u>	<u>Monthly Salary</u>
Chief Medical Investigator, Health Division	\$ 5897
Superintendents, Dammasch State Hospital, Eastern Oregon State Hospital, et al.	5346
Deputy Attorney General; Executive Assistant to the Governor	5093
Director, Department of Transportation; Public Utility Commissioner	4853
Directors, Department of Human Resources and the Executive Department	4853
Deputy Director, Department of Transportation	4622
<u>GOVERNOR</u>	4619
Chief Justice, Supreme Court	4553
Justices of the Supreme Court; Chief Judge, Court of Appeals	4442
<u>ATTORNEY GENERAL</u>	4442
Directors, Departments of Energy, Veterans Affairs, Workers' Compensation; Chairman, Workers' Compensation Board	4398
Directors, Departments of Revenue, General Services, Commerce, et al.; class of Attorney 5	4398
Judges, Court of Appeals	4338
Member, Workers' Compensation Board	4189
Members, Employment Relations Board, Land Use Board of Appeals, Superintendent of State Penitentiary	4189
Circuit Court Judges	4030
Deputy State Treasurer; Real Estate Commissioner; Public Utility Hearings Director	3992
Adjutant General, Military Department; Administrator, OLCC; Deputy Commissioner, Bureau of Labor; Attorney 4; Corporation Commissioner	3992

<u>Position</u>	<u>Monthly Salary</u>
Workers' Compensation Hearings Referees	\$ 3894
Director of Transportation, PUC	3802
<u>SECRETARY OF STATE, STATE TREASURER, SUPERINTENDENT</u> <u>OF PUBLIC INSTRUCTION, LABOR COMMISSIONER</u>	3802
Senior Public Utility Hearings Examiner	3709
Fire Marshal; Director of Administrative Service, PUC; Assist. Director, Department of Energy	3619

Bill Fact Sheet

Date Received 3/10/83

Bill Number SB171 Title Compensation / State employees

Fiscal Note - Date Requested 3/14 Date Received _____

- Of Whom Rebecca Burch / Dept of Admin

Dept. Position Paper - Date Requested 3/14 Date Received _____

- Of Whom Rebecca Burch / Dept of Admin

Resource People

Initial Hearing - Date 3/24/83

People Contacted
Rebecca Burch - Dept. of Admin 3/21
Sen. Sackett's Office

Follow-up hearing - Date _____

Final Action passed Senate L+C Date 3/24/83

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#1

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 3, 1983

SUBJECT: Amendments to the Little Davis-Bacon Act
(AS 36.05) (Work Order No. 13-1354)

TO: Senator Richard I. Eliason

FROM: Thomas A. Sofo ^{AS}
Legislative Counsel

You have asked this office to suggest and analyze methods of limiting the scope of Alaska's Little Davis-Bacon Act (AS 36.05.010 - 36.05.120) without going so far as repealing the act outright. That act was modelled on the federal Davis-Bacon Act (40 U.S.C. 276(a)) and has as its goal the protection of the local labor force from transient labor which is willing to work for less than the prevailing wage in that locality. The Alaska Supreme Court has recognized the genesis and fundamental purpose involved in the state act on more than one occasion. City of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (1982); and Fowler v. City of Anchorage, 583 P.2d 817 (1978).

As I understand it, arguments have surfaced which indicate that there is some dissatisfaction with the operation of the Little Davis-Bacon Act in Alaska. Rather than serving to protect the local labor force, in many instances the requirement that the prevailing wage be paid discourages the construction of certain public projects in smaller locales. Apparently the prevailing wage which the state Department of Labor uses is in excess of what the people would actually work for in some of our smaller villages. Thus, the application of the Little Davis-Bacon Act and its requirement that a higher prevailing wage be paid than actually would normally be available at a particular public construction site has served to undercut the local labor force by making that work competitive with and therefore more attractive to a more urbanized labor force which can be sent into the area to perform the local public construction. If the underlying facts exist to support this argument, there does not appear

May 3, 1983

to be any constitutional impediment from adding exemptions to the Little Davis-Bacon Act to reflect the economic reality of the situation.

As stated above, the Alaska Supreme Court has recognized as a legitimate goal the protection of the local labor force from itinerant labor. If the operation of the act is shown to have the opposite effect from what is intended in areas of particularly small populations which include many able workers who are willing to work for less than the higher official prevailing wage, there appears to be a rational relationship to a legitimate state purpose which is necessary to meet an argument concerning equal protection. The fact that a worker on a similar project in a larger, more urban area of the state might get paid more for doing the same work does not necessarily mean the exemption in the statute would fail. Since the history of the judicial decisions in this subject area has already clearly recognized the legitimate goal of government in enacting such legislation, exemptions to the statutory scheme which have the same goal would also apparently be valid.

The most direct approach of taking into account the inapplicability of the Davis-Bacon scheme to rural areas in Alaska is to provide an exemption from the provisions of the act for public construction projects in places which do not meet certain minimum population requirements. I believe that this is the tack taken by HB 304. Another way to remove the smaller rural area from the operation of the act would be to create an exemption for public construction below a certain dollar amount. This latter way is not as direct and may have some difficulty passing a constitutional challenge since it is not always clear that a lower cost is associated with our projects in the bush while there certainly may be lower cost projects built in urban areas. For that reason a minimum cost figure exemption would find it harder to meet the requirement of being rationally related to the permissible state goal of protecting the indigenous labor force in rural areas.

Another approach which has been mentioned is to tack on an exemption to the Davis-Bacon Act in specific appropriation bills as they arise. Although that particular approach may be viable in federal legislation, the Alaska Constitution contains several prohibitions which serve to make it of questionable value in this state. Article II, section 9 of the Alaska State Constitution provides that "bills for

Senator Richard I. Eliason
Page 3
May 3, 1983

appropriations shall be confined to appropriations". That restriction seems to eliminate the inclusion of an exemption from an area of substantive law in an appropriation bill. Additionally, Article II, section 19, contains a prohibition against local or special acts which such an exemption would also seem to violate.

Conceivably, many of the above problems may be avoided if the prevailing wage set by the Department of Labor was more narrowly focused to specific geographical areas so that it more accurately reflected the cost of labor in those areas. I imagine someone would have to discuss this at length with a representative of the Department of Labor in order to assess the feasibility of that approach.

Let me know if I can be of further assistance to you in this matter.

TAS:ljb
17/019

Memos re:
Davis - Bacon

MEMORANDUM

State of Alaska

TO: Honorable Richard A. Nevé
Commissioner
Department of Environmental
Conservation

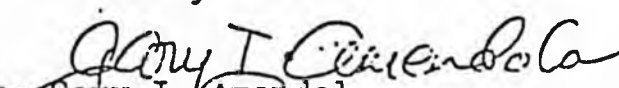
DATE: May 9, 1983

FILE NO: 366-573-83

TELEPHONE NO: 465-3603

cc: Norman C. Gorsuch
Attorney General

SUBJECT: Title 36

By: 
Gary I. Amendola
Assistant Attorney General
Human Services-Juneau

IS & S
JUNEAU MAY 19 1983

You have requested an opinion regarding the scope of Title 36 and its requirement that prevailing wages be paid on public works projects. Specifically you ask whether non-profit entities which receive grants under AS 37.05.316 or AS 37.05.317 can use "force account labor" to complete the public works project and thus avoid the payment of prevailing wages, as that term is used in AS 36.05.010 et seq.

On March 11, 1983, Deputy Attorney General Ron Lorensen issued an opinion regarding the application of the Little Davis-Bacon Act (AS 36.05) to designated grantees under AS 37.05.316 and 317. Under AS 37.05.317(2), nonprofit entities are permitted to receive and administer grants for public construction. This opinion addresses the related question which arose because of the issuance of that opinion.

A short answer to your question is yes.

The federal government has long recognized that where the government uses its own employees to perform public construction, the Davis-Bacon Act, upon which our "Little Davis Bacon Act" is modelled, does not require the payment of prevailing wages. See Veader v. Bay State Dredging and Contracting Company, 79 F. Supp. 837 (D.C. Mass. 1948); see also, Davis Bacon Act Field Operations Handbook, dated May 5, 1978 at page 15c14.

The 1978 informal Attorney General's opinion written by then Assistant Attorney General Ron Lorensen extended that rationale to municipal governments and by implication ratified that state governments could also use the "force account" system.

Without the existence of a contractual relationship between the non-profit entity and some third party doing the

Honorable Richard-A. Nevé
Commissioner
366-573-83

May 9, 1983
Page 2

work, Title 36 simply does not apply. The legislation in Title 36 is written in terms of contractors, subcontractors, and contracts. AS 36.05.010 states in relevant part:

A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done

...

Public construction, in turn, is defined at AS 36.95.010(3) as "the onsite 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." (emphasis supplied).

We can perceive of no reason to distinguish between a nonprofit entity's use of "force account labor" and a state's or municipality's use of "force account labor" to complete similar construction projects.

GIA:bap

Comm.
Up. Com.
Sp. Asst.
Inf. Cf.
Adm. Cf.
cc <i>Amendola</i>
cc
cc

TO: Honorable Jim Robison
 Commissioner
 Department of Labor

DATE: May 23, 1983

FILE NO: 366-592-83

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
 Attorney General

SUBJECT: Title 36 and the
 Juneau ANB/Tlingit-
 Haida building
 project.

By: *Gary I. Amendola*
 Gary I. Amendola
 Assistant Attorney General
 Human Services-Juneau

You have requested advice concerning the applicability of Title 36.05 (Little Davis-Bacon) to the above mentioned construction project. In order to decide on the applicability of Title 36.05 to this particular project, we have participated in discussions with representatives from your department and obtained a variety of materials and information regarding the project.

Our understanding of the facts is as follows:

In Chapter 82, SLA 1981, the legislature appropriated one million dollars for the Juneau Alaska Native Brotherhood by a grant identified as Juneau - Pilot Projects/Community Centers. The purpose of the appropriation was to provide funds to the Juneau ANB to replace its existing meeting hall, which had become quite old and inadequate, with a new one. The grant was authorized under AS 44.47.050(3), which permits the Department of Community and Regional Affairs to "conduct studies and carry out experimental and pilot projects for the purpose of developing solutions to community and regional problems". The Juneau ANB entered into an agreement with the Tlingit-Haida Central Council to jointly construct a building which will contain both the ANB tribal hall and offices for the Tlingit-Haida Central Council and its related organizations.

As we understand it, the Juneau ANB will own and utilize most of the first floor of the three-story building. Tlingit-Haida Central Council and its related organizations will own and utilize the remainder of the building.

The first floor utilized by Juneau ANB will be used mainly for Alaska Native Brotherhood community meetings and

Honorable Jim Robison
Commissioner
366-592-83

May 23, 1983
Page 2

functions. Even though the tribal hall will be open to the general public, the focal point will be as a community center for Alaska Natives. Games, tribal dances and other cultural activities will take place in the hall. It is our understanding that the remainder of the building utilized by Tlingit-Haida Central Council will be used for office space, conference rooms and other business purposes directly related to the services offered by the Central Council.

Based on our understanding of the facts and a review of our March 11, 1983, opinion to Representative Al Adams regarding the application of Little Davis-Bacon to designated grants, */ it is our opinion that Little Davis-Bacon (AS 36.05) does not apply to the Juneau Alaska Native Brotherhood/Tlingit-Haida Central Council building project. The uses to which the building will be put are not the type which are traditionally provided by government. Further, the construction of the building, while serving a public purpose, is simply not the sort of project which is traditionally undertaken by government.

GIA:bap

*/ We are mindful that, as stated in footnote 3 of the March 11, 1983 Attorney General's opinion, a deliberate attempt to evade or circumvent the Little Davis Bacon Act would likely not survive judicial scrutiny. We find no indication of such intent in this particular project.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149
JUNEAU, ALASKA 99802
(907)465-2700

May 6, 1983

The Honorable Richard Eliason
Chairman, Senate Labor and Commerce Committee
Pouch V
Juneau, AK. 99811

Dear Senator Eliason:

Sheila Peterson requested that the Department provide you with some time-frames for promulgating regulations for application of AS 36.05 to designated grants as recommended in Ron Lorensen's Opinion of March 11, 1983.

The Department will be conducting a workshop for the Title 36 enforcement staff and our attorneys during the early part of May 1983. The purpose of this workshop is to acquaint the regional staff with the many problems that have recently come to light as the result of funding for public construction. The Department is currently in the process of contacting every other state that has a Little Davis-Bacon Act to determine which of those states are encountering the same problems as we are, and to find out what approach they are taking for resolution of those problems.

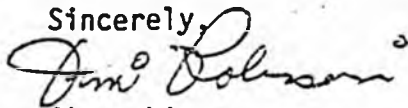
The Department is also surveying the U.S. Department of Labor to determine the federal approach for similar circumstances. While these surveys are being done by the Wage and Hour staff, we are also having our attorneys do independent research for any case law related to such funding problems. This information will then be used by the Department to bring to public hearings the proposed regulations that will, hopefully, clarify and give guidance to all parties when any public construction contract cannot be viewed in the traditional sense, whether the problems be related to funding or services to be provided.

Honorable Richard Eliason
May 6, 1983
Page Two

We are working toward holding public hearings in July and completing the regulations for submittal to the Attorney General in September 1983.

Thank you for your interest.

Sincerely,

A handwritten signature in cursive script that reads "Jim Robison". The signature is written in dark ink and is positioned above the printed name and title.

Jim Robison
Commissioner

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
WAGE & HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

March 7, 1983

PCOL #: 21

Honorable Richard I. Eliason
Senator, State of Alaska
Chairman, Committee on Labor
and Commerce
Pouch V
Juneau, Alaska 99811

Re: Force Account Labor (AS 36.05.010)

Dear Senator Eliason:

Thank you for your letter of March 1, 1983 in which you asked our opinion as to whether or not "force account" labor by employees of political subdivisions on public construction projects would be exempt from the provisions of AS 36.05.010.

Your question was posed within the framework of a municipal government which was the recipient of state appropriations for small communities for the construction of public facilities. The example cited was the case in which the municipality used the appropriation to hire a construction manager to provide "hands in the pocket" management and supervision of the project. The actual work of the laborers, mechanics and field surveyors was performed by employees of the municipality; all wages and benefits were set by the municipality, all wages were paid by the municipality with municipal payroll checks; the municipality did all the hiring and firing; the management contractor could not intervene between the employees and the municipality; the management contractor's sole purpose was to be the construction manager, procure materials and supervise the design and engineering phases.

At a recent seminar in Anchorage relating to all aspects of AS 36, at which the Deputy Attorney General was in attendance, the subject of "force account" labor was very thoroughly discussed by our attorneys and the Wage and Hour staff. Your question as set forth in your letter, and as earlier relayed to us by one of your staff members, was especially considered. It was the consensus that the circumstances as you presented them were an accurate characterization of "force account" labor which is exempt from the provisions of AS 36.05.010.

We have enclosed a copy of an Attorney General Opinion dated October 10, 1978. We have also enclosed a copy of the section from the U.S. Department of Labor Compliance Officer's handbook dealing with "force account" situations. As you can see from a perusal of the text, the Attorney General Opinion is in accordance with the Federal Davis-Bacon Act. You may, however, wish to seek further clarification on the federal stance from the U.S. Department of Labor. We would suggest you contact Mr. Edward Woodruff, Wage and Hour Specialist, Region X, Federal Office Building, 909 First Avenue, Seattle, Washington, 98174, phone: 206-442-1914.

Senator Eliason
March 7, 1983
Page 2

If we can be of any other assistance in this matter, please do not hesitate to contact us.

Sincerely,



Donald R. Wilson
Deputy Director
Labor Standards & Safety Division

Enclosures

cc: Director
PCOL File & Distribution



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

March 1, 1983

Donald R. Wilson, Supervisor
Wage and Hour Administration
Department of Labor
3301 Eagle St.
Pouch 7-021
Anchorage, Alaska 99510

Dear Mr. Wilson:

Several communities in my district have developed a procedure for their municipal construction projects based on a sort of "force account" system. I fully support this approach to handling construction of projects funded through state appropriation in small communities. This approach offers many advantages, including much-needed local employment, close involvement of the municipal government in all phases of planning, development, and construction of projects, a sense of pride and involvement by citizens in projects and growth in their own community, and often more work can be completed within the budget than if projects went out to bid.

My concern is that there has been some discussion about the applicability of the Little Davis-Bacon Act to projects done in this way. What I would like to ask is that your office make a ruling on this matter after consulting with the Attorney General's office. I believe that it is important that we establish in writing that the way in which these communities are dealing with their construction projects is fine and they need not fear future legal questions about whether they should have been paying Davis-Bacon wages.

As I understand it, the procedure being used is as follows. The state appropriates money for a particular project to the city government in a direct grant. The city hires a construction manager (a person or firm to serve as a "hands-in-pocket" construction supervisor, and to handle engineering and design phases, ordering of materials, etc.). The city then hires laborers, usually local residents, unless some specialized skills are needed, to do the construction work. These laborers are non-union (or at least need no union affiliation to qualify), are hired and fired by the city, paid by city check, and are paid at whatever rate the city decides to pay as wages on the particular project.

Bill No. SB 172

Date May 6, 1983

Title "An Act relating to wage rates on public construction; and providing for an effective date"

Contact: Judy Knight

The Department of Labor and the Department of Community & Regional Affairs oppose passage of this legislation. While it is recognized that the legislation was introduced to attempt to address certain matters of public construction in rural and small communities in Alaska, we believe that the legislation effectively undermines a process of paying a prevailing and fair wage to persons employed in public construction activities.

The Departments recognize that there may be continuing problems with the payment of prevailing wage rates, resident (local) hire in remote locations, and possible difficulties in the annual calculation of prevailing wage rates.

Therefore, at the instructions of Governor Sheffield, we are forming a "mini-Cabinet" composed of the Departments of Labor, Community & Regional Affairs and Transportation and Public Facilities to evaluate in detail the issues that this legislation purports to address. Specific focus will be made on the issue of prevailing wage rates and their methods for calculation, potential recommendations for adjusting formulas for calculation of wage rates, the uniformity of local hire, and related issues.

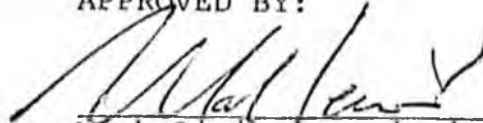
We believe that the formation of this mini-Cabinet and the issues that it will address will allow us to provide solutions to the problems that these two pieces of legislation are attempting to resolve.

APPROVED BY:



Jim Robinson, Commissioner
Department of Labor

APPROVED BY:



Mark Lewis, Commissioner
Department of Community &
Regional Affairs

POSITION PAPER/Department of Labor

STATE OF ALASKA
FISCAL NOTE

Revision Date April 25, 1983

I. REQUEST Sponsor Substitute II. FISCAL DETAIL
 Bill/Resolution No.: for Senate Bill 172 Agency Affected: Labor
 Title: "wage rates on public construction" Program Category Affected: Worker Protection
 Sponsor: Senator Sackett BRU, Program of Subprogram(s) Affected:
 Requestor: Senate Labor and Commerce Labor Standards and Safety, Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		(95.3)				
200 TRAVEL		0				
300 CONTRACTUAL		(73.9)				
400 COMMODITIES		(.9)				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		(170.1)	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(170.1)	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		(3)	0	0	0	0
PART-TIME						
TEMPORARY						

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

Not Applicable

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: ^{RS} Robert J. Bacolas, Sr. *R. Bacolas* Phone: 465-4870
 Division: Labor Standards and Safety Date: April 25, 1983
 Approved by Commissioner: ^{RS} Jim Robison *Jim Robison* Date: April 25, 1983
 Department: Labor
 LEG:A:41

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

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE

TITLE: "An Act relating to wage rates on public construction"

AGENCY AFFECTED: Department of Labor

Page 2

Detail Bill Analysis SSSB 172

The repeal of AS 36.05 will result in the discontinuation of enforcement activities by the Department of Labor with respect to contractor compliance with the payment of prevailing wages. This statute is modeled after the "Little Davis Bacon Act," which states that the payment of prevailing wages are required whenever public funds are appropriated for construction of projects for use by the public for traditional purposes.

Through the repeal of AS 36.05, the Department will not have any resources remaining to enforce AS 36.10, Employment Preference or Resident Hire.

Included in the fiscal note reduction is the current staff of three Wage and Hour technicians, associated non-personal services costs, and the deletion of funding for the annual prevailing wage study.

Assumptions:

Effective date July 1, 1983

1.	POSITION TITLE Wage and Hour Technician I			RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSSB 172	PCN NUMBER 074021	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.	

3.	CONTINUATION LEVEL	ADDITION		
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	<23,676>		
6.	Benefits	<3,757>		
7.	Supplemental Benefits	<1,451>		
8.	Fixed Benefits	<2,880>		
9.	TOTAL PERSONAL SERVICES	01	<31,764>	
10.	Travel	02	-0-	
11.	Contractual	03	<63,900>	
12.	Commodities	04	<300>	
13.	Equipment	05		
14.	Other			
15.	TOTAL COST		<95,964>	

JUSTIFICATION

This position was required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.

Contractual service includes \$58,900 for the prevailing wage survey. All other costs are normal operating expenses.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	<95,964>
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Page 1 of 3

Revised Date _____

FY 84

1.	POSITION TITLE Wage and Hour Technician I				RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSSB172	PCN NUMBER 074009	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	XX
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	<23,676>	
6.	Benefits	<3,757>	
7.	Supplemental Benefits	<1,451>	
8.	Fixed Benefits	<2,880>	
9.	TOTAL PERSONAL SERVICES	01	<31,764>
10.	Travel	02	-0-
11.	Contractual	03	<5,000>
12.	Commodities	04	<300>
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		<37,064>

JUSTIFICATION

This position was required to audit certified payrolls to ascertain if contractgors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor in not available.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	<37,064>
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour

FY 84

Page 2 of 3

Revised Date _____

1.	POSITION TITLE Wage and Hour Technician I				RANGE/STEP 12A	BARG. UNIT GGII	FORM 12 PAGE/LINE	GOV.	APPRD.V.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSSR172	PCN NUMBER 074008	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	YX
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	<23,676>	
6.	Benefits	<3,757>	
7.	Supplemental Benefits	<1,451>	
8.	Fixed Benefits	<2,880>	
9.	TOTAL PERSONAL SERVICES	01	<31,764>
10.	Travel	02	-0-
11.	Contractual	03	<5,000>
12.	Commodities	04	<300>
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		<37,064>

JUSTIFICATION

This position was required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	<37,064>
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR NEW POSITION

AGENCY Labor
PROGRAM Worker Protection
BRU Labor Standards and Safety
COMPONENT Wage and Hour

FY 84

Page 3 of 3
Revised Date _____

PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.010.

CATCH LINE

WAGE RATES ON PUBLIC CONSTRUCTION.

TEXT

A CONTRACTOR OR SUBCONTRACTOR WHO PERFORMS WORK ON PUBLIC CONSTRUCTION IN THE STATE, AS DEFINED BY AS 36.95.010(3), SHALL PAY NOT LESS THAN THE CURRENT PREVAILING RATE OF WAGES FOR WORK OF A SIMILAR NATURE IN THE REGION IN WHICH THE WORK IS DONE. THE CURRENT PREVAILING RATE OF WAGES FOR EACH PAY PERIOD IS THAT CONTAINED IN THE LATEST DETERMINATION OF PREVAILING RATE OF WAGES ISSUED BY THE DEPARTMENT OF LABOR BEFORE THE END OF THE PAY PERIOD.

HISTORY (SEC. 14-2-1 ACLA 1949; AM SEC. 1 CH 142 SLA 1972; AM SEC. 1 CH 89 SLA 1976)

END OF DOCUMENT

AS36.05.020 DOCUMENT= 2 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.020
TITLE = 36

HEADINGS

TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.020.

CATCH LINE

BASIS FOR DETERMINING WAGE.

TEXT

A SUBCONTRACT WHICH IS PERFORMED ON PUBLIC CONSTRUCTION MAY BE REDUCED TO A BASIS OF DAY LABOR FOR THE PURPOSE OF DETERMINING WHETHER OR NOT THE SUBCONTRACTOR OR CONTRACTORS HAVE PAID AT NOT LESS THAN THE PREVAILING SCALE OF WAGE.

HISTORY (SEC. 14-2-2 ACLA 1949)

END OF DOCUMENT

AS36.05.030 DOCUMENT= 3 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.030
TITLE = 36

HEADINGS

TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.030.

CATCH LINE

AUTHORITY.

TEXT

(A) THE DEPARTMENT OF LABOR HAS THE AUTHORITY TO DETERMINE THE PREVAILING WAGE, AND WHETHER OR NOT THIS CHAPTER IS BEING VIOLATED. THE DEPARTMENT MAY WHEN NECESSARY FOR THE ENFORCEMENT OF THIS CHAPTER

(1) CONDUCT INVESTIGATIONS AND HOLD HEARINGS CONCERNING WAGES;

(2) COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS AND DOCUMENTS,

(3) PROMULGATE REGULATIONS.

(B) IF A PERSON VIOLATES THIS CHAPTER THE ATTORNEY GENERAL SHALL, WHEN REQUESTED BY THE DEPARTMENT OF LABOR, ENFORCE THESE PROVISIONS.

HISTORY (SEC. 14-2-3 ACLA 1949; AM SEC. 2 CH 142 SLA 1972)

END OF DOCUMENT

AS36.05.035 DOCUMENT= 4 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.035
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.035.

CATCH LINE

NOTIFICATION OF CONTRACT AWARDS.

TEXT UPON AWARDING A PUBLIC CONSTRUCTION CONTRACT, THE STATE OR A
POLITICAL SUBDIVISION OF THE STATE SHALL

(1) IMMEDIATELY NOTIFY THE COMMISSIONER OF LABOR OF THE
AMOUNT OF THE CONTRACT, THE EFFECTIVE DATE OF THE CONTRACT,
THE IDENTITY OF THE CONTRACTOR AND ALL SUBCONTRACTORS, THE
SITE OR SITES OF CONSTRUCTION AND PROVIDE A PROJECT
DESCRIPTION; AND

(2) VERIFY THAT THE BONDING REQUIREMENTS OF AS 36.25
HAVE BEEN MET AND THAT THE REQUIREMENTS OF AS 08.18 HAVE BEEN
MET.

HISTORY (SEC. 3 CH 142 SLA 1972)

END OF DOCUMENT

AS36.05.040 DOCUMENT= 5 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.040
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.040.

CATCH LINE

FILING SCHEDULE OF EMPLOYEES, WAGES PAID AND OTHER INFORMATION.

TEXT ALL CONTRACTORS OR SUBCONTRACTORS WHO PERFORM WORK ON A PUBLIC
CONSTRUCTION CONTRACT FOR THE STATE OR FOR A POLITICAL
SUBDIVISION OF THE STATE SHALL, BEFORE THE FRIDAY OF EACH WEEK,
FILE WITH THE DEPARTMENT OF LABOR A SWORN AFFIDAVIT FOR THE
PREVIOUS WEEK, SETTING OUT IN DETAIL THE NUMBER OF MEN EMPLOYED,
WAGES PAID, JOB CLASSIFICATION OF EACH EMPLOYEE, HOURS WORKED
EACH DAY AND WEEK, AND OTHER INFORMATION WHICH THE DEPARTMENT OF
LABOR REQUIRES.

HISTORY (SEC. 14-2-4 ACIA 1949; AM SEC. 4 CH 142 SLA 1972)

END OF DOCUMENT

AS36.05.050 DOCUMENT= 6 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.050
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.050.

CATCH LINE

HOURS TO CONSTITUTE DAY'S WORK.
REPEALED BY SEC. 1 CH 3 SLA 1973.

TEXT

END OF DOCUMENT

AS36.05.060 DOCUMENT# 7 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.060
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.060.

CATCH LINE

PENALTY FOR VIOLATION OF THIS CHAPTER.

TEXT A CONTRACTOR WHO VIOLATES THIS CHAPTER, IS GUILTY OF A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT LESS THAN \$100 NOR MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT LESS THAN 10 DAYS NOR MORE THAN 90 DAYS, OR BY BOTH. EACH DAY A VIOLATION EXISTS CONSTITUTES A SEPARATE OFFENSE.

HISTORY (SEC. 14-2-6 ACLA 1949; AM SEC. 6 CH 142 SLA 1972)

END OF DOCUMENT

AS36.05.070 DOCUMENT# 8 OF 13 PAGE = 1 OF 2
CHAPTER = 36.05
SECTION = 36.05.070
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.070.

CATCH LINE

WAGE RATES FOR LABORERS AND MECHANICS ON PUBLIC CONTRACTS.

TEXT (A) THE ADVERTISED SPECIFICATIONS FOR A PUBLIC CONSTRUCTION CONTRACT EXCEEDING \$2,000 TO WHICH THE STATE OR A POLITICAL SUBDIVISION OF THE STATE IS A PARTY WHICH REQUIRES OR INVOLVES THE EMPLOYMENT OF MECHANICS, LABORERS, OR FIELD SURVEYORS SHALL CONTAIN A PROVISION STATING THE MINIMUM WAGES TO BE PAID VARIOUS CLASSES OF LABORERS, MECHANICS, OR FIELD SURVEYORS AND THAT THE RATE OF WAGES SHALL BE ADJUSTED TO THE WAGE RATE FOR EACH PAY PERIOD APPLICABLE UNDER AS 36.05.010.

(B) REPEALED BY SEC. 17 CH 142 SLA 1972.

(C) A CONTRACT FOR PUBLIC WORKS IN THE STATE OR A POLITICAL SUBDIVISION SHALL CONTAIN PROVISIONS THAT

(1) THE CONTRACTOR OR HIS SUBCONTRACTORS SHALL PAY ALL EMPLOYEES UNCONDITIONALLY AND NOT LESS THAN ONCE A WEEK;

(2) WAGES MAY NOT BE LESS THAN THOSE STATED IN THE ADVERTISED SPECIFICATIONS, REGARDLESS OF THE CONTRACTUAL RELATIONSHIP BETWEEN THE CONTRACTOR OR SUBCONTRACTORS AND LABORERS, MECHANICS, OR FIELD SURVEYORS;

(3) THE SCALE OF WAGES TO BE PAID SHALL BE POSTED BY

AS36.05.070 DOCUMENT# 8 OF 13 PAGE = 2 OF 2

THE CONTRACTOR IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE SITE OF THE WORK,

(4) THE STATE OR A POLITICAL SUBDIVISION SHALL WITHHOLD SO MUCH OF THE ACCRUED PAYMENTS AS IS NECESSARY TO PAY TO LABORERS, MECHANICS, OR FIELD SURVEYORS EMPLOYED BY THE CONTRACTOR OR SUBCONTRACTORS THE DIFFERENCE BETWEEN

(A) THE RATES OF WAGES REQUIRED BY THE CONTRACT TO BE PAID LABORERS, MECHANICS, OR FIELD SURVEYORS ON THE WORK, AND

(B) THE RATES OF WAGES IN FACT RECEIVED BY LABORERS, MECHANICS OR FIELD SURVEYORS.

HISTORY (SEC. 4 CH 52 SLA 1959, AM SECS. 7, 8, 17 CH 142 SLA 1972, AM SEC. 2 CH 89 SLA 1974)

END OF DOCUMENT

AS36.05.080 DOCUMENT= 9 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.080
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.080.

CATCH LINE

FAILURE TO PAY AGREED WAGES.

TEXT

EVERY CONTRACT WITHIN THE SCOPE OF AS 36.05.070 SHALL CONTAIN A PROVISION THAT IF IT IS FOUND THAT A LABORER, MECHANIC, OR FIELD SURVEYOR EMPLOYED BY THE CONTRACTOR OR SUBCONTRACTOR HAS BEEN OR IS BEING PAID A RATE OF WAGES LESS THAN THE RATE OF WAGES REQUIRED BY THE CONTRACT TO BE PAID, THE STATE OR ITS POLITICAL SUBDIVISION MAY, BY WRITTEN NOTICE TO THE CONTRACTOR, TERMINATE THE CONTRACTOR'S RIGHT TO PROCEED WITH THE WORK OR THE PART OF THE WORK FOR WHICH THERE IS A FAILURE TO PAY THE REQUIRED WAGES AND TO PROSECUTE THE WORK TO COMPLETION BY CONTRACT OR OTHERWISE, AND THE CONTRACTOR AND HIS SURETIES ARE LIABLE TO THE STATE OR ITS POLITICAL SUBDIVISION FOR EXCESS COSTS FOR COMPLETING THE WORK.

HISTORY (SEC. 2 CH 52 SLA 1959)

END OF DOCUMENT

AS36.05.090 DOCUMENT= 10 OF 13 PAGE = 1 OF 2
CHAPTER = 36.05
SECTION = 36.05.090
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.090.

CATCH LINE

PAYMENT OF WAGES FROM WITHHELD PAYMENTS AND LISTING CONTRACTORS WHO VIOLATE CONTRACTS.

TEXT

(A) THE STATE DISBURSING OFFICER IN THE CASE OF A STATE CONTRACT AND THE LOCAL FISCAL OFFICER IN THE CASE OF A POLITICAL SUBDIVISION CONTRACT SHALL PAY DIRECTLY TO LABORERS, MECHANICS OR FIELD SURVEYORS FROM ACCRUED PAYMENTS WITHHELD UNDER THE TERMS OF THE CONTRACT THE WAGES DUE LABORERS, MECHANICS OR FIELD SURVEYORS UNDER AS 36.05.070.

(B) THE STATE DISBURSING OFFICER OR THE LOCAL FISCAL OFFICER SHALL DISTRIBUTE TO ALL DEPARTMENTS OF THE STATE GOVERNMENT AND TO ALL POLITICAL SUBDIVISIONS OF THE STATE A LIST GIVING THE NAMES OF PERSONS WHO HAVE DISREGARDED THEIR OBLIGATIONS TO EMPLOYEES. NO PERSON APPEARING ON THIS LIST AND NO FIRM, CORPORATION, PARTNERSHIP OR ASSOCIATION IN WHICH THE PERSON HAS AN INTEREST MAY WORK AS A CONTRACTOR OR SUBCONTRACTOR ON A PUBLIC CONSTRUCTION CONTRACT FOR THE STATE OR A POLITICAL SUBDIVISION OF THE STATE UNTIL THREE YEARS AFTER THE DATE OF PUBLICATION OF THE LIST. IF THE ACCRUED PAYMENTS WITHHELD UNDER THE CONTRACT ARE INSUFFICIENT TO REIMBURSE ALL THE LABORERS, MECHANICS, OR FIELD

AS36.05.090 DOCUMENT= 10 OF 13 PAGE = 2 OF 2

SURVEYORS WITH RESPECT TO WHOM THERE HAS BEEN A FAILURE TO PAY THE WAGES REQUIRED UNDER AS 36.05.070, THE LABORERS, MECHANICS OR FIELD SURVEYORS HAVE THE RIGHT OF ACTION OR INTERVENTION OR BOTH AGAINST THE CONTRACTOR AND HIS SURETIES CONFERRED BY LAW UPON PERSONS FURNISHING LABOR OR MATERIALS, AND IN THE PROCEEDINGS IT IS NOT A DEFENSE THAT THE LABORERS, MECHANICS OR FIELD SURVEYORS ACCEPTED OR AGREED TO ACCEPT LESS THAN THE REQUIRED RATE OF WAGES OR VOLUNTARILY MADE REFUSES.

HISTORY (SEC. 3 CH 52 SLA 1959, AM SEC. 9 CH 142 SLA 1972)

END OF DOCUMENT

AS36.05.100 DOCUMENT= 11 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.100
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.100.

CATCH LINE

EFFECT OF AS 36.05.070 - 36.05.110 ON OTHER LAWS.

TEXT AS 36.05.070 - 36.05.110 DO NOT SUPERSEDE OR IMPAIR AUTHORITY
GRANTED BY STATE LAW TO PROVIDE FOR THE ESTABLISHMENT OF SPECIFIC
WAGE RATES.

HISTORY (SEC. 4 CH 52 SLA 1959; AM SEC. 10 CH 142 SLA 1972)

END OF DOCUMENT

AS36.05.110 DOCUMENT= 12 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.110
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.110.

CATCH LINE

CONTRACTS ENTERED INTO WITHOUT ADVERTISING.

TEXT THE FACT THAT A PUBLIC CONTRACT AUTHORIZED BY LAW IS ENTERED INTO
UPON A COST-PLUS-A-FIXED-FEE BASIS OR OTHERWISE, WITHOUT
ADVERTISING FOR PROPOSALS, DOES NOT MAKE AS 36.05.070 - 36.05.110
INAPPLICABLE IF THEY ARE OTHERWISE APPLICABLE TO THE CONTRACT.

HISTORY (SEC. 5 CH 52 SLA 1959)

END OF DOCUMENT

AS36.05.120 DOCUMENT= 13 OF 13 PAGE = 1 OF 1
CHAPTER = 36.05
SECTION = 36.05.120
TITLE = 36

HEADINGS TITLE 36.
PUBLIC CONTRACTS.
CHAPTER 05.
WAGES AND HOURS OF LABOR.

CITATION SEC. 36.05.120.

CATCH LINE

REGULATIONS GOVERNING CONTRACTORS.

TEXT REPEALED BY SEC. 17 CH 142 SLA 1972.

AS3601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

Donald R. Wilson
March 1, 1983
Page two

Please investigate the applicability of the Davis-Bacon Act to projects handled as described above and let me know of your conclusions so that I may inform the municipalities in my district.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Dick Eliason". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Sen. Dick Eliason

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

APR 19 1983

Bill Sheffield, Governor

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

April 19, 1983

Hon. John C. Sackett
Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Applicability of AS 36.-
05.010 -- 36.05.110 to
forced-accounting
Our file no.: 366-554-83

Dear Senator Sackett:

This letter responds to your inquiry regarding whether the prevailing wage stipulations required under the Little Davis-Bacon Act, AS 36.05.010 -- 36.05.110, apply where a municipality or a Rural Education Attendance Area (REAA) use their own employees to perform work on a public works project. It is our view that municipalities or REAAs which use their own employees on a public works project, a practice commonly referred to as "forced-accounting," are not required to pay prevailing wages. Where state funds are involved, however, other statutory provisions may limit the instances when forced-accounting is appropriate.

The prevailing wage requirement is set forth in AS 36.-05.010, which provides in pertinent part:

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

The statute plainly applies only to contractor or subcontractors under contract for public works. Where the state or a political subdivision uses its own employees to perform public construction, the Little Davis-Bacon Act does not apply. 1978 Inf. Op. Att'y Gen. (Oct. 11; J66-195-79). See Annot. 18 A.L.R.-3d 944 (1968).

We have not discovered any case authority which imposes any limit on the authority of a public employer to force-account. We note, however, that courts which address the distinction drawn in a prevailing wage provision between public employees and those of a contractor justify the distinction due to the perceived benefits of public employment. The presumption, here, is that public employment is more permanent and offers an employee other economic advantages such as fringe benefits. See City of Monmouth v. Lorenz, 195 N.E.2d 661 (Ill. 1963) (inclusion of public employees in prevailing wage provision violated constitutional guarantee to equal protection). If, when a municipality or an REAA employs persons on a sporadic, project-by-project basis, the public employees do not obtain the advantages typically available through public employment, a court may conclude that forced-accounting cannot serve to circumvent prevailing wage requirements. See 1983 Inf. Op. Att'y Gen. (Mar. 11; 366-267-83) (Little Davis-Bacon Act applicable to certain designated grants). See also City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982).

While a municipality or an REAA may construct a project through forced accounting without being subject to prevailing wage requirements, the more difficult inquiry is when forced-accounting is an available option. Where state funds are used, the general preference for the award of contracts through public bid is set forth in AS 35.15.010(a):

Except as provided in AS 36.98 and AS 44.33.-300, it shall be the general policy of the department to require the construction of all public works under bid contract. However, when the estimated cost of a construction project is less than \$100,000, or when it appears to be in the best interests of the state, the department may perform the work, notwithstanding any other provisions of law. A complete record shall be kept by the commissioner or the commissioner's designee of all transactions entered into under this section including names of employees involved in the transactions.

(Emphasis added.)

A municipality may request the assumption of "all or part of the [Department of Transportation and Public Facilities'] responsibilities relating to the planning, design and

construction of a public works project of the state that is to be located within the boundaries of the municipality and that would otherwise be construction in the manner provided by AS 35.15.-010." AS 35.15.080. Arguably among the assumed responsibilities is the responsibility to determine under AS 35.15.010 whether "it appears to be in the best interests of the state" for the department to perform the work, notwithstanding that the public work costs in excess of \$100,000. 1/

An REAA, in turn, may assume "the responsibilities relating to the planning, design and construction of a school or an education-related facility, located within the boundaries or operating areas of the...[REAA]." AS 14.11.020. 2/ Title 14, however, does not define the Department of Education's "responsibilities" which may be assumed by an REAA. 3/ Were the Department of Education to retain responsibility for the construction of a school project, the public bid requirements set forth in AS 35.15 would be applicable. Consequently, an REAA which assumes responsibility for a school project is subject to the preference for public bidding under AS 35.15.010.

1/ A countervailing argument is that only a state agency has the requisite breadth of perspective to make a determination of what is in the best interest of the state. For purposes of this opinion, we assume that the best interest determination is delegable. Moreover, it is a separate inquiry whether DOT/PF may by regulation limit the authority to force-account. See AS 35.15.080(f).

2/ Indeed, prior the adoption of ch. 92, SLA 1982, AS 35.15.080 also provided for the assumption of responsibility in a local public works project by both a municipality and an REAA. We note that other provisions in AS 35.15 which relate to an assumption by an REAA were not amended. In particular, we do not interpret AS 35.05.080(f) to impose an independent obligation for an REAA to pay prevailing wages to its own employees engaged in work on a public project.

3/ Presumably, an REAA also assumes the concomitant responsibility to determine whether forced-accounting would be in the public interest. See supra, note 2. We are advised that, as required by AS 14.11.020(d), the Department of Education is presently drafting regulations which relate to the assumption of departmental responsibilities.

We finally offer an observation regarding the flexibility of a municipality or an REAA to use its own employees on a public works project which costs in excess of \$100,000.

While a degree of deference would be due an administrative determination of when it is in the "public interest" to force-account rather than contract for services, we caution that an anticipated reduction in project costs may not, by itself, be a sufficient basis for that determination. The Alaska Supreme Court addressed an analogous claim in City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). Sitka had attempted to execute a timber sale contract separate from a dam construction contract subject to the Little Davis-Bacon wage stipulations. The separate timber sale contract allowed Sitka to maximize the value of the merchantable timber on the dam site. The court, however, rejected Sitka's attempt to enhance economic returns through the avoidance of contractual prevailing wage stipulations.

Sitka's position, in essence, invites the government to sever from a public construction bid offering any aspect of the endeavor which may have an unrelated profit incentive, such as the removal of a natural resource. Such a rule impermissibly enables a public agency to profit at the expense of workers engaged in activities instrumental to a public construction project.

644 P.2d at 233. The Sitka analysis suggests that a municipality or an REAA must articulate other considerations in support of a finding that force-accounting a particular project is in the best interests of the public.

We hope this responds to your concerns. Please feel free to contact us if you have any further questions on this matter.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



Jonathan B. Rubini
Assistant Attorney General

JBR:jb

MEMORANDUM

State of Alaska

TO: Dale Cheek, Director
Labor Standards & Safety Division
Department of Labor
Juneau

DATE: May 24, 1982

FILE NO: A66-453-82

TELEPHONE NO: 276-3550

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Applicability of Little
Davis-Bacon Act
(AS 36.05.010-.110)
to Road Maintenance and
Repair Projects

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

You have requested our assistance in resolving an apparent dispute between the Department of Labor and the Matanuska-Susitna Borough concerning the applicability of the prevailing wage requirements contained in Alaska's "Little Davis-Bacon Act" (AS 36.05.010-.110) to road and highway maintenance and repair projects. As part of our inquiry, we have also reviewed the correspondence between the Department and the Borough on this subject.

AS 36.05.010 requires contractors and subcontractors performing work on "public construction" in the state to pay "not less than the prevailing rate of wages for work of a similar nature in the region in which the work is done." AS. 36.05.030 authorizes the Alaska Department of Labor to determine prevailing wage rates, and whether or not a given project is subject to the Little Davis-Bacon Act.

AS 36.95.010(3) defines "public construction" as follows, in pertinent part:

"Public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, [or] a political subdivision of the state....

The central question in this inquiry is: how broad is the definition of "repair" under AS 36.95.010(3), and does it extend to cover routine "maintenance" work on public streets, roads or highways?

The applicability of the Little Davis-Bacon Act to particular public projects in Alaska has been addressed in at least three prior opinions from this office. An August 1977 memorandum concluded that a contract for window washing services between the state and a private contractor was not subject to the provisions of AS 36 (Ronald W. Lorensen, August 5, 1977). A March 1981 memorandum found that contracts for snow removal from state airports and roads were not contracts for "public construction" subject to the requirements of AS 36 (John B. Gaguine, March 10, 1981). A third opinion in August 1979 concluded that contracts for highway maintenance on the North Slope Haul Road were subject to the prevailing wage and bonding requirements of AS 36 (Larry Wood, August 14, 1979). It was noted in this latter opinion that most courts have found the concepts of "maintenance" and "repair" - as they relate to streets, roads and highways - to be synonymous for all practical purposes.

In a decision just released, the Alaska Supreme Court for the first time reviewed the applicability of the Little Davis-Bacon Act to a specific public project. City and Borough of Sitka v. Construction and General Laborers Local 942, Opinion No. 2495 (Alaska Supreme Court, May 7, 1982). The principal issue in the case was whether a contract for the sale of timber between the City and Borough of Sitka and a private logging company preparatory to a dam construction project was "public construction" subject to the wage protections afforded by Little Davis-Bacon. The court held that even though a timber sale contract standing alone might normally be outside the scope of Little Davis-Bacon, it nonetheless was subject to the Act because the subject matter of the contract was "substantially related" to "public construction". In making its decision, the court relied heavily on federal

regulations under the Davis-Bacon Act, which indicated that clearing done at a dam site in preparation for the dam's construction was "construction" within the purview of the Davis-Bacon Act. Accordingly, the court found that the clearing of timber and its subsequent sale was such an integral part of the entire dam construction project that it constituted "public construction". It rejected Sitka's contention that because the timber sale contract had been severed from the dam construction contract it was outside the scope of Little Davis-Bacon coverage.

Moreover, the court reaffirmed that the fundamental purpose of the Little Davis-Bacon Act is "to assure that employees engaged in public construction receive at least the prevailing wage" and that "the focus of the Act, quite clearly, is to the benefit of the employees, not the contracting principals". Slip opinion at 15. The court also cited a leading federal case holding that the language of the Davis-Bacon 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." City and Borough of Sitka, supra, slip op. at 15 n.11, quoting U.S. v. Binghamton Construction Co., 347 U.S. 171, 177 (1953).

The federal Davis-Bacon regulations relied upon by the Alaska Supreme Court in City and Borough of Sitka define the terms "construction", "prosecution", "completion" or "repair" to mean "all types of work done on a particular building or work at the site thereof... including without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work..." 29 C.F.R. § 5.2(g) (1981) (emphasis added). On the other hand, the same regulations define the terms "building" or "work" to generally include "construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work". 29 C.F.R. § 5.2(f) (1981) (emphasis added). Unfortunately, the federal regulations do not elaborate

on the apparent distinction between "repair" and "servicing or maintenance" work.

The few authorities which discuss the concepts of "repair" and "maintenance" as they relate to streets, roads and highways generally indicate that the terms are essentially synonymous. Black's Law Dictionary (Rev. 4th ed. 1968) defines "repairs" as "restoration to soundness; reparation; work done to property to keep it in good order." The same authority defines "maintenance" as "acts of repair and other acts to prevent a decline, lapse or cessation from existing state or condition". "Maintain" as used in a state statute referring to maintenance of roads includes the word "repair". Weiher v. Phillips, 133 N.E. 67, 68 (Ohio 1921). The words "maintain" and "repair", when applied to a street, practically mean one and the same thing. Barber Asphalt Paving Co. v. Hezel, 56 S.W. 449, 451 (Mo. 1900); Verdin v. City of St. Louis, 33 S.W. 480, 494 (Mo. 1895);. To "maintain" means to preserve or keep in an existing state or condition and embraces acts of repair and other acts to prevent a decline, lapse or cessation from that state or condition, and includes the idea of keeping in repair but has much broader meaning involving the concept of supporting, sustaining, carrying on and continuing. State Farm Mutual Automobile Insurance Co. v. Pan American Insurance Co., 437 S.W. 2d 542, 545 (Tex. 1969), quoting Morris v. American Liability & Surety Co., 185 A. 201, 202 (Pa. 1936).

From the above authorities it appears to us that the concepts of "repair" and "maintenance" are closely related and in most cases mean the same thing. All repairs by definition are a form of maintenance. However, not all acts of maintenance constitute repairs. For example, we do not believe that street sweeping, window washing, snow removal, or the cleaning of public buildings are in and of themselves acts of repair. With respect to work on public roads and highways, we believe that the concept of "repair" under the Little Davis-Bacon Act requires that the term be defined in its broadest sense, consistent with the broad statutory

purpose recognized by the Alaska Supreme Court in its recent City and Borough of Sitka opinion. As a general guideline, therefore, we believe "repair" includes the excavation of mudholes and potholes, the hauling and placing of any additional material or fill on the roadway, the grading or reshaping of newly added materials, and the correction or replacement of damaged culverts, fences or guardrails. On the other hand, we believe that the grading or smoothing of an existing roadway surface, the straightening or reshaping of shoulders, slopes and ditches, and the unplugging or cleaning of culverts are merely "maintenance" activities and would not independently be subject to the Little Davis-Bacon Act unless otherwise "substantially related" to ongoing construction or repair.

We recognize that the distinction between "repair" and "maintenance" is often a difficult one to define in practical terms, and that it is not possible to set out an exhaustive list of illustrative examples. We would note, however, that frequently the "principal purpose" of the overall project will aid in the determination of whether a contract calls for construction or repair on the one hand, or maintenance or servicing on the other. See, e.g., 29 C.F.R. §§ 4.115-4.132 (1981) (McNamara-O'Hara Service Contract Act regulations). As the Alaska Supreme Court noted in City and Borough of Sitka, it is the nature of the specific work as well as the relationship of that work to the overall project which are the salient considerations. Slip opinion at 15.

Finally, it should be emphasized that the Department of Labor is the state agency authorized under AS 36.05.030 to make final determinations of statutory coverage under the Little Davis-Bacon Act. City and Borough of Sitka, supra, Slip Op. at 5. See also 29 C.F.R. § 5.12 (1981). Other state agencies or political subdivisions awarding contracts for publicly financed work should be advised to refer any questions or uncertainties regarding Little Davis-Bacon coverage

Dale Cheek

-6-

May 24, 1982

to the Department's Wage and Hour Administration for resolution prior to the commencement of the project.

cc: Donald R. Wilson, Wage and Hour Administration
Ronald W. Lorensen, Deputy Attorney General

MEMORANDUM

TO: Dale Cheek, Director
Wage & Hour Division
Department of Labor

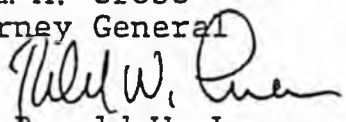
DATE: October 11, 1978

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Performance of Public
Construction Projects by
Municipalities; A.G. File
No. J-66-195-79

By: 
Ronald W. Lorensen
Assistant Attorney General

This is in response to your recent request for our advice as to whether municipal governments may properly carry out their public construction projects by using their own employees under a "force-account" system which utilizes private contractors, if at all, solely to provide overall "hands-in-pocket" management and supervision of the project. Also, if municipalities may perform their own public construction in this manner, you wonder whether they are subject to the provisions of AS 36.05, relating to the payment of prevailing wages on public construction contracts.

As we understand the situation about which you are inquiring, at least one organized borough in the state does not carry out its public construction projects by hiring private construction contractors to perform all phases of the work and complete the project. Instead, it hires private contractors to perform only the management and supervisory functions necessary to accomplish the project for the borough, but requires that the contractor utilize borough employees to actually do the construction work. We see no legal impediment to a borough doing all or any portion of its public construction projects on its own in this manner.

As to whether AS 36.05 applies to a borough which accomplishes its public construction projects by use of its own employees under a "force account" system, we think the answer is clearly that it does not. AS 36.05.010, which establishes the scope of the requirement of payment of prevailing wages under AS 36.05, speaks only in terms of the duty of "contractors" and "sub-contractors" who perform work on public construction in the state. It does not state that political subdivisions performing such work must pay prevailing wages. Nor does it state that all employees working on public construction projects are entitled to be paid in accordance with prevailing wages. Thus, while it appears that AS 36.05 would apply to a municipality's contractor for management services on a public construction project, it does not apply to the municipality in carrying out such projects with its own employees.

RWL:lw

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.

Honorable Albert P. Adams
Representative
366-267-83

March 11, 1983
Page 2

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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Honorable Albert P. Adams
Representative
366-267-83

March 11, 1983
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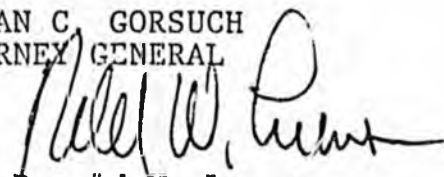
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If you have any further questions regarding the scope of Little Davis-Bacon, please let us know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Ronald W. Lorensen
Deputy Attorney General

RWL:vrh

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.

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.

Honorable Albert P. Adams
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366-267-83

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Honorable Albert P. Adams
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March 11, 1983
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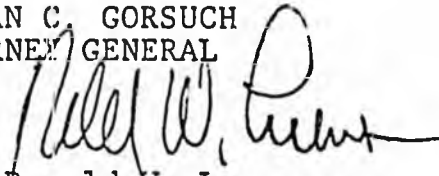
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Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Ronald W. Lorensen
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cc: Jim Robison
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MEMORANDUM

State of Alaska

TO Dale Cheek, Director
Labor Standards & Safety Division
Department of Labor
Juneau

DATE: May 24, 1982
FILE NO: A66-453-82
TELEPHONE NO: 276-3550

FROM WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Applicability of Little
Davis-Bacon Act
(AS 36.05.010-.110)
to Road Maintenance and
Repair Projects

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

You have requested our assistance in resolving an apparent dispute between the Department of Labor and the Matanuska-Susitna Borough concerning the applicability of the prevailing wage requirements contained in Alaska's "Little Davis-Bacon Act" (AS 36.05.010-.110) to road and highway maintenance and repair projects. As part of our inquiry, we have also reviewed the correspondence between the Department and the Borough on this subject.

AS 36.05.010 requires contractors and subcontractors performing work on "public construction" in the state to pay "not less than the prevailing rate of wages for work of a similar nature in the region in which the work is done." AS. 36.05.030 authorizes the Alaska Department of Labor to determine prevailing wage rates, and whether or not a given project is subject to the Little Davis-Bacon Act.

AS 36.95.010(3) defines "public construction" as follows, in pertinent part:

"Public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, [or] a political subdivision of the state....

regulations under the Davis-Bacon Act, which indicated that clearing done at a dam site in preparation for the dam's construction was "construction" within the purview of the Davis-Bacon Act. Accordingly, the court found that the clearing of timber and its subsequent sale was such an integral part of the entire dam construction project that it constituted "public construction". It rejected Sitka's contention that because the timber sale contract had been severed from the dam construction contract it was outside the scope of Little Davis-Bacon coverage.

Moreover, the court reaffirmed that the fundamental purpose of the Little Davis-Bacon Act is "to assure that employees engaged in public construction receive at least the prevailing wage" and that "the focus of the Act, quite clearly, is to the benefit of the employees, not the contracting principals". Slip opinion at 15. The court also cited a leading federal case holding that the language of the Davis-Bacon 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." City and Borough of Sitka, supra, slip op. at 15 n.11, quoting U.S. v. Binghamton Construction Co., 347 U.S. 171, 177 (1953).

The federal Davis-Bacon regulations relied upon by the Alaska Supreme Court in City and Borough of Sitka define the terms "construction", "prosecution", "completion" or "repair" to mean "all types of work done on a particular building or work at the site thereof... including without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work..." 29 C.F.R. § 5.2(g) (1981) (emphasis added). On the other hand, the same regulations define the terms "building" or "work" to generally include "construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work". 29 C.F.R. § 5.2(f) (1981) (emphasis added). Unfortunately, the federal regulations do not elaborate

The central question in this inquiry is: how broad is the definition of "repair" under AS 36.95.010(3), and does it extend to cover routine "maintenance" work on public streets, roads or highways?

The applicability of the Little Davis-Bacon Act to particular public projects in Alaska has been addressed in at least three prior opinions from this office. An August 1977 memorandum concluded that a contract for window washing services between the state and a private contractor was not subject to the provisions of AS 36 (Ronald W. Lorenson, August 5, 1977). A March 1981 memorandum found that contracts for snow removal from state airports and roads were not contracts for "public construction" subject to the requirements of AS 36 (John B. Gaguine, March 10, 1981). A third opinion in August 1979 concluded that contracts for highway maintenance on the North Slope Haul Road were subject to the prevailing wage and bonding requirements of AS 36 (Larry Wood, August 14, 1979). It was noted in this latter opinion that most courts have found the concepts of "maintenance" and "repair" - as they relate to streets, roads and highways - to be synonymous for all practical purposes.

In a decision just released, the Alaska Supreme Court for the first time reviewed the applicability of the Little Davis-Bacon Act to a specific public project. City and Borough of Sitka v. Construction and General Laborers Local 942, Opinion No. 2495 (Alaska Supreme Court, May 7, 1982). The principal issue in the case was whether a contract for the sale of timber between the City and Borough of Sitka and a private logging company preparatory to a dam construction project was "public construction" subject to the wage protections afforded by Little Davis-Bacon. The court held that even though a timber sale contract standing alone might normally be outside the scope of Little Davis-Bacon, it nonetheless was subject to the Act because the subject matter of the contract was "substantially related" to "public construction". In making its decision, the court relied heavily on federal

on the apparent distinction between "repair" and "servicing or maintenance" work.

The few authorities which discuss the concepts of "repair" and "maintenance" as they relate to streets, roads and highways generally indicate that the terms are essentially synonymous. Black's Law Dictionary (Rev. 4th ed. 1968) defines "repairs" as "restoration to soundness; reparation; work done to property to keep it in good order." The same authority defines "maintenance" as "acts of repair and other acts to prevent a decline, lapse or cessation from existing state or condition". "Maintain" as used in a state statute referring to maintenance of roads includes the word "repair". Weiher v. Phillips, 133 N.E. 67, 68 (Ohio 1921). The words "maintain" and "repair", when applied to a street, practically mean one and the same thing. Barber Asphalt Paving Co. v. Hezel, 56 S.W. 449, 451 (Mo. 1900); Verdin v. City of St. Louis, 33 S.W. 480, 494 (Mo. 1895);. To "maintain" means to preserve or keep in an existing state or condition and embraces acts of repair and other acts to prevent a decline, lapse or cessation from that state or condition, and includes the idea of keeping in repair but has much broader meaning involving the concept of supporting, sustaining, carrying on and continuing. State Farm Mutual Automobile Insurance Co. v. Pan American Insurance Co., 437 S.W. 2d 542, 545 (Tex. 1969), quoting Morris v. American Liability & Surety Co., 185 A. 201, 202 (Pa. 1936).

From the above authorities it appears to us that the concepts of "repair" and "maintenance" are closely related and in most cases mean the same thing. All repairs by definition are a form of maintenance. However, not all acts of maintenance constitute repairs. For example, we do not believe that street sweeping, window washing, snow removal, or the cleaning of public buildings are in and of themselves acts of repair. With respect to work on public roads and highways, we believe that the concept of "repair" under the Little Davis-Bacon Act requires that the term be defined in its broadest sense, consistent with the broad statutory

purpose recognized by the Alaska Supreme Court in its recent City and Borough of Sitka opinion. As a general guideline, therefore, we believe "repair" includes the excavation of mudholes and potholes, the hauling and placing of any additional material or fill on the roadway, the grading or reshaping of newly added materials, and the correction or replacement of damaged culverts, fences or guardrails. On the other hand, we believe that the grading or smoothing of an existing roadway surface, the straightening or reshaping of shoulders, slopes and ditches, and the unplugging or cleaning of culverts are merely "maintenance" activities and would not independently be subject to the Little Davis-Bacon Act unless otherwise "substantially related" to ongoing construction or repair.

We recognize that the distinction between "repair" and "maintenance" is often a difficult one to define in practical terms, and that it is not possible to set out an exhaustive list of illustrative examples. We would note, however, that frequently the "principal purpose" of the overall project will aid in the determination of whether a contract calls for construction or repair on the one hand, or maintenance or servicing on the other. See, e.g., 29 C.F.R. §§ 4.115-4.132 (1981) (McNamara-O'Hara Service Contract Act regulations). As the Alaska Supreme Court noted in City and Borough of Sitka, it is the nature of the specific work as well as the relationship of that work to the overall project which are the salient considerations. Slip opinion at 15.

Finally, it should be emphasized that the Department of Labor is the state agency authorized under AS 36.05.030 to make final determinations of statutory coverage under the Little Davis-Bacon Act. City and Borough of Sitka, supra, Slip Op. at 5. See also 29 C.F.R. § 5.12 (1981). Other state agencies or political subdivisions awarding contracts for publicly financed work should be advised to refer any questions or uncertainties regarding Little Davis-Bacon coverage

Dale Cheek

-6-

May 24, 1982

to the Department's Wage and Hour Administration for resolution prior to the commencement of the project.

cc: Donald R. Wilson, Wage and Hour Administration
Ronald W. Lorensen, Deputy Attorney General

MEMORANDUM

TO: Dale Cheek, Director
Wage & Hour Division
Department of Labor

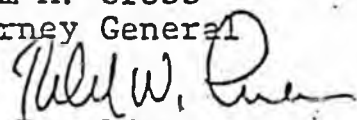
DATE: October 11, 1978

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Performance of Public
Construction Projects by
Municipalities; A.G. File
No. J-66-195-79

By: 
Ronald W. Lorensen
Assistant Attorney General

This is in response to your recent request for our advice as to whether municipal governments may properly carry out their public construction projects by using their own employees under a "force-account" system which utilizes private contractors, if at all, solely to provide overall "hands-in-pocket" management and supervision of the project. Also, if municipalities may perform their own public construction in this manner, you wonder whether they are subject to the provisions of AS 36.05, relating to the payment of prevailing wages on public construction contracts.

As we understand the situation about which you are inquiring, at least one organized borough in the state does not carry out its public construction projects by hiring private construction contractors to perform all phases of the work and complete the project. Instead, it hires private contractors to perform only the management and supervisory functions necessary to accomplish the project for the borough, but requires that the contractor utilize borough employees to actually do the construction work. We see no legal impediment to a borough doing all or any portion of its public construction projects on its own in this manner.

As to whether AS 36.05 applies to a borough which accomplishes its public construction projects by use of its own employees under a "force account" system, we think the answer is clearly that it does not. AS 36.05.010, which establishes the scope of the requirement of payment of prevailing wages under AS 36.05, speaks only in terms of the duty of "contractors" and "sub-contractors" who perform work on public construction in the state. It does not state that political subdivisions performing such work must pay prevailing wages. Nor does it state that all employees working on public construction projects are entitled to be paid in accordance with prevailing wages. Thus, while it appears that AS 36.05 would apply to a municipality's contractor for management services on a public construction project, it does not apply to the municipality in carrying out such projects with its own employees.

15c14 "Force account" construction work. In some instances a Government agency (or a State or political subdivision thereof or a private firm or individual using Federal money) may perform construction work under what is generally known as "force account". In essence, this is a "do-it-yourself" type of construction - the agency or grant recipient decides not to contract out the work but actually performs it "in-house" with its own employees. Such work is not subject to DBRA/CWHSSA, except under the Public Works Employment Act of 1977 and the U.S. Housing Act of 1937 and the Housing Act of 1949. (See FOH 15e23.) This is true even though - in the case of loans or grants - the lender or grantor may provide as a condition that the construction be performed in accord with DBRA/CWHSSA stipulations and pay requirements. However, that part of the work not done under "force account" but contracted out is subject to DBRA/CWHSSA in the usual manner. (See FOH 15c19.)

15c15 Owner-operators of trucks and other hauling equipment.

(a) As a matter of administrative policy, the provisions of DBRA/CWHSSA have not been applied to bona fide owner-operators of trucks and other hauling equipment on construction projects. For purposes of these Acts, the certified payrolls including the names of such owner-operators need not show hours worked nor rates allegedly paid, but only the notation "Owner-operator". This position does not pertain to owner-operators of other equipment such as bulldozers, scrapers, backhoes, cranes, drilling rigs, welding machines, and the like.

15c16 Supply and installation contracts. Installation work is covered by the DB Act where it involves more than an incidental amount of construction activity. For example, DB coverage has been extended to installing a security system or an intrusion detection system, installing permanent shelving which is attached to the structure, installing air-conditioning ducts, excavating outside cable trenches and laying cable, installing heavy generators, mounting radar antenna, and installing instrumentation grounding systems. However, where mixed or combination supply and installation contracts are involved, the DB Act may apply to a portion of the contract, depending upon whether more than an incidental amount of construction work is involved.